

**MOTOR FINANCE COMMISSION CONSUMER REDRESS SCHEME (2014-2024)  
INSTRUMENT 2026**

**Powers exercised**

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the powers and related provisions in or under the following sections of the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137A (The FCA’s general rules);
  - (2) section 137T (General supplementary powers);
  - (3) section 139A (Power of the FCA to give guidance);
  - (4) section 226 (Compulsory jurisdiction);
  - (5) section 395 (The FCA’s and PRA’s procedures);
  - (6) section 404(3) (Consumer redress schemes);
  - (7) section 404A (Rules under s.404: supplementary); and
  - (8) paragraph 23 (Fees) of Part 3 (Penalties and fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 31 March 2026.

**Amendments to the Handbook**

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C
Consumer Redress Schemes sourcebook (CONRED)	Annex D

**Notes**

- E. In the Annexes to this instrument, the notes (indicated by “*Editor’s note:*”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- F. This instrument may be cited as the Motor Finance Commission Consumer Redress Scheme (2014-2024) Instrument 2026.

By order of the Board  
26 March 2026

## Annex A

## Amendments to the Glossary of definitions

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

Amend the following definition as shown.

*complaint* ...

- (2) (in *DISP*, except *DISP* 1.1 and (in relation to *collective portfolio management*) in the *consumer awareness rules*, the *complaints handling rules* and the *complaints record rule*, and in *CONRED 5*, *CONRED 6*, *CREDS 9* and in *SUP 12*) any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a *person* about the provision of, or failure to provide, a financial service, *claims management service* or a *redress determination*, which:

...

...

- (4) (in *DISP*, *CONRED 5* and *CONRED 6*) reference to a *complaint* includes:

...

...

## Annex B

## Amendments to the Fees manual (FEES)

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

### 3 Application, Notification and Vetting Fees

...

#### 3.2 Obligation to pay fees

...

##### 3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1A: Application, notification and vetting fees		
(1) Fee payer	(2) Fee payable (£) by reference to the pricing category in <i>FEES</i> 3 Annex 1AR.	Due date
...		
(zn) [deleted]	...	
(zo) In the case of <i>persons</i> in respect of which the <i>FCA</i> has given notice of its intention to take, or appoint a competent person to take, any steps under <i>CONRED</i> 2.5.12R, <del>or</del> <i>CONRED</i> 4.5.1R; <u><i>CONRED</i> 5.5.1R or <i>CONRED</i> 6.5.1R</u> either:  (i) a Firm (as defined in <i>CONRED</i> 2.1.1R(1) or <u><i>CONRED</i> 4.1.3R</u> ); or  (ii) a <i>person</i> falling within <i>CONRED</i> 2.1.2R(1), <del>or</del> <i>CONRED</i> 4.1.5R, <u><i>CONRED</i> 5.1.4R or <i>CONRED</i> 6.1.4R</u> .	An amount equal to:  (1) a sum determined by the number of hours, or part of an hour, taken by the <i>FCA</i> in relation to work conducted in taking steps under <i>CONRED</i> 2.5.12R, <del>or</del> <u><i>CONRED</i> 4.5.1R, <i>CONRED</i> 5.5.1R or <i>CONRED</i> 6.5.1R</u> recorded on the <i>FCA</i> 's systems, multiplied by the rate in <i>FEES</i> 3 Annex 9 (11)R; or  (2) any amount invoiced to the <i>FCA</i> by a competent person in relation to any work carried out by that competent person in connection with its appointment by the <i>FCA</i> under <i>CONRED</i> 2.5.12R <del>or</del> <u><i>CONRED</i> 4.5.1R, <i>CONRED</i> 5.5.1R or <i>CONRED</i> 6.5.1R</u> .	Within 30 <i>days</i> of the date of the invoice.

...		
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## Annex C

**Amendments to the Dispute Resolution: Complaints sourcebook (DISP)**

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

**App 5 Relevant motor finance discretionary commission arrangement complaint and motor finance non-discretionary commission arrangement complaint handling rules**

...

**App 5.2 Complaint handling rules in respect of a relevant motor finance DCA complaint and a motor finance non-DCA complaint**

...

Time limits for a final response: motor finance non-DCA complaint

App R ...  
5.2.1B

(2) For the purpose of calculating the eight-week period in:

- (a) *DISP* 1.6.2R;
- (b) *DISP* 1.6.7G;
- (c) *DISP* 2.8.1R(2); and
- (d) *DISP* 2.8.1R(4)(a),

time is to be treated as not running for the period beginning with ~~26 October 2024~~ 20 December 2024 and ending with 31 May 2026.

...

...

## Annex D

### Amendments to the Consumer Redress Schemes sourcebook (CONRED)

Insert the following new chapter, CONRED 5 (Motor finance commission consumer redress scheme (2014-2024)), after CONRED 4 (British Steel Consumer Redress Scheme). All the text is new and is not underlined.

#### **5 Motor finance commission consumer redress scheme (2014-2024)**

##### **5.1 Interpretation, application and subject matter of the scheme**

Definitions used in this chapter

###### 5.1.1 R For the purposes of this chapter:

- (1) ‘Annual percentage rate of charge’ means the rate of the total charge for credit, expressed as an annual percentage of the total amount of credit, calculated in accordance with *CONC* App 1.
- (2) ‘Commission’ has the meaning given in *CONRED* 5.1.3(1).
- (3) *Complaint* includes:
  - (a) a relevant motor finance DCA complaint; and
  - (b) a motor finance non-DCA complaint,
 as each of those types of *complaint* are respectively defined in *DISP* App 5.1.2R and *DISP* App 5.1.3AR.
- (4) ‘Consumer’ means any individual falling within the meaning of ‘consumers’ in section 404E of the *Act* and includes:
  - (a) a partnership consisting of 2 or 3 persons not all of whom are bodies corporate; and
  - (b) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership.
- (5) ‘Credit broker’ means:
  - (a) a *credit broker*; or
  - (b) a person who was, at the time the relevant motor finance agreement was entered into, a *credit broker*.
- (6) ‘Disclosure information’ means the information described in *CONRED* 5.3.10R(1)(a) to (c).
- (7) ‘Durable medium’ means, in writing:

- (a) on paper; or
  - (b) using any instrument which:
    - (i) enables the recipient to store information addressed personally to the recipient in a way that is accessible for future reference and for a period of time adequate for the purposes of the information;
    - (ii) allows the unchanged reproduction of the information stored; and
    - (iii) is not communicated by way of a social media platform, a short message service (SMS) or another similar commercial messaging service.
- (8) ‘Early settlement payment’ means any payment to fully or partially discharge the consumer’s indebtedness under a motor finance agreement before the time fixed by that agreement, taking into account any rebate calculated in accordance with the formula at regulation 4 of the Consumer Credit (Early Settlement) Regulations (SI 2004/1483).
- (9) ‘High commission arrangement’ means an arrangement under which the total amount of commission was at least:
- (a) 39% of the total charge for credit; and
  - (b) 10% of the total amount of credit.
- (10) ‘Implementation period’ means a period of 3 *months* beginning with the scheme effective date.
- (11) ‘Lender’ means:
- (a) a *lender*; or
  - (b) a person who was, at the time the relevant motor finance agreement was entered into, a *lender*.
- (12) ‘Motor finance agreement’ means a credit agreement which is not an exempt agreement under articles 60C to 60H of the *Regulated Activities Order* which, in whole or in part, financed the purchase of a motor vehicle or under which a motor vehicle was bailed or hired.
- (13) ‘Motor vehicle’ means a mechanically propelled vehicle intended or adapted for use on roads to which the public has access.
- (14) ‘Opt-in’ means a written notification from, or on behalf of, a consumer indicating that the consumer agrees for their scheme case to be assessed for liability under the scheme.

- (15) ‘Opt-out’ means a written notification from, or on behalf of, a consumer indicating that the consumer does not want their scheme case to be assessed for liability under the scheme.
- (16) ‘Primary records’ means records of the type described in *CONRED* 5 Annex 1.1G(1) to (3).
- (17) ‘Priority debt’ means an obligation on the part of a consumer to make a payment:
- (a) where the remedies for a breach of that obligation potentially include seeking possession of, or seeking to exercise a power of sale in respect of:
    - (i) the sole or main residence of the consumer (for example, an obligation to pay secured by a mortgage or charge in respect of land, an obligation to pay rent under a tenancy, or an obligation to make payment under a licence to occupy land); or
    - (ii) the consumer’s essential goods or services (for example, an obligation to pay under a hire purchase, conditional sale or hire agreement that relates to, or an obligation to pay secured by a charge on, the consumer’s cooker, refrigerator, or the means to travel to work); or
  - (b) where that obligation arises out of an order of the court, an Act or secondary legislation (for example, an obligation to pay council tax, child support maintenance, income tax or court fines); or
  - (c) where that obligation arises under a contract for the provision of utility supplies (for example, water, gas or electricity).
- (18) ‘Relevant arrangement’ has the meaning given in *CONRED* 5.2.19R(1) to (4).
- (19) ‘Scheme’ means the *consumer redress scheme* created by this chapter.
- (20) ‘Scheme case’ means a case that satisfies each of the conditions in *CONRED* 5.1.17R.
- (21) ‘Scheme effective date’ means 31 March 2026 and is the date that the scheme created by this chapter comes into force.
- (22) ‘Secondary records’ means:
- (a) contemporaneous records of the type described in *CONRED* 5 Annex 1.1G(1) to (3) relating to other consumers who were in a sufficiently similar position as the consumer in the scheme case, and which include information that demonstrates the standard practices of the lender or the credit broker at the relevant time; or

- (b) records of the type described in *CONRED* 5 Annex 1.1G(4).
- (23) ‘Successor’ means a person who is a creditor for the purposes of section 140A of the *CCA* by virtue of section 140C(2) of that Act.
- (24) ‘Tied arrangement’ means a contractual arrangement between a lender and a credit broker under which the credit broker is required to:
  - (a) introduce consumers exclusively to the lender; or
  - (b) give the lender the option to provide an offer of credit to the consumer before the credit broker is entitled to approach another lender in respect of that consumer (including a ‘right of first refusal’ or an equivalent right of priority).
- (25) ‘Total amount of credit’ means the total sums made available under a motor finance agreement.
- (26) ‘Total charge for credit’ means the true cost to the borrower of the credit provided, or to be provided, under an actual or prospective motor finance agreement, calculated in accordance with *CONC* App 1.
- (27) ‘Total amount of commission’ has the meaning given in *CONRED* 5.1.3R(2).
- (28) ‘Unfair relationship provisions’ means sections 140A to 140C of the *CCA*.
- (29) ‘Very high commission arrangement’ means an arrangement under which the total amount of commission was at least:
  - (a) 50% of the total charge for credit; and
  - (b) 22.5% of the total amount of credit.

5.1.2 G The words and phrases that are in italics in this chapter have the meaning set out in the *Glossary*.

Meaning of ‘commission’ and related expressions

5.1.3 R For the purposes of this chapter:

- (1) ‘Commission’ means any commission, fee or other financial consideration or remuneration payable (directly or indirectly) by a lender to a credit broker in connection with the entering into of a specific motor finance agreement.
- (2) ‘Total amount of commission’ means the sum of all commission payable in connection with the entering into of a specific motor finance agreement.

- (3) All references to commission ‘payable’ refer to the amount of commission that the credit broker was entitled to receive under the arrangements providing for the payment of commission.
- (4) In determining the amount of commission that was payable, the lender may refer to evidence of the actual amount of commission paid to a credit broker in connection with a specific motor finance agreement contained in its financial records (see *CONRED 5 Annex 1.1G(1)(c)*) if it is a reasonable proxy.
- (5) References to ‘discretionary commission arrangement’ are to be read as including any arrangement which would, if it had been entered into on or after 28 January 2021, have constituted a *discretionary commission arrangement*.

- 5.1.4 G (1) The definition of commission captures any commission, fee or other financial consideration or remuneration payable in connection with the entering into of a specific motor finance agreement. As such, it will not capture sums that were payable for meeting aggregated transaction, performance or ‘volume’ targets rather than attributable to specific motor finance agreements entered into by consumers. A sum payable for meeting a target based on a specified cumulative total of transactions is not captured because that sum is not referable to any specific transaction comprised in that cumulative total. Firms are not required to retrospectively apportion payments that were not attributable to specific transactions at the time.
- (2) By contrast, if a commission sum was at the time attributable to a specific motor finance agreement, it will be caught by these rules irrespective of the administrative arrangements for the settling of that sum with the credit broker. For example, a payment made to the credit broker’s head office (rather than local dealership) which was calculated as a percentage of the total amount of credit is captured by the definition of commission, even if all such sums the credit broker was entitled to receive during a specified period (eg, over the year or per quarter) were in practice settled through a single administrative payment made at a later date. In these circumstances, each commission sum comprised in that payment is attributable to the entering into of a specific motor finance agreements rather than to the meeting of an ‘aggregated’ target.
  - (3) The definition of commission also captures commission that is payable indirectly. This will include where commission that a credit broker was entitled to receive under the arrangements providing for the payment of commission were paid to the credit broker:
    - (a) through an intermediary (including another credit broker); or
    - (b) by another third party on behalf of the lender (for example, under an arrangement where another company in the same *group* as the lender agreed to make the payment).

- (4) To identify the total amount of commission, the lender will need to calculate the sum of all commission payable in connection with the entering into of the relevant motor finance agreement. This will mean, for example, that:
- (a) where commission was payable under more than one type of commission arrangement (for example, where commission was payable under both a discretionary commission arrangement and a fixed fee commission arrangement), the total amount of commission is the sum of the commission payable under each type of commission arrangement;
  - (b) it does not matter if different commission sums within the total amount of commission were payable to different administrative functions of the credit broker, or at different points in time (see also (2) above); and
  - (c) where commission was payable to more than one credit broker in connection with the entering into of the same motor finance agreement, the total amount of commission is the sum of the commission payable to each of those credit brokers.

Further interpretation provisions: transactions involving more than one motor finance agreement

- 5.1.5 R (1) This *rule* applies where a single motor vehicle sales transaction was financed by more than one motor finance agreement.
- (2) The lender should treat the transaction as a single scheme case for the purposes of the steps required under this chapter.
- (3) Provisions requiring a determination of the following in respect of a scheme case are to be interpreted in accordance with (2):
- (a) whether one or more relevant arrangements is present; and
  - (b) whether there was a failure to provide adequate disclosure of one or more relevant arrangements giving rise to an unfair relationship that caused loss or damage (see third step in *CONRED 5.3*).
- (4) For the purposes of (3)(a):
- (a) the total amount of commission must be calculated by aggregating the total amount of commission for each motor finance agreement; and
  - (b) to identify whether the definitions of high commission arrangement or very high commission arrangement are met, the following must be calculated by aggregating the relevant values for each motor finance agreement:

- (i) the total amount of commission;
  - (ii) the total charge for credit; and
  - (iii) the total amount of credit.
- (5) *CONRED* 5.4.23R applies for the purposes of calculating redress in scheme cases to which this rule applies.

#### Application to lenders

- 5.1.6 R (1) This chapter applies to a lender in respect of a motor finance agreement it entered into with a consumer:
- (a) in the circumstances described in (2);
  - (b) where the unfair relationship provisions apply in connection with the motor finance agreement; and
  - (c) where the consumer, at the time the agreement was entered into, was habitually resident in the *UK*.
- (2) The circumstances referred to in (1)(a) are that:
- (a) there were arrangements between the lender and a credit broker in connection with the entering into of the agreement relating to the payment of commission; and
  - (b) the agreement was entered into during the period beginning with 1 April 2014 and ending with 1 November 2024.
- 5.1.7 G The provisions of this scheme are without prejudice to any rights of indemnity or contribution a lender may have against a credit broker under the contractual arrangements between them or pursuant to the Civil Liability (Contribution) Act 1978.

#### Application to credit brokers

- 5.1.8 R The following provisions apply to a credit broker:
- (1) *CONRED* 5.1.9R;
  - (2) *CONRED* 5.2.23G;
  - (3) *CONRED* 5.2.28R;
  - (4) *CONRED* 5.3.6R;
  - (5) *CONRED* 5.4.29;
  - (6) *CONRED* 5.5.6R; and

(7) *CONRED 5.9.1R.*

5.1.9 R Where a credit broker receives a *complaint* in relation to the subject matter of the scheme, it must:

- (1) forward the *complaint* to the lender; and
- (2) inform the consumer that the *complaint* has been forwarded to the lender.

Application to successor where lender is insolvent or has ceased to exist

5.1.10 R (1) Where the conditions in (2) are met, this chapter applies to the following *person* as if it were the lender in scope of *CONRED 5.1.6R*:

- (a) for a motor finance agreement with a single successor, the successor; or
- (b) for a motor finance agreement with multiple successors, the *person* who became a successor first in time.

(2) The conditions are:

- (a) the motor finance agreement was entered into with a consumer by another *person*; and
- (b)
  - (i) that *person* is a lender in scope of *CONRED 5.1.6R* and is subject to insolvency proceedings; or
  - (ii) that *person* would have been a lender in scope of *CONRED 5.1.6R* but for the fact it ceased to exist before the scheme effective date.

Application to successors generally

5.1.11 R Subject to *CONRED 5.1.10R*, the following provisions apply to successors in respect of a motor finance agreement:

- (1) *CONRED 5.1.14G*;
- (2) *CONRED 5.2.6R*;
- (3) *CONRED 5.4.42R*;
- (4) *CONRED 5.4.43G*; and
- (5) *CONRED 5.9.1R.*

5.1.12 R Notwithstanding *CONRED 5.1.10R* and *CONRED 5.1.11R*, this chapter does not apply to a successor in respect of a motor finance agreement if that *person* became the successor after the fixed term of the motor finance agreement expired.

- 5.1.13 G (1) The definition of successor means that a *person* who has been assigned rights under a motor finance agreement will only be in scope if there was a legal assignment under section 136 of the Law of Property Act 1925, with notice being given to the consumer.
- (2) A successor may be in scope of this scheme even if it is an *unauthorised person* because of the expanded definition of a relevant firm in section 404F(5) of the *Act*.

- 5.1.14 G The provisions of this scheme are without prejudice to any rights of indemnity or contribution a successor may have against a lender under the contractual arrangements between them or pursuant to the Civil Liability (Contribution) Act 1978.

#### Duration of the scheme

- 5.1.15 R The scheme comes into force on the scheme effective date and has no end date.

#### Subject matter of the scheme

- 5.1.16 R The subject matter of the scheme is whether, in a scheme case, there was inadequate disclosure of any of the following in connection with the entering into of a motor finance agreement:
- (1) a discretionary commission arrangement;
  - (2) the payment of commission;
  - (3) a tied arrangement; or
  - (4) any other arrangement between a lender and a credit broker under which the credit broker was incentivised (directly or indirectly) to introduce consumers wishing to enter into motor finance agreements to that lender.

#### Scheme case

- 5.1.17 R (1) A 'scheme case' is a case that satisfies each of the following conditions:
- (a) it involves a motor finance agreement falling within *CONRED* 5.1.6R;
  - (b) the motor finance agreement was not cancelled;
  - (c) commission was payable (directly or indirectly) by the lender to a credit broker in connection with the entering into of the motor finance agreement;
  - (d) subject to (2), the total amount of credit did not exceed the amount specified in the second column of the table in *CONRED*

- 5.1.18R for the year in which the motor finance agreement was entered into;
- (e) subject to *CONRED* 5.1.19R, the consumer has not accepted an offer of redress from the lender or the credit broker:
    - (i) for a claim directly arising out of a motor finance agreement in (a) that falls within the subject matter of this scheme; or
    - (ii) in full and final settlement of all potential claims in connection with the consumer's motor finance agreement;
  - (f) the motor finance agreement in (a) has not been the subject of:
    - (i) court proceedings where there has been a decision on the merits in relation to a claim falling within the subject matter of the scheme; or
    - (ii) a *complaint* by the consumer to the *Financial Ombudsman Service* that falls within the subject matter of the scheme and where the merits of that *complaint* have been considered by the *Financial Ombudsman Service*; and
  - (g) the lender determines, after having regard to the *rules and guidance* in *CONRED* 5.1.20G to *CONRED* 5.1.24R, that if the consumer brought a claim falling within the subject matter of the scheme against the lender under section 140A of the *CCA*:
    - (i) the limitation period (in England and Wales, and Northern Ireland) would not have expired before the rules creating the scheme were made; or
    - (ii) the claim would not be precluded by a period of prescription (in Scotland).
- (2) The condition in (1)(d) does not apply where the motor vehicle to which the motor finance agreement relates was constructed or adapted to enable a person with a disability to travel in the vehicle as a driver or a passenger (and 'disability' has the same meaning as in section 6(1) of the Equality Act 2010).
- (3) For the purposes of this *rule*, 'cancelled' means that the consumer exercised a statutory or contractual right of withdrawal or cancellation within an initial notice or 'cooling off' period which resulted in the motor finance agreement being cancelled (including where the motor finance agreement was cancelled because the consumer exercised a right to cancel an agreement for the supply of the motor vehicle).

- 5.1.18 R Table: Threshold for exclusion from being a scheme case for the purposes of *CONRED* 5.1.17R(1)(d).

<b>Year</b>	<b>Total amount of credit</b>
2014	£56,000
2015	£60,000
2016	£61,000
2017	£65,000
2018	£68,000
2019	£70,000
2020	£73,000
2021	£75,000
2022	£80,000
2023	£82,000
2024	£82,000

- 5.1.19 R The condition in *CONRED* 5.1.17R(1)(e) does not apply if a lender or the credit broker has defaulted in its obligation to make the payment by the agreed date.

Extension of limitation periods for unfair relationship provisions: general

- 5.1.20 G Pursuant to section 404(8) of the *Act*, a lender should conduct the assessment of limitation in *CONRED* 5.1.17R(1)(g) with reference to the position on 25 March 2026 (which is the day before the scheme *rules* were made).

Extension of limitation periods for unfair relationship provisions: England and Wales

- 5.1.21 G (1) The limitation period for a claim under section 140A of the *CCA* seeking a monetary remedy is 6 years from the end of the credit relationship (which will normally be the end of the motor finance agreement) in England and Wales.
- (2) Under section 32(1)(b) of the Limitation Act 1980, if any fact relevant to the claimant's right of action has been deliberately concealed from them by the defendant or its agent (which may include the lender or the

broker), the period of limitation will not begin to run until the claimant has discovered the concealment or could with reasonable diligence have discovered it.

- (3) In an unfair relationship claim under section 140A of the *CCA* arising out of the inadequate disclosure of a discretionary commission arrangement, high commission arrangement and/or tied arrangement, the facts relevant to the claimant's right of action will include the disclosure information described in *CONRED* 5.3.10R(1)(a) to (c) respectively.
- (4) In applying section 32(1)(b) of the Limitation Act 1980, the lender must apply section 56(2) of the *CCA*, which deems that relevant antecedent negotiations have been conducted by the negotiator (for example, the credit broker) in the capacity of the creditor (for example, the lender) as well as in their actual capacity.
- (5) Subject to (7), the fact or facts relevant to the claimant's right of action are likely to have been deliberately concealed, and the claimant is likely to be able to show that they could not with reasonable diligence have discovered them, to the extent that the information in *CONRED* 5.3.10R(1)(a) to (c), as applicable, was not clearly and prominently provided in the manner described in *CONRED* 5.3.10R(2) to (4).
- (6) It is unlikely that, where (5) applies, disclosure of the bare fact, or possibility, of commission being payable (for example, that commission 'would' be, 'may' be, 'is' or 'is typically' payable) will be sufficient for the defendant to argue either that there has not been any deliberate concealment of the facts relevant to the claimant's right of action, or that the claimant could with reasonable diligence have discovered all such relevant facts. For example, even if there was disclosure that a commission would be paid, it is unlikely that a disclosure of this nature would, in and of itself, be sufficient to mean that there was no concealment of the fact that the credit broker was permitted to select the interest rate provided for under the motor finance agreement in a way that affected the amount of commission that would be received by the credit broker. Nor is it likely that the claimant could, with reasonable diligence, have discovered that fact based on such a disclosure.
- (7) It is likely that the defendant will be able to demonstrate that the claimant could, with reasonable diligence, have discovered the facts relevant to their right of action such that the period of limitation will have begun to run from the end of the motor finance agreement (see (1)) where:
  - (a) the unfair relationship claim relates solely to a high commission arrangement; and
  - (b) there was clear and prominent disclosure, in the manner described in *CONRED* 5.3.10R(2) to (4), of the bare fact of, or possibility of, commission being payable (for example, that commission 'would' be, 'may' be, 'is' or 'is typically' payable), but not of the amount of commission payable to the credit broker in respect of

the consumer's agreement (ie, the amount of commission in monetary terms or the method by which the commission amount would be calculated such that the consumer was able to understand its size) (see *CONRED* 5.3.10R(1)(b)).

- (8) In considering whether there was clear and prominent disclosure for the purposes of *CONRED* (5) and (7)(b), firms should have regard to *CONRED* 5.3.11G.

Extension of limitation periods for unfair relationship provisions: Northern Ireland

- 5.1.22 G (1) The limitation period for a claim under section 140A of the *CCA* seeking a monetary remedy is 6 years from the end of the motor finance agreement in Northern Ireland.
- (2) Under article 71(1)(b) of the Limitation (Northern Ireland) Order 1989 (SI 1989/1339 (N.I. 11)), if any fact relevant to the claimant's right of action has been deliberately concealed from them by the defendant or its agent (which may include the lender or the credit broker), the period of limitation will not begin to run until the claimant has discovered the concealment or could with reasonable diligence have discovered it.
- (3) The *guidance* set out in *CONRED* 5.1.21G(3) to (8) applies.

Prescription period in Scotland for unfair relationship claims

- 5.1.23 G (1) In Scotland, time limits – referred to as prescription – applicable to bringing a legal claim are governed by the Prescription and Limitation (Scotland) Act 1973 ('the 1973 Act').
- (2) The 1973 Act does not impose a period of prescription on an unfair relationship claim under section 140A of the *CCA*, or a remedy awarded pursuant to section 140B of the *CCA*.

Applicable law for the purposes of limitation

- 5.1.24 R For the purposes of *CONRED* 5.1.17R(1)(g), the applicable law is:
- (1) that of the *UK* territory where, in connection with the motor finance agreement:
- (a) the consumer has agreed to the lender's *terms of business*; and
- (b) those *terms of business* include a clause providing for the application of the law of a particular *UK* territory (that is, England and Wales, Northern Ireland or Scotland); or
- (2) (if (1) does not apply) that of the *UK* territory where both the lender entered into the motor finance agreement and the consumer was habitually resident at the time the motor finance agreement was entered into; or

- (3) (if neither (1) nor (2) apply) that of the *UK* territory where the consumer was habitually resident at the time the motor finance agreement was entered into; or
- (4) (if none of (1), (2) or (3) apply) that of the *UK* territory where the lender entered into the motor finance agreement.

#### Gibraltar-based firms

- 5.1.25 R This chapter applies to a *Gibraltar-based firm* in respect of motor finance agreements falling within *CONRED 5.1.6R*.

## 5.2 Consumer redress scheme: scheme steps and identifying scheme cases

### Notice required during implementation period

- 5.2.1 R A lender must not take any scheme steps before the end of the implementation period unless the lender has provided the *FCA* with at least 15 *working days* prior notice of its intention to commence taking scheme steps.
- 5.2.2 G *CONRED 5.9.4R* sets out the information that a lender must include in a notice provided to the *FCA* to comply with *CONRED 5.2.1R*.

### Overview of scheme steps

- 5.2.3 G The lender must take the following steps in this chapter in respect of each motor finance agreement as applicable:
- (1) first step – identify *complaints* it has received before the end of the implementation period;
  - (2) second step – identify motor finance agreements in respect of which it does not have a *complaint*;
  - (3) in respect of agreements identified under (1) and (2), in accordance with *CONRED 5.2.9R* and *CONRED 5.2.11R*, determine:
    - (a) which are scheme cases; and
    - (b) of the agreements that are scheme cases, whether there is one or more relevant arrangement present;
  - (4) for scheme cases that have one or more relevant arrangement identified in the first step (existing complaints) proceed to the third step;
  - (5) for scheme cases with one or more relevant arrangement identified in the second step, in accordance with *CONRED 5.2.11R(2)*, invite the consumer to opt in to the scheme and, if the consumer opts in, proceed to the third step;

- (6) third step – in accordance with *CONRED 5.3*, determine whether an unfair relationship exists or existed and, if it did, whether the unfairness caused any loss or damage;
- (7) fourth step – calculate redress in accordance with *CONRED 5.4*;
- (8) fifth step – send a provisional redress decision and, if necessary a *redress determination*, in accordance with *CONRED 5.4.36R* and *CONRED 5.4.37R*.

#### Disapplication of DISP time limits for complaint handling

- 5.2.4 R (1) A *complaint* which is a:
- (a) relevant motor finance DCA complaint; or
  - (b) motor finance non-DCA complaint,
- must be handled by a lender in accordance with the *rules* in this chapter, including any applicable time limits, notwithstanding any *DISP* time limits that would apply to the *complaint* but for this provision.
- (2) This *rule* does not apply if a *complaint* falls outside the subject matter of the scheme.

#### Application of DISP to a mixed complaint

- 5.2.5 R Where a *complaint* is about matters that fall within the scheme and matters that do not, a lender must:
- (1) in relation to the matters that do not, send the consumer a *final response*; and
  - (2) as applicable, send the *final response* in (1):
    - (a) no later than 1 *month* after a provisional redress decision is accepted by a consumer under the scheme; or
    - (b) at the same time as sending a *redress determination* under the scheme.

#### Cooperation between lenders and successors

- 5.2.6 R (1) For scheme cases with one or more relevant arrangement, lenders must determine whether there are any successors and, where one or more is identified, keep the successor(s) informed of the steps taken by the lender.
- (2) Lenders and successors must cooperate with one another when carrying out their obligations under the scheme, including the sharing of information.

- (3) Where a successor receives a *complaint* and a lender is responsible under the scheme for assessing that *complaint*, the successor must forward the *complaint* promptly to the lender and inform the consumer or their personal representative that it has done so.

#### Early settlement of scheme cases

- 5.2.7 R (1) In relation to any scheme case, a lender may, at any time, make an offer to a consumer in the form of a provisional redress decision in a durable medium that includes the information set out in *CONRED 5 Annex 2* to settle the case in full and final settlement of all claims relating to the subject matter of the scheme and which provides the consumer with 1 *month* to respond.
- (2) Where an offer is made under (1), the lender must demonstrate in the provisional redress decision that the amount of the offer is no less than the maximum redress that would be available under *CONRED 5.4* and may, as part of the offer, apply set-off under *CONRED 5.4.24R*, where applicable.
- (3) Where the lender makes an offer in accordance with this *rule*, the lender is not required to complete any of the remaining steps set out in this chapter in relation to that motor finance agreement other than the fifth step.
- 5.2.8 G *CONRED 5.4.37R* and *CONRED 5.4.38R* set out the requirements on a lender following a response from a consumer to a provisional redress decision made under *CONRED 5.2.7R(1)*. The *FCA* considers that a decision to revise the amount of redress offered following an objection from a consumer under *CONRED 5.4.37R* is limited to deciding whether the amount of redress was calculated in accordance with *CONRED 5.2.7R(2)*.

#### First step: contacting consumers who have made complaints

- 5.2.9 R (1) This *rule* applies to a *complaint* received before:
- (a) the scheme effective date; or
- (b) the end of the implementation period.
- (2) Subject to (3), a lender must:
- (a) assess whether the *complaint* is in relation to a scheme case that meets the conditions set out in *CONRED 5.1.17R*;
- (b) where the case does not meet the conditions of a scheme case:
- (i) inform the consumer of that decision and the reasons for it by sending a *redress determination* in a durable medium containing the information in *CONRED 5 Annex 5.1R*; and

- (ii) send a *final response* at the same time as sending a *redress determination* in (i);
  - (c) assess whether a scheme case identified in (a) includes one or more relevant arrangement (for the meaning of ‘relevant arrangement’ see *CONRED 5.2.18G* to *CONRED 5.2.22R*);
  - (d) where the *complaint* relates to a scheme case which includes one or more relevant arrangement, complete the remaining steps in this chapter, as applicable, in relation to all relevant arrangements, including sending a first provisional redress decision to the complainant;
  - (e) where the *complaint* relates to a scheme case which does not include a relevant arrangement:
    - (i) inform the consumer of that decision and the reasons for it by sending a provisional redress decision in a durable medium which contains the information set out in *CONRED 5 Annex 4.1R* and which provides the consumer with 1 *month* to respond; and
    - (ii) if applicable, send a *final response* in relation to any matters that do not fall within the scheme in accordance with (iii);
    - (iii) a *final response* in (ii) must be sent either: (a) no later than one *month* after a provisional redress decision is accepted by a consumer under the scheme; or (b) at the same time as sending a *redress determination* under the scheme.
  - (f) within a period of 6 *months* beginning with the scheme effective date, complete this step and any other steps in this chapter that are necessary to provide the complainant with their first *redress determination* or provisional redress decision; and
  - (g) include a request to indicate whether the consumer is going to opt out of the scheme in a *redress determination* or provisional redress decision which is the first communication sent to a consumer in accordance with (f).
- (3) Where a *complaint* to which this *rule* applies is a *complaint* in response to which, by the scheme effective date, a lender or credit broker has sent the complainant a *final response* which rejects the *complaint*:
- (a) paragraph (2) does not apply; and
  - (b) *CONRED 5.2.11R* applies to the motor finance agreement to which the complaint relates as if no complaint had been made.

## Option to pause the first step: dual track cases

- 5.2.10 R (1) In relation to a dual track case, if (2) applies, a lender may:
- (a) continue to process; or
  - (b) pause processing,
- a scheme case in accordance with the requirements set out in this chapter.
- (2) A lender may elect to pause the processing of a dual track case if the relevant court proceedings are not stayed or withdrawn.
- (3) If a lender elects to pause the processing of a dual track case, it must issue a notice in a durable medium to a consumer at least 14 *days* before the lender intends to pause the processing of the dual track case.
- (4) A notice under (3) must contain the following information:
- (a) that the lender will pause handling of the scheme case unless the lender receives evidence that the relevant court proceedings are stayed or withdrawn;
  - (b) that the lender will resume processing the scheme case if the relevant court proceedings are stayed or withdrawn; and
  - (c) a warning that a consumer may be required to pay the lender's legal costs if the consumer decides to withdraw from the relevant court proceedings.
- (5) A lender must resume processing a dual track case if at any time the relevant court proceedings are stayed or withdrawn.
- (6) If a court issues a judgment in a dual track case, it will cease to be a scheme case and a lender will not be required to take any further action in relation to it.
- (7) If a lender issues a notice in accordance with (3), it has the effect of suspending each deadline in this chapter which has not yet expired until the date the lender receives notice that:
- (a) proceedings are stayed or withdrawn; or
  - (b) the date of judgment.
- (8) In this *rule*:
- (a) a 'dual track case' means a scheme case in relation to which court proceedings have been issued in relation to the same motor

finance agreement by, or on behalf of, a consumer in any court or tribunal in the *United Kingdom*; and

- (b) ‘withdrawn’ means discontinued or otherwise brought to an end, so that the court will not determine the parties’ rights or liabilities in respect of the claim.

Second step: contacting consumers about motor finance agreements where no complaint has been made

- 5.2.11 R (1) Subject to *CONRED 5.2.9R(3)*, this *rule* applies to motor finance agreements in relation to which a complaint meeting the requirements in *CONRED 5.2.9R(1)* has not been received by a lender.
- (2) A lender must:
- (a) identify whether the agreement meets the conditions of a scheme case in *CONRED 5.1.17R*;
- (b) assess whether a scheme case identified in (2)(a) includes at least one relevant arrangement;
- (c) where a scheme case includes at least one relevant arrangement, send a communication in a durable medium in the form set out in *CONRED 5 Annex 6.1R* to:
- (i) inform the consumer that the agreement is a scheme case and includes at least one relevant arrangement; and
- (ii) invite the consumer to opt in to the scheme within 6 *months* starting with the day the communication is sent by the lender;
- (d) where an agreement is not a scheme case because the condition in *CONRED 5.1.17R(1)(g)* is not met and it includes at least one relevant arrangement, inform the consumer of the decision that it is not a scheme case for that reason in a *redress determination* provided in a durable medium with the content set out in *CONRED 5 Annex 7.1R*; and
- (e) complete this step within a period of 9 *months* beginning with the scheme effective date.
- 5.2.12 G (1) Where no *complaint* has been made to the lender about an existing motor finance agreement, there is no requirement for that lender to contact the relevant consumer under this scheme where the agreement is not a scheme case, unless *CONRED 5.2.11R(2)(d)* applies.
- (2) Where no *complaint* has been made and there are no relevant arrangements in relation to a scheme case, there is no requirement for a lender to contact the relevant consumer.

## Identifying scheme cases and relevant arrangements: insufficient information

- 5.2.13 R Where a lender cannot identify whether a case is a scheme case with one or more relevant arrangement in accordance with *CONRED* 5.2.9R(2)(a) and (c) or *CONRED* 5.2.11R(2)(a) and (b), it must:
- (1) where the reason is because it does not have the relevant records and information, follow the *rules* and *guidance* set out in *CONRED* 5.2.23G to *CONRED* 5.2.28R; and
  - (2) where, having followed those *rules* and that *guidance*, it still cannot make that determination, follow the process set out in *CONRED* 5.2.29R to *CONRED* 5.2.31R.

## Opt-in reminders

- 5.2.14 R (1) Where the lender has not received an opt-in within 1 *month* of sending the communication in *CONRED* 5.2.11R(2)(c), the lender must, within 1 *month*, send the consumer an opt-in follow-up communication in a durable medium containing the information set out in *CONRED* 5 Annex 8.1R.
- (2) Where the lender has not received an opt-in from the consumer within 1 *month* of the opt-in follow-up communication in (1), the lender must follow the process set out in *CONRED* 5.7.13R to *CONRED* 5.7.16R in taking all reasonable steps to contact the consumer.
- (3) Subject to *CONRED* 5.4.40R, where a lender receives an opt-in more than 6 *months* after the consumer was sent the opt-in communication in accordance with *CONRED* 5.2.11R, the lender may determine not to proceed with the case. Upon deciding not to proceed, it must:
- (a) inform the consumer of that determination and the reasons for it in a provisional redress decision in a durable medium containing the information in *CONRED* 5 Annex 2; and
  - (b) provide the consumer with 1 *month* to respond.

## Next steps for opt-in cases

- 5.2.15 R (1) Paragraph (2) applies where, with respect to all scheme cases identified in *CONRED* 5.2.11R, the consumer has opted in within 6 *months* of being sent the opt-in communication in *CONRED* 5.2.11R(2)(c).
- (2) The lender must:
- (a) within 7 *days* of receiving the response, send the consumer an acknowledgment in a durable medium to confirm that the scheme case is being assessed under the scheme and setting out the deadlines for next steps;

- (b) proceed to the third step; and
  - (c) within a period of 3 *months* beginning with the date the response is received, complete any other steps in this chapter that are necessary to provide the complainant with a *redress determination* or provisional redress decision.
- (3) Where a lender must send a communication to a consumer under *CONRED 5.2.11R(2)(c)*, it may:
- (a) complete the remaining steps in this chapter in respect of that agreement before the expiry of the 9-*month* period referred to in that *rule*; and
  - (b) send the provisional redress decision required by those steps with that communication.
- (4) Where a lender sends a provisional redress communication under (3), the time within which the consumer is required to respond is the same as the 6-*month* period it has to respond to the communication inviting the consumer to opt in to the scheme referred to in *CONRED 5.2.11R(2)(c)*.

Responses to first step and second step provisional redress decisions: lender obligations

- 5.2.16 R (1) This rule applies where a lender has sent a provisional redress decision under:
- (a) *CONRED 5.2.9R(2)(e)(i)*;
  - (b) *CONRED 5.2.14R(3)*; or
  - (c) *CONRED 5.2.30R(1)*.
- (2) Where the consumer responds to the provisional redress decision within 1 *month* stating that they do not wish to have their case considered under this scheme, the lender must, within a 7-*day* period beginning on the day the response is received, send the consumer a communication to:
- (a) acknowledge the response; and
  - (b) explain that the case will not be dealt with any further.
- (3) Where the consumer responds to the provisional redress decision within 1 *month* stating that they accept the decision, the lender must, within a 7-*day* period beginning on the day the response is received, send the consumer a communication acknowledging the acceptance.
- (4) Where a consumer responds to the provisional redress decision within 1 *month* objecting to the decision, the lender must:

- (a) send an acknowledgment containing the information in *CONRED 5 Annex 10.1R* within *7 days*, requiring the consumer to provide further details of the objection, including any evidence supporting the objection, within *1 month* of the date of the acknowledgement;
  - (b) decide whether it should proceed to the third step on the basis of the objection, including any representations and any supporting evidence from the consumer; and
  - (c) undertake one of the actions set out in (5) within *2 months* of:
    - (i) the date it receives the further details of the objection; or
    - (ii) where receives no further details within *1 month* of the date of the acknowledgement in accordance with (a), the date of the expiry of that *1 month* period.
- (5) The actions in (4)(c) are:
- (a) send a *redress determination* confirming the provisional redress decision containing the information in *CONRED 5 Annex 3*; or
  - (b) complete the remaining steps under this chapter necessary to provide the consumer with their next provisional redress decision or *redress determination*.
- (6) Where the lender accepts the consumer's objection, provided in accordance with (4), it must proceed to the third step in *CONRED 5.3*.
- (7) Where the consumer does not respond to the provisional redress decision within *1 month*, the lender must send a *redress determination* confirming the provisional redress decision containing the information in *CONRED 5 Annex 3* within *1 month* of the expiry of that period.
- (8) Any communication sent by a lender under this *rule* must be sent in a durable medium.

#### Complaints received after the end of the implementation period

- 5.2.17 R (1) This *rule* does not apply if the lender has sent:
- (a) an opt-in communication to the consumer within the prescribed deadlines in this chapter, and the deadline for the consumer to opt in has expired; or
  - (b) a provisional redress decision or a *redress determination* to the consumer under any provision in this chapter.
- (2) Where a lender receives a *complaint* from a consumer relating to a motor finance agreement after the end of the implementation period and

before the end of a period of 17 *months* beginning with the scheme effective date, it must:

- (a) treat the *complaint* as it would have treated a *complaint* received before the end of the implementation period under *CONRED* 5.2.9R, except that any communication required to be sent in accordance with that *rule* must be sent within a period of 3 *months* beginning with the date the *complaint* is received; or
  - (b) where the *complaint* relates to an agreement in relation to which an opt-in communication has been sent under *CONRED* 5.2.11R(2)(c), treat the *complaint* as an opt-in.
- (3) Where (2)(a) applies, the requirement in *CONRED* 5.2.11R(2)(d) does not apply.
- (4) Where a lender receives a *complaint* from a consumer relating to a motor finance agreement after the end of a period of 17 *months* beginning with the scheme effective date and the failure to comply with that time limit was caused by exceptional circumstance as set out in *CONRED* 5.4.41G, (2)(a) applies.

#### Identifying a relevant arrangement

- 5.2.18 G *CONRED* 5.2.19R sets out the circumstances in which a discretionary commission, high commission or tied arrangement will be a relevant arrangement for the purposes of the scheme, including the exceptions that apply. *CONRED* 5.2.20R to *CONRED* 5.2.22R then make further provision about the exception for captive and white label relationships, and the evidence that will be required to demonstrate that it applies.
- 5.2.19 R (1) Each of the following is a relevant arrangement unless at least one of the exceptions in (2) to (4) apply in respect of that arrangement:
- (a) a discretionary commission arrangement;
  - (b) a high commission arrangement; or
  - (c) a tied arrangement.
- (2) A discretionary commission arrangement, a high commission arrangement, or a tied arrangement is not a relevant arrangement if:
- (a) the total amount of commission was £150 or less; or
  - (b) the annual percentage rate for the motor finance agreement was 0%.
- (3) A discretionary commission arrangement is not a relevant arrangement if the interest rate that applied under the motor finance agreement was the lowest rate of interest in the range of interest rates that could have

been selected by the credit broker under the discretionary commission arrangement.

- (4) A tied arrangement is not a relevant arrangement where the exception for captive and white label relationships described in *CONRED 5.2.20R* applies.
- (5) For the purposes of (3), the lowest rate of interest in the range is the rate at which the credit broker would not receive commission in respect of the motor finance agreement because of the exercise of its discretion under the discretionary commission arrangement.
- (6) The exceptions in (2) to (4) only apply where the lender can demonstrate the application of the exception on the basis of evidence (see also *CONRED 5.2.24R* and (with respect to the exception in (4)) *CONRED 5.2.22R*).
- (7) If a lender has identified that an arrangement set out at (1)(a) to (c) is present in a scheme case but cannot demonstrate that one of the exceptions in (2) to (4) applies in respect of that arrangement, it must determine that the arrangement is a relevant arrangement.

Identifying a relevant arrangement: exception for captive and white label relationships

- 5.2.20 R (1) The exception referred to in *CONRED 5.2.19R(4)* applies where the motor finance agreement was entered into in the following circumstances:
- (a) the lender (L) was at the relevant time a captive lender of, or operating as a white label lender of, the manufacturer (M) of the motor vehicle acquired using the motor finance agreement;
  - (b) the credit broker (C) that introduced the consumer to L was at the relevant time a franchised dealer of M; and
  - (c) a trading name or branding commonly associated with the brand of the motor vehicle being acquired in the scheme case was clearly and prominently presented in:
    - (i) a dedicated premises, or clearly segregated area of the premises, of C visited by the consumer;
    - (ii) marketing materials or other communications relating to the motor finance agreement presented to the consumer prior to the consumer entering into the motor finance agreement; and
    - (iii) the motor finance agreement.
- (2) A captive lender of M means a lender that:

- (a) had the main business purpose of providing finance in connection with the acquisition of motor vehicles manufactured by M;
  - (b) was a *subsidiary undertaking* of M; and
  - (c) operated under one or more trading names commonly associated with those motor vehicles.
- (3) A lender operating as a white label lender of M means a lender (other than a captive lender) that was party to an agreement with M under which it:
- (a) provided finance in connection with the acquisition of motor vehicles manufactured by M; and
  - (b) operated under one or more trading names commonly associated with those motor vehicles when providing that finance.
- (4) A franchised dealer of M means a credit broker that supplied one or more brands of vehicle manufactured by M using a trading name or other branding commonly associated with those motor vehicles and was either:
- (a) a *subsidiary undertaking* of M; or
  - (b) operating pursuant to an agreement with M under which the credit broker was permitted to supply those vehicles using that trading name or other branding.
- (5) Where the context requires, references to ‘the manufacturer’ or ‘M’ are to be read as including another undertaking in the same group as M.
- (6) For the purposes of this *rule* (and *CONRED 5.2.22R*):
- (a) ‘acquired’ means through purchase or bailment (or in Scotland, hire), and references to ‘acquisition’ are to be read accordingly;
  - (b) ‘premises’ means a dealer’s place of business including a motor vehicle forecourt;
  - (c) ‘providing finance’ means providing credit under consumer credit agreements within the meaning of the *CCA*; and
  - (d) ‘supply’ means:
    - (i) selling or offering to sell; and
    - (ii) bailment (or in Scotland, hiring);
 and references to ‘supplied’ or ‘supplier’ are to be read accordingly.

- 5.2.21 G The purpose of *CONRED* 5.2.20R(5) is to capture vehicle manufacturing *group* structures. For example, where the lender and the motor vehicle manufacturer are both *subsidiary undertakings* of a *parent undertaking* in the same *group* as the vehicle manufacturer (eg, a group holding company), the reference to the lender being a captive lender of M should be read as if the reference to M is a reference to the manufacturer's *parent undertaking*.

Identifying a relevant arrangement: evidencing reliance on the exception for captive and white label relationships

- 5.2.22 R (1) To demonstrate that the exception in *CONRED* 5.2.19R(4) applies (see *CONRED* 5.2.19R(6)), the lender must have evidence that demonstrates that each of the conditions in *CONRED* 5.2.20R(1) are met.
- (2) The lender may rely on the following to demonstrate that the conditions in *CONRED* 5.2.20R(1)(a) are met:
- (a) primary records; or
- (b) reasonable assumptions made by relying on secondary records.
- (3) If the records in (2)(a) and (b) are not available, the lender may also rely on reasonable assumptions made by relying on primary or secondary records relating to a comparable credit broker.
- (4) To determine that the circumstances in *CONRED* 5.2.20R(1)(c) apply, the lender must identify evidence which:
- (a) demonstrates how the trading name or branding commonly associated with the brand of the motor vehicle being acquired in the scheme case was more likely than not presented to the consumer; and
- (b) relates to a period of time that is contemporaneous with the time the consumer entered into their motor finance agreement.
- (5) For the purposes of (4), the lender may rely on:
- (a) primary records of the type described in *CONRED* 5 Annex 1.1G(3) which the lender has reasonable grounds to believe were presented to the consumer before the consumer entered the transaction; or
- (b) reasonable assumptions made by relying on secondary records which include information that demonstrates the disclosure, marketing and communication standards applied by the lender or the credit broker at the relevant time, together with evidence that compliance with those standards was monitored and enforced.

- (6) If the records in (5)(a) and (b) are not available, the lender may rely on reasonable assumptions made by relying on secondary records relating to a comparable credit broker.
- (7) A lender may only rely on secondary records if it can demonstrate that it is has taken reasonable steps to verify that the record relied on relates to a period of time that is contemporaneous with the time the consumer entered into their motor finance agreement.
- (8) For the purposes of this *rule*, a credit broker (A) will only be comparable to the credit broker in the scheme case (B) where the lender has reasonable grounds to believe that at the relevant time A was, in carrying on its business, subject to:
  - (a) the same or closely analogous terms of engagement or business with the lender and the vehicle manufacturer as B; and
  - (b) the same or closely analogous disclosure, marketing and communication standards as B.

Insufficient information: obtaining relevant records and information

- 5.2.23 G In relation to a motor finance agreement that ended on or after:
- (1) 11 January 2018 (and was entered into before 28 January 2021), lenders and credit brokers are expected to have retained records which confirm whether the agreement contained a discretionary commission arrangement pursuant to the record retention rule in *DISP* App 5.3.1R; and
  - (2) 20 December 2018, lenders and credit brokers are expected to have retained records which confirm whether the agreement contained all other relevant arrangements pursuant to the record retention rule in *DISP* App 5.3.1AR.
- 5.2.24 R (1) Subject to (2), to identify whether a particular motor finance agreement is a scheme case or any relevant arrangements are present in respect of a scheme case, in accordance with *CONRED* 5.2.9R(2)(a) and (c) or *CONRED* 5.2.11R(2)(a) and (b), the lender must:
- (a) first consider the primary records of the type set out in *CONRED* 5 Annex 1.1G(1) and (2); and
  - (b) where appropriate, consider whether reasonable assumptions can be made by relying on the secondary records.
- (2) *CONRED* 5.2.22R applies for the purposes of identifying whether a tied arrangement is not a relevant arrangement because the exception for captive and white label relationships in *CONRED* 5.2.19R(4) applies.

- (3) A lender may only rely on secondary records if it can demonstrate that it has taken reasonable steps to verify that the secondary record to be relied on relates to a period of time that is contemporaneous with the time the consumer entered into their motor finance agreement.

#### Requirement to contact credit brokers

- 5.2.25 R A lender, in circumstances where it does not have the records necessary to identify the matters set out in *CONRED* 5.2.9R(2)(a) and (c) or *CONRED* 5.2.11R(2)(a) and (b), must request relevant records and information from the relevant credit broker.
- 5.2.26 G When making the request of the credit broker in *CONRED* 5.2.25R, the lender may also request the relevant records and information necessary to conduct the unfair relationship assessment in accordance with *CONRED* 5.3.1R and the redress calculations in accordance with *CONRED* 5.4.
- 5.2.27 R If a credit broker either does not respond to the request for information in *CONRED* 5.2.25R within 1 *month* or the credit broker only partially responds, the lender must send a further communication in a durable medium as soon as practicable, providing a further 14 *days* from the day of that communication for the credit broker to respond.
- 5.2.28 R A credit broker, where it receives a request for information from a lender under *CONRED* 5.2.25R and *CONRED* 5.2.27R, must conduct a thorough search of its systems and respond to that request within the prescribed deadlines by either:
- (1) providing the requested information in the format requested or, if that is not reasonably practicable, a reasonable format; or
  - (2) confirming that it does not hold the requested information.

#### Insufficient information: making a provisional redress decision

- 5.2.29 R A lender may conclude that there is insufficient evidence to make the determinations in *CONRED* 5.2.9R(2)(a) and (c) or *CONRED* 5.2.11R(2)(a) and (b) where, in respect of a determination, it has:
- (1) complied with the *rules* and *guidance* in *CONRED* 5.2.13R, *CONRED* 5.2.23G and *CONRED* 5.2.24R;
  - (2) taken the steps set out in *CONRED* 5.2.25R to *CONRED* 5.2.27R; and
  - (3) failed to receive from a credit broker the necessary evidence to establish whether each of those conditions have been met.
- 5.2.30 R In relation to the determinations in *CONRED* 5.2.9R(2)(a) and (c), where a lender draws a conclusion referred to in *CONRED* 5.2.29R, the lender must:

- (1) send a provisional redress decision in a durable medium containing the information set out in *CONRED 5 Annex 9.1R* to inform the consumer of the following:
  - (a) its conclusion;
  - (b) the reasons for its conclusion; and
  - (c) on that basis, that there will be no redress payable under the scheme; and
- (2) give the consumer at least 1 *month* to respond to that provisional redress decision and provide any relevant records and information.

5.2.31 R Where the evidence being relied on by the lender is of equal relevance to any evidence provided by consumer, including in relevant records and information provided in accordance with *CONRED 5.2.30R(2)*, and where there is a conflict in the content of that evidence, the lender must resolve the conflict in favour of the consumer unless the lender can demonstrate a clear basis for not doing so.

### 5.3 Third step: assessing scheme cases under unfair relationship provisions

- 5.3.1 R For each relevant arrangement that the lender determines is present in respect of a scheme case, the lender must determine whether it is more likely than not that:
- (1) there is or was an unfair relationship under the unfair relationship provisions arising out of a failure to provide adequate disclosure of one or more of the relevant arrangements (stage 1); and
  - (2) the consumer suffered loss or damage as a result (stage 2).

#### Relevant records and information at assessment stage

- 5.3.2 R Before undertaking the stage 1 assessment, the lender must identify whether:
- (1) any more relevant arrangements are present in respect of the scheme case; and
  - (2) it has the necessary records and information to determine whether there was an unfair relationship that caused loss or damage to the consumer in accordance with the rules in this section (i.e. the third step).
- 5.3.3 R (1) To identify whether any of the relevant arrangements are present in accordance with *CONRED 5.3.2R(1)*, the lender must apply the *rules and guidance* in *CONRED 5.2.19R* to *CONRED 5.2.24R* in so far as those *rules* relate to identifying whether a relevant arrangement is present in a scheme case.
- (2) To identify whether the lender has the necessary records and information to make the determination required under the third step in accordance with *CONRED 5.3.2R(2)* the lender must consider in particular the types

of records set out in *CONRED* 5.3.12R (approach to evidence when assessing the adequacy of disclosure).

Requirement to contact credit brokers

- 5.3.4 R If a lender does not have the records necessary to make the determination required under the third step, it must request relevant records and information from the credit broker.
- 5.3.5 R If a credit broker does not respond to the request in *CONRED* 5.3.4R within 1 *month*, or only sends a partial response, the lender must send a further communication in a durable medium as soon as practicable, providing a further 14 *days* for the credit broker to respond.
- 5.3.6 R If a credit broker receives a request for information from a lender under *CONRED* 5.3.4R or *CONRED* 5.3.5R, it must conduct a thorough search of its systems and respond to that request within 1 *month* by either:
- (1) providing the requested information in the format requested or, if that is not reasonably practicable, a reasonable format; or
  - (2) confirming that it does not hold the requested information.
- 5.3.7 R If a lender has taken the steps set out in *CONRED* 5.3.2R to *CONRED* 5.3.5R but does not have sufficient information to identify whether a particular relevant arrangement is present in respect of a scheme case, the lender may undertake the unfair relationship assessment required under this section on the basis that the relevant arrangement is not present.

Stage 1: the unfair relationship assessment

- 5.3.8 R The lender must presume that there was an unfair relationship in respect of a scheme case if:
- (1) one or more of the relevant arrangements are present; and
  - (2) there was a failure to provide adequate disclosure to the consumer of any of those arrangements that were present.

Stage 1: the unfair relationship assessment – assessing the adequacy of disclosure

- 5.3.9 R To assess whether there was a failure to provide adequate disclosure for the purposes of *CONRED* 5.3.8R(2), the firm must apply:
- (1) the *rules* on assessing adequate disclosure in *CONRED* 5.3.10R and *CONRED* 5.3.12R; and
  - (2) section 56 of the *CCA* (see *CONRED* 5.3.13G).
- 5.3.10 R (1) There will not have been adequate disclosure of a relevant arrangement unless the following information (the ‘disclosure information’) was

clearly and prominently provided to the consumer before the consumer entered into the motor finance agreement:

- (a) in relation to a discretionary commission arrangement – the fact that commission was payable to the credit broker in respect of the consumer’s agreement and sufficient information about the discretionary commission arrangement for the consumer to understand that the credit broker was permitted to select the interest rate provided for under the motor finance agreement in a way that affected the amount of commission that would be received by the credit broker;
  - (b) in relation to a high commission arrangement – the fact and amount of the commission payable to the credit broker in respect of the consumer’s agreement, either by the disclosure of the amount of commission in monetary terms or by the disclosure of the method by which the commission amount would be calculated such that the consumer was able to understand its size;
  - (c) in relation to a tied arrangement – the fact of the tied arrangement and sufficient information about the arrangement for the consumer to understand that the credit broker would introduce consumers exclusively to the lender or give the lender the option to provide an offer of credit to the consumer before the credit broker approached any other lender (as relevant).
- (2) The disclosure information will not have been clearly and prominently provided unless it was presented, in relation to the other information provided at the same time, in such a way that it (subject to (3) and (4)) was likely to have drawn the attention of the average customer to whom it was directed.
- (3) The lender may base its assessment of whether there was adequate disclosure for the purposes of (1) on whether the disclosure was likely to have been adequate for the average consumer to whom the relevant communication was directed unless there is evidence in the records relating to the scheme case that:
- (a) the consumer had characteristics which would have impaired the consumer’s ability to meaningfully understand the information; and
  - (b) those characteristics would at the time have been apparent to the person making the communication.
- (4) Where the circumstances in (3)(a) and (b) apply, the lender should further consider whether any additional information, further explanation or a different communication channel would have been required to meet the information needs of that consumer for the disclosure to have been adequate.

Stage 1: the unfair relationship assessment - guidance on clear and prominent disclosure

- 5.3.11 G (1) Examples that would tend to indicate that the disclosure information in *CONRED 5.3.10R(1)* is likely to have been presented clearly and prominently for the purposes of *CONRED 5.3.10R(2)* include the following (subject to *CONRED 5.3.10R(3)* to (4)):
- (a) there is evidence that an oral communication was used to draw the consumer's attention to the information in written form;
  - (b) that information was presented as a key term or item of information at the top of a key document, or presented as such in a separate short summary document;
  - (c) that information was specifically drawn to the consumer's attention by bold text or similar visual means; or
  - (d) the consumer was asked to specifically acknowledge that they had been given that information (for example, by signing a declaration to that effect).
- (2) Examples that would tend to indicate that the disclosure information in *CONRED 5.3.10R(1)* is unlikely to have been presented clearly and prominently for the purposes of *CONRED 5.3.10R(2)* include where its importance was obscured or diminished by:
- (a) being surrounded by a significant volume of other terms or information, with no particular attention drawn to it; or
  - (b) the use of small font sizes.

Stage 1: the unfair relationship assessment – approach to evidence when assessing the adequacy of disclosure

- 5.3.12 R (1) This *rule* sets out the lender's approach to evidence when assessing whether there was adequate disclosure of the disclosure information.
- (2) The lender must presume that there was no adequate disclosure unless one of the conditions in (3) or (4) is met.
- (3) The first condition referred to in (2) is that:
- (a) one (or more) of the primary records of the type listed in *CONRED 5 Annex 1.1G(3)* contains the disclosure information; and
  - (b) either:
    - (i) there is evidence that the disclosure information contained in that record (or records) was provided to the

consumer prior to the consumer entering into the motor finance agreement; or

- (ii) the lender has reasonable grounds to believe that the consumer was made aware of the disclosure information contained in that record (or records) prior to that consumer entering into the motor finance agreement.
- (4) The second condition referred to in (2) is that there are relevant secondary records which demonstrate that the disclosure information was more likely than not provided to the consumer before the consumer entered into the motor finance agreement.
- (5) For the purposes of this *rule*, ‘relevant secondary record’ means:
- (a) records (of the type described in *CONRED 5 Annex 1.1G(4)* (such as template disclosure materials or other records)) which clearly set out the policy of the lender or the credit broker to include information that would constitute adequate disclosure in the information provided to consumers at the relevant time; or
  - (b) contemporaneous records of the type described in *CONRED 5 Annex 1.1G(3)* relating to other consumers who were in a sufficiently similar position as the consumer in the scheme case, and which include information that demonstrates the standard disclosure practice of the lender or the credit broker at the relevant time.
- (6) A lender may only rely on a relevant secondary record if it can demonstrate that it has taken reasonable steps to verify that the record relates to a period of time that is contemporaneous with the time the consumer entered into their motor finance agreement.

Stage 1: the unfair relationship assessment – guidance on applying section 56 of the Consumer Credit Act when assessing the adequacy of disclosure

- 5.3.13 G The effect of section 56(2) of the *CCA* is that the acts and omissions of a credit broker when conducting ‘antecedent negotiations’ with the consumer are attributable to the lender for the purposes of the assessment of whether a credit relationship is unfair under section 140A of the *CCA*. As a result, where section 56 of the *CCA* applies in the context of a scheme case, the lender must also consider any acts or omissions by the credit broker in conducting those negotiations.

Stage 1: the unfair relationship assessment – rebutting a presumption of unfairness

- 5.3.14 R (1) A presumption of an unfair relationship arising out of a failure to provide adequate disclosure of a relevant arrangement is rebuttable by the lender where it can be demonstrated on the basis of evidence that it is more likely than not that the particular consumer could reasonably be

expected to have known about or foreseen the disclosure information about the relevant arrangement because of:

- (a) their level of specific knowledge or experience (for example, from working in a relevant role within a vehicle dealership or the motor finance industry); or
  - (b) prior transactions with the lender or credit broker involving adequate disclosure of the relevant arrangements.
- (2) A presumption of an unfair relationship arising out of a failure to provide adequate disclosure of a tied arrangement is rebuttable by the lender where it can be demonstrated on the basis of evidence that it is more likely than not that the constraints imposed by the tied arrangement in the scheme case did not impact on the credit broker's decision to introduce the consumer to the lender because, at the relevant time:
- (a) the lender had expressly, or by implication through the course of dealing between the parties, agreed to forgo any reliance on the tied arrangement; or
  - (b) the broker had a policy or practice of disregarding the tied arrangement when introducing consumers to lenders.
- 5.3.15 R Where there is a presumption of an unfair relationship arising out of a failure to provide adequate disclosure of more than one of the relevant arrangements, the presumption may only be rebutted if a condition for rebuttal applies in relation to each of those failures.
- 5.3.16 R Reliance on the rebuttal in *CONRED* 5.3.14R(2) must be supported by:
- (1) evidence which demonstrates that, at the relevant time, the credit broker was introducing consumers to lenders in a way that was incompatible with a scenario in which the tied arrangement had an impact on the decision making of the credit broker (see *CONRED* 5.3.17R); and
  - (2) verification of the reliance on that evidence in accordance with *CONRED* 5.3.18R.
- 5.3.17 R (1) The following evidence is likely to be required to support reliance on the rebuttal in *CONRED* 5.3.14R(2):
- (a) relevant transactional data; and
  - (b) supporting evidence.
- (2) The relevant transactional data referred to in (1)(a) is data relating to the financial year quarter or calendar year quarter in which the relevant motor finance agreement was entered into, and which sets out:

- (a) the distribution (by number or value) of the initial introductions made to each lender to which the credit broker made introductions; or
  - (b) where the data in (2)(a) is not available, the distribution (by number or value) of the credit agreements entered into by each lender as a result of introductions made by the credit broker.
- (3) The following are examples of supporting evidence for the purposes of (1)(b):
- (a) contemporaneous records of:
    - (i) internal policies, procedures or other documents which set out the credit broker's approach to the introduction of consumers to lenders at the relevant time;
    - (ii) the lender's monitoring of its arrangements with the credit broker which demonstrate that the lender was not receiving a volume of introductions consistent with that which the lender would have reasonably expected under the terms of the tied arrangement with the credit broker;
    - (iii) agreements or communications which demonstrate that the lender had agreed to forgo any reliance on the tied arrangement;
    - (iv) tied arrangements (to which the credit broker was a party) other than the tied arrangement with the lender at the relevant time;
  - (b) a statement from an individual of appropriate seniority in the credit broker:
    - (i) explaining the credit broker's approach to the introduction of consumers to lenders at the relevant time; and
    - (ii) attesting that the tied arrangement did not impact on the decision making of the credit broker when introducing the consumer to the lender.
- (4) For the purposes of this *rule*:
- (a) an 'initial introduction' is an introduction made by a credit broker to a lender, including where the consumer did not subsequently enter into a credit agreement with the lender following that introduction (for example, because the lender refused to offer credit to the consumer); and

- (b) 'value' means the amount of credit made available by the lender to consumers under motor finance agreements.

Verification of evidence supporting the rebuttal in CONRED 5.3.14R(2)

- 5.3.18 R (1) In addition to the evidence of the type described in *CONRED* 5.3.17R, the lender must obtain a report from:
- (a) the individual who has responsibility for the management of the internal audit function of the firm; or
  - (b) an independent auditor.
- (2) The report must include:
- (a) an explanation of the evidence being relied upon by the firm to demonstrate the rebuttal;
  - (b) a statement of the role and responsibilities of the person providing the report; and
  - (c) an attestation from that person confirming that they have:
    - (i) reviewed and assessed the evidence relied on by the firm to demonstrate the rebuttal; and
    - (ii) concluded that the evidence demonstrates that the conditions for relying on the rebuttal are met.
- (3) A report produced pursuant to this rule may apply to a group of scheme cases provided the requirements of this rule are satisfied in respect of each scheme case to which the report relates.

- 5.3.19 R If the presumption in *CONRED* 5.3.8R applies and is not rebutted in accordance with *CONRED* 5.3.14R, the lender must determine that there was an unfair relationship.

Stage 1: the unfair relationship assessment – next steps

- 5.3.20 R (1) If the lender determines that there was an unfair relationship in accordance with *CONRED* 5.3.19R, the lender must proceed to *CONRED* 5.3.21R (Stage 2: loss or damage assessment – presumption of loss or damage).
- (2) If the lender determines there was not an unfair relationship because there was adequate disclosure or the presumption of an unfair relationship was rebutted, the lender must:
- (a) inform the consumer of that determination and the reasons for it in a provisional redress decision that:

- (i) contains the information set out in *CONRED 5 Annex 2*; and
  - (ii) is sent in a durable medium; and
- (b) provide the consumer with 1 *month* to respond.

Stage 2: loss or damage assessment – presumption of loss or damage

- 5.3.21 R If the lender determines there was an unfair relationship in respect of a scheme case, the lender must presume that the unfair relationship caused the consumer loss or damage.

Stage 2: loss or damage assessment – rebuttal of presumption of loss or damage

- 5.3.22 R (1) The presumption of loss or damage in *CONRED 5.3.21R* is rebuttable by the lender if it can demonstrate on the basis of evidence that it is more likely than not that the consumer would not, in relation to the same transaction, have been able to obtain a lower annual percentage rate from another lender with which the credit broker had a referral arrangement, at the relevant time.
- (2) The rebuttal in this rule only applies where, at the relevant time:
- (a) the credit broker had referral arrangements with one or more lender, other than the lender in the scheme case (for example, where the credit broker had access to a ‘panel’ of other lenders as an alternative to the right of first refusal arrangement it had with the lender); and
  - (b) those lenders offered motor finance agreements that would have been available to, and suitable for the needs of, the consumer in the scheme case (considering the consumer’s credit profile and the characteristics of the credit product sought).
- (3) Reliance on the rebuttal in this rule must be supported by evidence which demonstrates:
- (a) the alternative annual percentage rates that would, at the relevant time, have been available to the consumer from each lender with which the credit broker had referral arrangements; or
  - (b) that the credit broker’s internal processes at the relevant time involved carrying out checks which ensured that the consumer could not have received a lower annual percentage rate from any other lender with which the credit broker had a referral arrangement.
- (4) The rebuttal in this *rule* cannot be relied upon in scheme cases where the lender has determined that there was an unfair relationship arising out of a discretionary commission arrangement.

- (5) For the purposes of this *rule*, and *CONRED* 5.3.23R, ‘referral arrangement’ means an arrangement between a lender and a credit broker relating to the introduction of consumers wishing to enter into motor finance agreements with that lender.

5.3.23 R (1) The following evidence is likely to be required to demonstrate *CONRED* 5.3.22R(3)(a):

- (a) contemporaneous broker platform screenshots or other records showing the application of the consumer in the scheme case and the range of rates that were available to that consumer;
- (b) contemporaneous communications (for example, emails or system notes) confirming the annual percentage rates considered by the credit broker in respect of the consumer in the scheme case; or
- (c) a combination of the following:
  - (i) contemporaneous records that:
    - (A) show the annual percentage rates available from the lenders with which the credit broker had arrangements at the relevant time; and
    - (B) provide sufficient information, taking into account different credit profiles, credit amounts and product types, to allow the available rates to be matched to the consumer in the scheme case; and
  - (ii) sufficient transaction data:
    - (A) to demonstrate the annual percentage rates that were provided to consumers in a sufficiently similar position to the consumer in the scheme case (ie, consumers with a similar credit profile, credit amount and product type) by those lenders; and
    - (B) from which reasonable assumptions about the rates available to the consumer in the scheme case can be made.

(2) The following evidence is likely to be required to demonstrate *CONRED* 5.3.22R(3)(b):

- (a) contemporaneous records of the credit broker’s internal systems, controls, processes, policies, procedures or other documents which set out the credit broker’s approach to the introduction of consumers to lenders at the relevant time; and

- (b) a statement from an individual of appropriate seniority in the credit broker attesting that:
    - (i) the records referred to in (a) accurately reflect the credit broker's internal processes the relevant time; and
    - (ii) those processes ensured that the consumer could not have obtained a lower annual percentage rate from another lender with which the credit broker had referral arrangements at the relevant time.
- 5.3.24 R If the lender has determined that there was an unfair relationship arising out of a failure to provide adequate disclosure of more than one of the relevant arrangements, the presumption of loss or damage may only be rebutted if the condition for rebuttal applies in relation to each of those failures.
- 5.3.25 R If the presumption of loss and damage is not rebutted, the lender must determine that the unfair relationship caused the consumer loss or damage.

Stage 2: loss or damage assessment – next steps

- 5.3.26 R (1) If the lender determines that the unfair relationship caused loss or damage to the consumer, the lender must proceed to the fourth step in *CONRED 5.4*.
- (2) If the lender determines that the unfair relationship did not cause loss or damage to the consumer (because the presumption was rebutted in accordance with *CONRED 5.3.22R*), the lender must:
- (a) inform the consumer of that determination and the reasons for it in a provisional redress decision sent in a durable medium that contains the information set out in *CONRED 5 Annex 2*; and
  - (b) provide the consumer with 1 *month* to respond.

Responses to third step provisional redress decisions: lender obligations

- 5.3.27 R (1) This rule applies where a lender has sent a provisional redress decision under:
- (a) *CONRED 5.3.20R(2)*; or
  - (b) *CONRED 5.3.26R(2)*.
- (2) If the consumer responds to the provisional redress decision within 1 *month* stating that they do not wish to have their case considered under this scheme, the lender must, within a *7-day* period beginning on the day the response is received, send the consumer a communication to:
- (a) acknowledge the response; and

- (b) explain that the *complaint* will not be dealt with any further.
- (3) If the consumer responds to the provisional redress decision within 1 *month* stating that they accept the decision, the lender must, within a 7-*day* period beginning on the day the response is received, send the consumer a communication acknowledging the acceptance.
  - (4) If a consumer responds to the provisional redress decisions within 1 *month* objecting to the decision, the lender must:
    - (a) send an acknowledgment containing the information set out in *CONRED 5 Annex 10.1R* within 7 *days*, requiring the consumer to provide further details of the objection, including any evidence supporting the objection, within 1 *month* of the date of the acknowledgement;
    - (b) decide whether it should proceed to stage 2 of the third step in respect of cases relating to (1)(a) and the fourth step in respect of cases relating to (1)(b) on the basis of the objection, including any representations and any supporting evidence from the consumer; and
    - (c) undertake one of the actions set out in (5) within 2 *months* of:
      - (i) the *day* it receives the further details of the objection; or
      - (ii) where the lender receives no further details within 1 *month* of the date of the acknowledgement in accordance with (a), the date of the expiry of that 1 *month* period.
  - (5) The actions in (4)(c) are:
    - (a) send a *redress determination* confirming the provisional redress decision and containing the information in *CONRED 5 Annex 3*; or
    - (b) complete the remaining steps under this chapter necessary to provide the consumer with their next provisional redress decision or *redress determination*.
  - (6) Where the lender accepts the consumer's objection, provided in accordance with (4), it must proceed to the next stage or step.
  - (7) Where the consumer does not respond to the provisional redress decision referred to in (1) within 1 *month*, the lender must send a *redress determination* confirming the provisional redress decision in the form set out in *CONRED 5 Annex 3* within 1 *month* of the expiry of that period.

- (8) Any communication sent by a lender under this *rule* must be sent in a durable medium.

#### 5.4 Fourth and fifth steps: calculating and paying redress

##### Fourth step: calculating redress

- 5.4.1 G (1) Where a lender has determined that, in relation to a scheme case, there was an unfair relationship under *CONRED* 5.3 and the consumer has suffered loss or damage as a result, the lender must calculate the amount of redress payable in accordance with *CONRED* 5.4.3R to *CONRED* 5.4.35R.
- (2) Where there was a failure to provide adequate disclosure of a high commission arrangement together with a tied arrangement or a discretionary commission arrangement or both, the lender must determine whether there was a very high commission arrangement, and, if so, calculate redress in accordance with the commission repayment remedy (*CONRED* 5.4.4R).
- (3) In all other cases, except where *CONRED* 5.4.6R applies, the lender must calculate redress in accordance with the hybrid remedy *CONRED* 5.4.15R to 5.4.16R and calculate and, where required, apply the caps in *CONRED* 5.4.19R to 5.4.21R.
- (4) *CONRED* 5.4.6R applies to a scheme case under the hybrid remedy, where the consumer paid a minimal cost of credit, offered to 5% of the market at the time (excluding 0% APR agreements). In such cases, no redress is payable.
- 5.4.2 R All references to redress or redress amount in this section include compensatory interest, calculated in accordance with *CONRED* 5.4.34R.

##### The commission repayment remedy

- 5.4.3 R (1) The commission repayment remedy applies where the lender has determined in accordance with *CONRED* 5.3 that there was an unfair relationship causing loss or damage arising from a failure to provide adequate disclosure of;
- (a) a high commission arrangement that was also a very high commission arrangement; and
- (b) either or both of:
- (i) a tied arrangement;
- (ii) a discretionary commission arrangement.
- (2) The lender must calculate the commission repayment remedy in accordance with *CONRED* 5.4.4R.

- 5.4.4 R (1) The amount of redress payable to the consumer under the commission repayment remedy is the sum of A and B where:
- (a) 'A' is the total amount of commission payable; and
  - (b) 'B' is compensatory interest on that amount, calculated using the approach in *CONRED 5.4.34R*, applied from the date the consumer entered into the motor finance agreement until the date of redress payment.
- (2) For the purpose of calculating compensatory interest for the provisional redress decision and the *redress determination*, the 'date of redress payment' is the date the relevant communication is sent.

#### The hybrid remedy and applicable caps

- 5.4.5 R (1) The hybrid remedy applies in all scheme cases where the lender has determined in accordance with *CONRED 5.3* that there was an unfair relationship causing loss or damage, other than where the commission repayment remedy applies (*CONRED 5.4.3R*).
- (2) Except where *CONRED 5.4.6* applies, for each scheme case, the lender must:
- (a) calculate the commission repayment remedy in accordance with *CONRED 5.4.4R*;
  - (b) calculate the total APR adjustment in accordance with *CONRED 5.4.8R* to *CONRED 5.4.14R*;
  - (c) apply the amounts calculated under (a) and (b) to the hybrid formula in accordance with *CONRED 5.4.16R*;
  - (d) calculate the adjusted commission plus interest cap, the adjusted realised cost of credit cap, and, where applicable, the total realised cost of credit cap in accordance with *CONRED 5.4.19R* to *CONRED 5.4.21R*; and
  - (e) apply the caps where necessary to determine the amount of redress payable to the consumer under the hybrid remedy in accordance with *CONRED 5.4.22R*.

#### No redress for hybrid cases with minimal cost of credit

- 5.4.6 R (1) Where the annual percentage rate of charge paid by the consumer is less than or equal to the 5th percentile annual percentage rate of charge for the year in which the motor finance agreement was executed, as set out in the table in *CONRED 5.4.7R*, the lender must assess the amount of redress payable to the consumer as £0.
- (2) Where (1) applies, the lender must:

- (a) inform the consumer of the assessment in (1) and reasons for it in a provisional redress decision in a durable medium that contains the information in *CONRED 5 Annex 2*;
- (b) provide the consumer with 1 *month* to respond to the communication in (a); and
- (c) consider any response to the provisional redress decision in accordance with *CONRED 5.4.37R*.

5.4.7 R Table: Minimal cost of credit by year for the purpose of *CONRED 5.4.6R*, *CONRED 5.4.20R* and *CONRED 5.4.23R(8)*

<b>Year</b>	<b>5th percentile APR (excluding 0% APR agreements)</b>
<b>2014</b>	4.20
<b>2015</b>	4.26
<b>2016</b>	2.90
<b>2017</b>	3.20
<b>2018</b>	2.92
<b>2019</b>	3.90
<b>2020</b>	3.90
<b>2021</b>	3.10
<b>2022</b>	3.90
<b>2023</b>	4.91
<b>2024</b>	3.90

The total APR adjustment

- 5.4.8 R The lender must follow the stages in *CONRED 5.4.9R* to *CONRED 5.4.14R* to calculate the total APR adjustment.
- 5.4.9 R (1) Stage 1: the lender must first determine the market adjusted APR for the motor finance agreement.

- (2) The market adjusted APR is the annual percentage rate of charge paid by the consumer under the motor finance agreement with the lender multiplied by 0.83.
- (3) Where the motor finance agreement includes a discretionary commission arrangement and the lowest rate of interest in the range of interest rates that could have been selected by the credit broker is higher than the figure calculated in (2), the lowest rate of interest should be used instead of the market adjusted APR.
- 5.4.10 R (1) Stage 2: the lender must create a schedule of the consumer's payments under the motor finance agreement.
- (2) Where all actual payment dates and payment amounts are available and the consumer made early settlement payment(s) or partial early settlement payment(s) the lender must recreate the schedule of actual payments, using the annual percentage rate of charge under the motor finance agreement ('option 1').
- (3) Where option 1 does not apply, the lender must create a schedule using the payment dates and payment amounts contractually agreed under the terms of the motor finance agreement ('option 2') where this is possible.
- (4) Where option 1 does not apply and it is not possible to create a schedule under option 2, the lender must create an equivalent schedule by applying the amortisation formula at (5), using the annual percentage rate of charge under the motor finance agreement, and assume, when applying this formula, that the motor finance agreement ran for the agreed term and the lender and consumer fulfilled their obligations under the terms of that agreement ('option 3').
- (5) The amortisation formula is:
- $$M = (P \times r) / (1 - (1 + r)^{-n})$$
- where:
- (a)  $M$  = monthly payment;
- (b)  $P$  = principal (amount borrowed);
- (c)  $r$  = monthly interest rate (which is the annual percentage rate of charge paid by the consumer under the motor finance agreement divided by 12); and
- (d)  $n$  = total number of monthly payments (term in months).
- (6) Where in (3) and (4) (options 2 and 3) there is information to suggest that the consumer made early settlement payment(s) under the motor finance agreement, the lender must calculate these using the formula in regulation 4 of the Consumer Credit (Early Settlement) Regulations

2004 and replace any monthly payments with the early settlement payment(s).

- 5.4.11 R (1) Stage 3: the lender must create a schedule of the consumer's market adjusted payments.
- (2) Where *CONRED* 5.4.10R(2) or (3) apply (options 1 or 2), the lender must calculate all market adjusted payments, including any early settlement payments, by substituting the annual percentage rate of charge under the motor finance agreement with the market adjusted APR calculated in accordance with *CONRED* 5.4.9R.
- (3) Where *CONRED* 5.4.10R(4) applies (option 3), the lender must calculate all market adjusted payments using the amortisation formula in *CONRED* 5.4.10R(5), where  $r$  equals the market adjusted APR calculated in *CONRED* 5.4.9R, divided by 12. The lender must also calculate any early settlement payment(s) by substituting the annual percentage rate of charge with the market adjusted APR.
- 5.4.12 R (1) Stage 4: the lender must create a schedule of payment differentials using the formula:
- $$A - B$$
- where:
- (a) 'A' is the consumer's payments under the motor finance agreement calculated in accordance with *CONRED* 5.4.10R; and
- (b) 'B' is the corresponding market adjusted payments calculated in accordance with *CONRED* 5.4.11R.
- (2) Where option 1 in *CONRED* 5.4.10R(2) applies and the formula at (1) would produce a negative figure, the lender must adopt the actual payment made under the motor finance agreement as the market adjusted payment and set the payment differential to £0 in the schedule.
- 5.4.13 R (1) Stage 5: the lender must calculate the amount of compensatory interest payable on the payment differentials set out in the schedule created under *CONRED* 5.4.12R.
- (2) Compensatory interest payments are calculated in accordance with *CONRED* 5.4.34R.
- (3) For the purpose of calculating compensatory interest for the provisional redress decision and *redress determination*, the 'date of redress payment' is the date the relevant communication is sent.
- 5.4.14 R Stage 6: the lender must calculate the total APR adjustment, which is the sum of:

- (1) all payment differentials in the schedule created in accordance with *CONRED 5.4.12R*; and
- (2) all compensatory interest payments on those payment differentials calculated in accordance with *CONRED 5.4.13R*.

The hybrid formula

5.4.15 R The lender must calculate the amount of redress using the formula in *CONRED 5.4.16R*.

5.4.16 R The hybrid formula is:

$$(C + D) / 2$$

where:

- (1) 'C' is the amount calculated in accordance with *CONRED 5.4.4R* (the commission repayment remedy).
- (2) 'D' is the amount calculated in accordance with *CONRED 5.4.14R* (the total APR adjustment).

Caps applying to the hybrid remedy

5.4.17 G Where the amount of redress calculated using the hybrid formula exceeds the value of any of the caps calculated in *CONRED 5.4.19R* to *CONRED 5.4.21R*, the amount of redress payable is the lowest amount calculated under any of these caps.

5.4.18 R The lender must calculate each of the caps in accordance with *CONRED 5.4.19R* and *CONRED 5.4.20R*, and, where applicable, *CONRED 5.4.21R*.

5.4.19 R The lender must calculate the adjusted commission plus interest cap by multiplying the amount calculated in accordance with *CONRED 5.4.4R* (the commission repayment remedy) by 0.9.

5.4.20 R The lender must calculate the adjusted realised cost of credit cap in accordance with the stages set out in (1) to (5):

- (1) Stage 1 – adopt the schedule of the consumer's payments under the motor finance agreement created in *CONRED 5.4.10R*.
- (2) Stage 2 – create a separate '5th percentile' schedule by:
  - (a) substituting the annual percentage rate of charge in the consumer's payment schedule (stage 1) with the 5th percentile annual rate of charge set out in the table at *CONRED 5.4.7R* for the year in which the motor finance agreement was executed; and

- (b) recalculating each payment made under the agreement using that rate.
- (3) Stage 3 – create a schedule of payment differentials using the formula:
- $$A - E$$
- where:
- (a) ‘A’ is the consumer’s payments under the motor finance agreement (stage 1); and
- (b) ‘E’ is the corresponding 5th percentile annual rate of charge payments calculated at stage 2.
- (4) Stage 4 – calculate compensatory interest on the payment differentials in the schedule created at stage 3 in accordance with *CONRED* 5.4.34R(2)(b) and (3) to (5).
- (5) Stage 5 – calculate the adjusted realised cost of credit cap, which is the sum of all payment differentials calculated at stage 3 and all compensatory interest payments on those payment differentials calculated at stage 4.
- 5.4.21 R (1) Where the lender can identify the total value of all payments made by the consumer under the motor finance agreement, the lender must also calculate the total realised cost of credit cap.
- (2) The total realised cost of credit cap is the sum of A and B, where:
- (a) ‘A’ is the total value of all actual payments made by the consumer under the motor finance agreement minus the total amount of credit; and
- (b) ‘B’ is compensatory interest on that amount calculated using the interest rate formula in *CONRED* 5.4.34R(2)(a) and (3) to (5), applied from the date the consumer entered into the motor finance agreement until the date of the redress payment.

Final redress calculation where the hybrid remedy applies

- 5.4.22 R Redress payable to the consumer under the hybrid remedy is:
- (1) the amount calculated under the hybrid formula in *CONRED* 5.4.16R; or
- (2) where the amount at (1) exceeds the value of any of the caps calculated in *CONRED* 5.4.19R to *CONRED* 5.4.21R, the lowest amount calculated under any of these caps.

Calculating redress in scheme cases involving more than one motor finance agreement

- 5.4.23 R (1) This *rule* applies where, in a scheme case, a single motor vehicle sales transaction was financed by more than one motor finance agreement.
- (2) The lender must calculate the total amount of commission and assess whether the definition of a very high commission arrangement is met in accordance with *CONRED 5.1.5R(4)(a)* and *(4)(b)*.
- (3) The commission repayment remedy applies where the lender has determined that, in relation to the scheme case, there was an unfair relationship causing loss or damage arising from a failure to provide adequate disclosure of:
- (a) a high commission arrangement that was also a very high commission arrangement, assessed in accordance with (2); and
  - (b) either or both of:
    - (i) a tied arrangement;
    - (ii) a discretionary commission arrangement.
- (4) (a) Where (3) applies, the lender must calculate the commission repayment remedy in accordance with *CONRED 5.4.4R* for each motor finance agreement.
- (b) The total redress is the sum of the amounts calculated in (a).
- (5) In all other cases, the hybrid remedy applies, and the lender must calculate:
- (a) (i) the commission repayment remedy in accordance with (4) and the total APR adjustment in accordance with *CONRED 5.4.9R* to *CONRED 5.4.14R*, for each motor finance agreement; and
  - (ii) redress under the hybrid remedy, by applying the amounts in (i) to the hybrid formula in *CONRED 5.4.16R* for each motor finance agreement and then calculating the sum of these amounts;
  - (b) the adjusted commission plus interest cap in accordance with *CONRED 5.4.19R*, for each motor finance agreement and then the sum of these amounts;
  - (c) the adjusted realised cost of credit cap in accordance with *CONRED 5.4.20R* for each motor finance agreement and then the sum of these amounts;
  - (d) the total realised cost of credit cap in accordance with *CONRED 5.4.21R*, where this can be calculated for all motor finance agreements, and then the sum of these amounts.

- (6) The total redress payable is the lowest amount calculated under (5)(a)(ii) to (d).
- (7) When calculating the commission repayment remedy in (4) and the adjusted commission plus interest cap in (5)(b), where the total amount of commission payable in relation to any agreement involved in the transaction is not known, the lender must divide the total amount of commission calculated in accordance with (2) by the number of agreements involved in the transaction, and then apportion these equal amounts to each motor finance agreement involved in the transaction.
- (8) Where the hybrid remedy applies to a scheme case and the annual percentage rate of charge under an agreement involved in the transaction is less than or equal to the minimal annual percentage rate of charge set out in the table at *CONRED* 5.4.7R, the lender must assess the amount of redress for that agreement as £0 and include this in the sum in (5)(a)(ii).

#### Redress set-off against undisputed arrears and defaults

- 5.4.24 R (1) The lender may set-off redress against any undisputed arrears or default sums owed by the consumer to the lender in relation to the motor finance agreement where:
- (a) an offer is made to the consumer in accordance with *CONRED* 5.2.7R; or
  - (b) redress is payable under either the commission repayment remedy (*CONRED* 5.4.4R) or the hybrid remedy (*CONRED* 5.4.22R).
- (2) Where a single motor vehicle sales transaction is financed by more than one motor finance agreement, the lender may set off redress against one or more of the agreements relating to the transaction where there are undisputed arrears or default sums owed by the consumer under that agreement.
- 5.4.25 R Where the lender sets-off any redress in accordance with *CONRED* 5.4.24R, the lender must provide the consumer with the relevant details in the provisional redress decision (*CONRED* 5.4.36R and *CONRED* 5 Annex 2) and the *redress determination* where applicable (*CONRED* 5.4.37R(5) and *CONRED* 5 Annex 3).
- 5.4.26 R (1) The lender must remove any set-off in the redress determination where the consumer has objected to set-off being applied and the lender has determined that the objection satisfies one or more of the conditions in (2).
- (2) The conditions are that the consumer:

- (a) has provided evidence that they had disputed the arrears or default sums prior to the date of the provisional redress decision and this matter had not been resolved by the lender or by some other means; and/or
  - (b) has demonstrated that if set off is applied, the consumer would not be able to meet their priority debts.
- (3) When considering a consumer's objection to set off being applied, a lender must assess the objection and evidence in support fairly and in good faith.
- (4) The lender must respond to the consumer's objection to set off being applied in accordance with *CONRED 5.4.37R*.

Redress calculations – approach to evidence and missing information

- 5.4.27 R (1) In order to calculate redress in accordance with *CONRED 5.4*, the lender must:
- (a) first, consider information and data contained in primary records of the type set out in *CONRED 5 Annex 1.1G(1)* and (3); and
  - (b) then, where appropriate, consider whether reasonable assumptions can be made regarding the consumer's motor finance agreement by relying on contemporaneous records of the type described in *CONRED 5 Annex 1.1G(4)*.
- (2) Where the lender does not have the necessary records, it must request these from the relevant credit broker.
- 5.4.28 R Where a credit broker either does not respond to the request for information in *CONRED 5.4.27R(2)* within 1 *month* or the credit broker only partially responds, the lender must send a further request as soon as practicable, providing a further 14 *days* for the credit broker to respond.
- 5.4.29 R A credit broker, where it receives a request for information from a lender under *CONRED 5.4.27R(2)*, must comply with *CONRED 5.2.28R*.
- 5.4.30 R Where the lender has complied with *CONRED 5.4.27R* and the relevant information necessary to calculate redress continues to be missing, it must either:
- (1) contact the consumer and/or an appropriate third party such as a *credit reference agency* to provide some or all of the missing information and then rely on the approach to reconstructing missing information in *CONRED 5.4.31R* where the information has not been obtained; or
  - (2) rely on the approach to reconstructing missing information in *CONRED 5.4.31R*, without first taking the steps in (1).

## Approach to reconstructing missing information

- 5.4.31 R (1) Where appropriate, the lender must reconstruct missing data using contemporaneous records of the type described in *CONRED 5 Annex 1.1G(1), (3) and (4)* relating to other consumers.
- (2) The other consumers referenced in (1) must have been in the same or sufficiently similar position as the consumer in the scheme case and would have received an annual percentage rate of charge which was the same or sufficiently similar to the annual percentage rate of charge that the consumer in the scheme case received.
- (3) The lender's determination must take into account:
- (a) the year of the transaction;
  - (b) the type and value of the vehicle purchased, bailed or hired;
  - (c) the amount of credit obtained; and
  - (d) the cost of that credit relative to the value of the vehicle.
- 5.4.32 R Where it is not possible to reconstruct missing information in accordance with *CONRED 5.4.31R*, the lender must adopt the approach set out in *CONRED 5.4.33R* for the relevant value.
- 5.4.33 R (1) Where the annual percentage rate of charge is missing, the lender must use:
- (a) the median of the annual percentage rates of charge under all motor finance agreements entered into by the lender following an introduction effected by the relevant credit broker in the financial year the motor finance agreement was entered into; or
  - (b) where (a) is not available, an annual percentage rate of charge which is the median annual percentage rate of charge under all motor finance agreements from a credit broker to whom the lender offered the same or sufficiently similar terms of engagement or business for the financial year in which the motor finance agreement was entered into.
- (2) Where the commission amount is missing, the lender must use:
- (a) a commission amount which is the median of the commission amounts under all motor finance agreements entered into by the lender following an introduction effected by the relevant credit broker in the financial year the motor finance agreement was entered into; or

- (b) where (a) is not available, a commission amount which is the median annual commission amount under all motor finance agreements from a credit broker to whom the lender offered the same or sufficiently similar terms of engagement or business for the financial year in which the motor finance agreement was entered into.
- (3) Where the total amount of credit is missing, the lender must:
- (a) adopt a value using a motor valuation guide such as AutoTrader, CAP, Percayso and Glass's for the relevant motor vehicle and the relevant year, deducting 10% to reflect a typical deposit payment; or
  - (b) where the relevant year is not available in the motor valuation guides in (a):
    - (i) contact either a relevant third party such as a *credit reference agency* or take all reasonable steps to contact the consumer to obtain this information; or
    - (ii) contact both a relevant third party and the consumer where enquiries under (i) have not resulted in the lender obtaining the total amount of credit; and
  - (c) where the lender has not managed to obtain the information as a result of enquiries in (a) or (b), use a motor valuation guide of the type specified in (a) to adopt a value for the relevant motor vehicle based on the closest year the lender can obtain a valuation for at the point at which the consumer entered into the motor finance agreement, deducting 10% to reflect a typical deposit payment.
- (4) Where the start date or execution date for the motor finance agreement is missing, the lender must use:
- (a) the first *day* of the *month* in which the lender has evidence of the consumer first making a payment or charges applying under the motor finance agreement; or
  - (b) if there is no evidence of the first payment or initial charges, the *day 'X' months* before the date the last regular payment was due under the agreement, where 'X' is the term of the agreement in *months*; or
  - (c) where it is not possible to determine the start date or execution date in accordance with (a) or (b):
    - (i) for new motor vehicles, the first *day* of the time period associated with the vehicle's registration, namely:

- (A) 1 March for vehicles registered between 1 March and 31 August; and
  - (B) 1 September for vehicles registered between 1 September and the last *day* of February; or
  - (ii) for used or second-hand motor vehicles, any information that indicates when the credit broker acquired the motor vehicle, such as date of purchase; or
  - (iii) where it is not possible to determine the start date or execution date in accordance with (i) or (ii), 48 *months* prior to the date the last regular payment was due under the agreement.
- (5) Where the date the last regular payment was due under the motor finance agreement or the date by which any fee associated with taking ownership must be paid is missing, the later of:
- (a) the last *day* of the *month* in which the lender has evidence of the consumer making a final payment or final charges applying under the agreement; and
  - (b) the *day* 48 *months* after the start date or the date the agreement was executed.
- (6) Where the actual end date of the motor finance agreement is not available, the lender must use:
- (a) the last *day* of the *month* in which the lender has evidence of the consumer making a final payment or final charges applying under the agreement;
  - (b) if there is no evidence of the final payment or final charges, the *day* 'X' *months* after the start date or the date the agreement was executed, where 'X' is the term of the agreement in *months*;
  - (c) if it is not possible to determine the end date in accordance with (a) or (b), the *day* 48 *months* after the start date or the date the agreement was executed.
- (7) Where the lowest rate of interest in the range of interest rates under the discretionary commission arrangement is not available, the lender must adopt:
- (a) the actual annual percentage rate of charge multiplied by 0.83; or
  - (b) (i) the median of the minimum rates under all motor finance agreements entered into by the lender

following an introduction effected by the relevant credit broker in the financial year the motor finance agreement was executed; or

- (ii) where (i) is not possible, the median of the minimum rates under all motor finance agreements from a credit broker to whom the lender offered the same or sufficiently similar terms of engagement or business for the financial year in which the motor finance agreement was executed.
- (8) Where necessary information to calculate early settlement payment(s) is not available, the lender must assume that the motor finance agreement remained valid for the agreed term, and the lender and consumer fulfilled their obligations under the terms and by the dates specified in that agreement.

#### Calculation methodology for compensatory interest

- 5.4.34 R (1) This *rule* sets out how the lender must calculate compensatory interest as part of the commission repayment remedy in *CONRED* 5.4.4R, the total APR adjustment in *CONRED* in 5.4.14R, the adjusted realised cost of credit cap in *CONRED* 5.4.20R and the total realised cost of credit cap in *CONRED* 5.4.21R.
- (2) (a) In relation to the commission repayment remedy and the total realised cost of credit cap, the lender must divide the period from the date the consumer entered into the motor finance agreement until the date of redress payment into calendar year segments.
  - (b) In relation to the total APR adjustment calculations and the adjusted realised cost of credit cap, the lender must:
    - (i) for each payment differential in the schedule in *CONRED* 5.4.12R and *CONRED* 5.4.20R(3), identify the date the payment differential occurred and the date of redress payment to create a list of interest periods; and
    - (ii) divide each interest period in (i) into calendar year segments.
- (3) For each calendar year segment, the lender must:
- (a) identify the compensatory interest rate from the table in *CONRED* 5.4.35R that applies to that year;
  - (b) calculate the number of *days* for which that rate applies in that calendar year; and

- (c) apply the formula in (4).
- (4) The formula is:
- Calendar year segment interest amount*  

$$= \text{principal} \times \text{compensatory interest rate for that year} \times \left(\frac{\text{days}}{365}\right)$$
- (\* if the calendar year is a leap year, the denominator is 366)
- where:
- (a) the principal is either:
- (i) the total amount of commission payable, when calculating interest in relation to the commission repayment remedy; or
  - (ii) the total realised cost of credit calculated in accordance with *CONRED* 5.4.21R, when calculating interest in relation to the total realised cost of credit cap; or
  - (iii) each payment differential set out in the schedule produced in accordance with *CONRED* 5.4.12R, when calculating interest in relation to the total APR adjustment; or
  - (iv) each payment differential set out in the schedule produced in accordance with *CONRED* 5.4.20R(3) when calculating interest in relation to the adjusted realised cost of credit cap; and
- (b) compensatory interest rate is the rate that applies for that calendar year as set out in the table in *CONRED* 5.4.35R.
- (5) The lender must sum the interest amounts for all calendar year segments to calculate the total compensatory interest.

5.4.35 R Table: Compensatory interest rates used in *CONRED* 5.4.34R for the purposes of calculating redress

<b>Compensatory interest rates 2014–2028</b>			
<b>2014</b>	3%	<b>2022</b>	3%
<b>2015</b>	3%	<b>2023</b>	5.68%
<b>2016</b>	3%	<b>2024</b>	6.11%
<b>2017</b>	3%	<b>2025</b>	5.25%

<b>2018</b>	3%	<b>2026</b>	4.49%
<b>2019</b>	3%	<b>2027</b>	4.4%
<b>2020</b>	3%	<b>2028</b>	4.6%
<b>2021</b>	3%		

Fifth step: sending a provisional redress decision and redress determination following redress calculations and paying redress

- 5.4.36 R (1) This *rule* applies where a lender has:
- (a) calculated the amount of redress payable to the consumer under *CONRED* 5.4.4R (the commission repayment remedy) or *CONRED* 5.4.22R (the hybrid remedy); and
  - (b) where relevant, set-off any undisputed arrears or defaults against that redress amount in accordance with *CONRED* 5.4.24R.
- (2) The lender must send the consumer a provisional redress decision in a durable medium that contains the information in *CONRED* 5 Annex 2 and includes:
- (a) the basis for the lender's determination that there was an unfair relationship that caused loss or damage;
  - (b) the total amount of redress payable to the consumer as an offer in full and final settlement of all claims against the lender within the subject matter of the scheme relating to the agreement;
  - (c) details of the calculations the lender made under *CONRED* 5.4.3R to *CONRED* 5.4.34R to determine the total amount of redress, clearly setting out the methodology used, any evidential assumptions and reconstructions relied on, the amount of compensatory interest included in these calculations and any proposed set-off for undisputed arrears or default sums; and
  - (d) that the consumer has 1 *month* from the date of the provisional redress decision to respond.

Handling a response to the provisional redress decision

- 5.4.37 R (1) This *rule* applies where a lender has sent a provisional redress decision under *CONRED* 5.2.7R(1), *CONRED* 5.4.6R or *CONRED* 5.4.36R.

- (2) Where the consumer responds to the provisional redress decision within 1 *month* stating that they do not wish to have their case considered under this scheme, the lender must, within a 7-day period beginning on the day the response is received, send the consumer a communication in a durable medium to:
  - (a) acknowledge the response; and
  - (b) explain that the *complaint* will not be dealt with any further.
- (3) Where the consumer responds to the provisional redress decision within 1 *month* stating that they accept the decision in full and final settlement, the lender must, within a 7-day period beginning on the day the response is received, send the consumer a communication acknowledging the acceptance.
- (4) Where a consumer responds to the provisional redress decision within 1 *month* objecting to the decision, the lender must:
  - (a) send an acknowledgment containing the information in *CONRED 5 Annex 10.1R* within 7 *days*, requiring the consumer to provide further details of the objection, including any evidence supporting the objection, within 1 *month* of the date of the acknowledgement;
  - (b) decide whether it should revise the provisional redress decision and recalculate the amount of redress payable based on the consumer's objection and any supporting evidence; and
  - (c) undertake one of the actions set out in (5) within 2 *months* of:
    - (i) the day it receives the further details of the objection; or
    - (ii) where it receives no further details within 1 *month* of the date of the acknowledgement in accordance with (a), the date of the expiry of that 1 *month* period.
- (5) The actions in (4)(c) are to either:
  - (a) send a *redress determination* containing the information in *CONRED 5 Annex 3* that confirms:
    - (i) that the lender has rejected the consumer's objection; and
    - (ii) the total amount of redress payable to the consumer in full and final settlement of all claims within the subject matter of the scheme relating to this case; or

- (b) send a *redress determination* containing the information in *CONRED 5 Annex 3* that confirms:
  - (i) the lender's acceptance of the consumer's objection; and
  - (ii) the revision of the provisional redress decision and recalculated total amount of redress payable in full and final settlement of all claims within the subject matter of the scheme relating to this case.
- (6) Where the consumer does not respond to the provisional redress decision within 1 *month*, the lender must send a *redress determination* confirming the provisional redress decision and containing the information in *CONRED 5 Annex 3* within 1 *month* of the expiry of that period.
- (7) Where the consumer responds to the *redress determination* within a minimum of 6 *months* stating that they accept the determination in full and final settlement, the lender must, within a 7-day period, beginning on the day the response is received, send the consumer a communication acknowledging the acceptance.
- (8) Any communication sent by a lender under this *rule* must be sent in a durable medium.

#### Paying redress

- 5.4.38 R (1) Where a lender receives an acceptance of the provisional redress decision sent in accordance with *CONRED 5.2.7R(1)* or *CONRED 5.4.36R* or the *redress determination* sent in accordance with *CONRED 5.4.37R(5)* or *CONRED 5.4.37R(6)*, it must recalculate the amount of compensatory interest payable as part of the redress calculations to reflect the actual redress payment date.
- (2) Where the motor finance agreement is ongoing, and there are no undisputed arrears or default sums, the lender:
- (a) may provide the consumer with the option of offsetting the amount of redress against any outstanding principal instead of receiving it as a separate payment; and
  - (b) must offset the amount of redress against the outstanding principal where the consumer gives consent to do so.
- (3) Within 1 *month* of receiving acceptance of the provisional redress decision or the *redress determination*, the lender must pay the amount of redress to the consumer either by bank transfer or in accordance with the consumer's instructions.

#### Post redress interest until payment

- 5.4.39 R (1) Simple interest is payable on the amount of redress from the end of the 1-month period referred to in *CONRED* 5.4.38R(3) until the date of payment of redress, at a rate of 8% per annum.
- (2) After the expiry of the 1-month period in *CONRED* 5.4.38R(3), the amount of redress, including interest, may be recovered as a debt due to the consumer and, in particular, may:
- (a) if a county court so orders in England and Wales, be recovered by execution issued from the county court (or otherwise) as if it were payable under an order of that court;
  - (b) be enforced in Northern Ireland as a money judgment under the Judgments: Enforcement (Northern Ireland) Order 1981; or
  - (c) be enforced in Scotland by the sheriff, as if it were a judgment or order of the sheriff whether or not the sheriff could themselves have granted such judgment or order.

#### Exceptional circumstances

- 5.4.40 R (1) Where a lender receives a communication set out in (2) after a deadline specified by this chapter due to exceptional circumstances (taking account of all of the circumstances of the case), the response must be considered under this chapter as if it had been received before that deadline.
- (2) The communications referred to in (1) are:
- (a) a response to a communication sent to a consumer under this chapter; and
  - (b) a *complaint* the lender would have been required to consider under *CONRED* 5.2.17(R)(2) had it been received before the end of the 17-month period referred to in that *rule*.
- (3) Where (1) applies, the time limits in this chapter are extended according to the length of delay caused by the customer's failure to comply with the deadline.

- 5.4.41 G In the *FCA's* view, examples of circumstances that are exceptional under *CONRED* 5.4.40R might include:
- (1) the consumer's incapacitation or other serious ill-health condition or a bereavement during the relevant period; or
  - (2) where the lender failed to comply with the requirements in this chapter.

#### Payment of redress by successors

- 5.4.42 R (1) A successor is liable for a portion of the redress, calculated by the lender in accordance with *CONRED* 5.4.44R.
- (2) A successor must promptly pay its portion of the redress to the lender.
- 5.4.43 G (1) *CONRED* 5.4.42R(2) clarifies how a successor discharges its portion of the liability, but this is without prejudice to any rights of indemnity or contribution a successor may have against a lender under the contractual arrangements between them or pursuant to the Civil Liability (Contribution) Act 1978.
- (2) The obligation on a successor to pay the lender promptly under *CONRED* 5.4.42R(2) is to allow the lender to make a single payment to the consumer for the full redress amount and within the timeframes required by the scheme.
- (3) *CONRED* 5.4.42R(2) does not allow for multiple payments to a consumer. A lender is responsible under *CONRED* 5.4.38R(3) for making a single payment of redress to consumers within the timeframes required by the scheme, including when there is a successor.
- 5.4.44 R (1) For all scheme cases where the lender has identified a successor, the lender must calculate the successor's liability using the successor liability formula.
- (2) The successor liability formula is:
- $$S = (R / T) \times D$$
- where:
- (a) S = successor's liability;
- (b) R = redress payable to a consumer;
- (c) T = term of the relevant loan represented in *days*; and
- (d) D = number of days for which the successor holds the loan.
- (3) The reference in *CONRED* 5.4.44R(2) to the successor holding the loan is to be read as meaning the period beginning on the day the *person* became a successor of the relevant motor finance agreement and, if relevant, ending the day before another *person* became a successor of the same motor finance agreement.

## 5.5 Taking steps by or on behalf of the FCA

- 5.5.1 R (1) Where there has been a material failure by the lender to take any of the actions required under this chapter, the *FCA* may:
- (a) take any of the steps in *CONRED 5.2* to *CONRED 5.4* in place of the lender; or
  - (b) appoint one or more competent persons to take any of the steps in *CONRED 5.2* to *CONRED 5.4* in place of the lender.
- (2) The *FCA* must give the lender notice before taking any steps under (1).
- 5.5.2 R Where the *FCA* gives notice in the circumstances described in *CONRED 5.5.1R(1)*, the lender must:
- (1) not carry out (or, as the case may be, cease to carry out) any of the steps to be taken by the *FCA* or the competent person, unless so directed by the *FCA* or the competent person (as applicable); and
  - (2) render all reasonable assistance to the *FCA* or the competent person.
- 5.5.3 R A lender must, in rendering all reasonable assistance to the *FCA*, ensure that the *FCA* has access to all primary and secondary records and, to the extent that there are gaps in those records, request them from the appropriate person in accordance with the *rules* in this chapter.
- 5.5.4 R The competent person may request relevant records and information directly from the credit broker, providing them with 1 *month* to respond.
- 5.5.5 R If a credit broker does not respond to the request for information in *CONRED 5.5.4R* within 1 *month*, or if the credit broker only partially responds, the competent person may send a further communication in a durable medium, providing a further 14 *days* for the credit broker to respond.
- 5.5.6 R Where a credit broker receives a request for information from a competent person under *CONRED 5.5.4R* or *CONRED 5.5.5R*, it must conduct a thorough search of its systems and respond to that request within the prescribed deadlines by either:
- (1) providing the requested information in the format requested or, if that is not reasonably practicable, a reasonable format; or
  - (2) confirming that it does not hold the requested information.
- 5.5.7 R (1) Where the *FCA* or a competent person takes any steps under *CONRED 5.5.1R* and the *FCA* proposes to make any determination of:
- (a) whether there has been a material failure by the lender to take any actions required under this chapter;

- (b) whether a failure by a lender has caused loss to a consumer; or
- (c) what the provisional redress sum must be in respect of the failures,

the *FCA* must give the lender a *warning notice* specifying the proposed provisional determination.

- (2) The provisional redress sum in (1)(c) must be the amount that would be owed to a consumer if a *redress determination* was made pursuant to *CONRED 5.4* on the same date as the *warning notice*.

5.5.8 R (1) If the *FCA* decides to make a determination of the matters in *CONRED 5.5.7R*, the *FCA* must give the lender a *decision notice* specifying the determination.

- (2) If the *FCA* makes such a determination, the lender may refer the matter to the *Tribunal*.

5.5.9 R Part 26 of the *Act* (including the provisions as to *final notices*) applies in respect of notices given under *CONRED 5.5.7R* and *CONRED 5.5.8R*.

5.5.10 G (1) Where, instead of the lender, the *FCA* or, where applicable, a competent person communicates with a consumer:

- (a) the *FCA* or the competent person must do so in its own name, making clear in the case of a competent person its authority from the *FCA* to do so; and
- (b) the *FCA* or the competent person must make such amendments to the communications in the forms set out in *CONRED 5 Annex 2* to *CONRED 5 Annex 10* as appropriate to reflect that they are being sent in the name of the *FCA* or the competent person.

- (2) Where, instead of the lender, the *FCA* or, where applicable, a competent person issues the *redress determination*:

- (a) the *FCA* or the competent person must update the redress sum in the provisional decision no earlier than 1 *month* after the issue of a final notice in respect of the *FCA*'s decision to make a determination of the matters in *CONRED 5.5.7R* to reflect the amount that is owed at the time such *redress determination* is made; and
- (b) the *FCA* or the competent person must send the lender a copy of the consumer's response to the *redress determination*.

5.5.11 G A fee is payable by the lender in any case where the *FCA* exercises its powers under *CONRED 5.5.1R*: see the table at *FEES 3.2.7R*.

- 5.5.12 G The completion of the steps in *CONRED* 5.2 to *CONRED* 5.4 by, or on behalf of, the *FCA*, as provided in *CONRED* 5.5.1R, does not affect the ability of the *Financial Ombudsman Service* to consider a *complaint*, in particular where the lender has not sent a *redress determination* in accordance with the time limits specified under the scheme.

## 5.6 Supervision and delegation of scheme process by firms

- 5.6.1 R (1) A lender must ensure that the steps required by this chapter are undertaken or supervised by the individual appointed by the lender under *DISP* 1.3.7R where that *rule* applies.
- (2) Where *DISP* 1.3.7R does not apply, those steps must be taken or supervised by a *person* of appropriate experience and seniority.
- 5.6.2 G (1) Any lender intending to outsource any of the obligations imposed on it under this chapter must have due regard to the *rules* and *guidance* on outsourcing which are applicable to it, notably in *SYSC*.
- (2) A lender which outsources any of the obligations imposed on it under this chapter in respect of communications with consumers must ensure that those communications are clear as to the identity of the lender.

## 5.7 Provisions relating to communications with consumers

### Consumer understanding outcomes

- 5.7.1 R *CONRED* 5.7.2R to *CONRED* 5.7.17R apply when a lender communicates with a consumer under this chapter.
- 5.7.2 R A lender must support its consumers' understanding so that its communications:
- (1) meet the information needs of those consumers;
  - (2) are likely to be understood by the consumers intended to receive the communications;
  - (3) equip those consumers to make decisions that are effective, timely and properly informed; and
  - (4) are tailored, taking into account the characteristics and needs of the consumers intended to receive the communication, including:
    - (a) any characteristics of vulnerability;
    - (b) the complexity of the relevant motor finance agreements;
    - (c) the communication channel used; and

- (d) the lender's role.
- 5.7.3 R A lender must communicate information to consumers in a way which is clear, fair and not misleading.
- 5.7.4 R Where a lender is interacting directly with a consumer on a one-to-one basis, it must, where appropriate:
- (1) tailor its communications to meet the information needs of that consumer, taking account of whether they have any characteristics of vulnerability; and
  - (2) ask the consumer whether they understand the information and whether they have any further questions.
- 5.7.5 R A lender must monitor and adapt its communications to support understanding and good outcomes for consumers.
- 5.7.6 G The *FCA* expects lenders to ensure that information with respect to customer vulnerability is kept up to date. This information is needed for lenders to be able adapt their communications to support understanding and good outcomes for consumers under *CONRED 5.7.5R*.
- 5.7.7 R In considering methods of communicating with consumers, a lender must satisfy itself that the communication channel:
- (1) enables the communication of relevant information, which is required by this consumer redress scheme or which consumers are likely to need, in a way that supports effective decision-making; and
  - (2) provides an appropriate opportunity for consumers to review the information and, where relevant, assess their options.

Communications: supplementary

- 5.7.8 R Whenever a lender sends a communication under a provision of this chapter containing information as set out in a specified Annex, it must:
- (1) enclose or attach any relevant documents and, where the communication is a letter, enable the consumer to respond free of charge by including pre-paid envelopes;
  - (2) where the communication is a *redress determination*, insert a link to, or include the URL of, the *Financial Ombudsman Service* in respect of such determination;
  - (3) complete the communication by following the instructions set out in the specified Annex; and
  - (4) comply with any instructions in the specified Annex.

5.7.9 R A lender must allocate a unique reference number to each scheme case it deals with and state this reference number in each communication it sends to a consumer.

5.7.10 R All communications to consumers required under this chapter which are letters must be printed on the letterhead of the lender.

#### Consumer factsheet

5.7.11 R Where a lender sends a consumer a provisional redress decision, a *redress determination* or an invitation to opt-in to the scheme as its first communication under the scheme with that consumer, it must send with that communication a consumer factsheet as set out in *CONRED 5 Annex 11.1R* in a durable medium.

#### Communication channels

5.7.12 R A lender must ensure that that the durable medium used to communicate with a consumer does not:

- (1) increase the risk of financial crime as compared to communicating by letter; or
- (2) make it more difficult for that consumer to access the scheme than had the consumer been communicated with by letter.

#### Incorrect contact details

5.7.13 R (1) Where a lender holds contact details for a consumer and becomes aware that the details are out of date, it must:

- (a) take all reasonable steps to obtain up-to-date contact details for the consumer, including by contacting an appropriate third party such as a *credit reference agency*;
- (b) where appropriate, resend any communication; and
- (c) repeat any other steps to contact the consumer required by this chapter.

(2) If, having complied with (1), a lender is unable to contact a consumer, it need not take any further action pursuant to this chapter in relation to that consumer unless (3) applies.

(3) If, in relying on (2), the lender has ceased taking action but subsequently becomes aware of up-to-date contact details for that consumer, the lender must resend any communications and repeat the steps to contact the consumer required by this chapter.

- (4) The means by which the lender may become aware of up-to-date contact details under (3) include receiving an opt-in communication or a *complaint* from the consumer:
- (a) within 17 *months* of scheme effective date; or
  - (b) more than 17 *months* after the scheme effective date where the exceptional circumstances referred to in *CONRED 5.4.41G* apply.
- (5) If a lender is resending a communication and repeating steps pursuant to (3), each applicable deadline for those steps is extended according to the length of the delay incurred by the application of (2).
- 5.7.14 R (1) This *rule* applies where, under this chapter, a lender contacts a consumer who has not previously complained to the lender about a motor finance agreement.
- (2) Where a lender contacts a consumer a second time because that consumer did not respond to the lender's first communication, the lender must attempt to do so using an alternative communication channel.
- (3) Where the lender does not have the contact details for a consumer using an alternative communication channel under (2), it must take all reasonable steps to obtain such contact details, including by contacting an appropriate third party such as a *credit reference agency*.
- (4) Where a lender is not able to obtain alternative contact details after taking all reasonable steps as referred to in (3), it may send the communication by the same communication channel as before.

Taking reasonable steps to ascertain missing information

- 5.7.15 R The reasonable steps referred to in *CONRED 5.7.13R(1)(a)* or *CONRED 5.7.14R(3)* must include, where applicable:
- (1) checking public sources of information (for example, electoral rolls) but without incurring disproportionate cost;
  - (2) attempting to contact the consumer by telephone (at a reasonable hour when the consumer is likely to be available to receive the call) and by email; and
  - (3) attempting to contact any other party by telephone (during business hours) and by email.
- 5.7.16 R When taking reasonable steps to ascertain missing information and when contacting a consumer, a lender must:

- (1) not request more information than is sufficient for it to determine all of the outstanding matters;
- (2) exercise sensitivity when requesting information about a consumer's personal circumstances;
- (3) ensure the consumer understands what information they have been asked to provide and in what format;
- (4) only ask for information that is likely to be readily accessible to the consumer (and obtain the consumer's authority to approach third parties for information on their behalf);
- (5) allow the consumer at least 1 *month* to respond; and
- (6) make clear why the lender is asking for the information and the consequence if the information is not provided.

#### Prohibition against influencing consumers against their interests

- 5.7.17 R A lender must not make any communication to a consumer which has the object or effect of influencing, for the benefit of the lender, the outcome of the processes undertaken pursuant to this chapter, either by influencing the content of information provided by the consumer in response to the lender's requests made under this chapter or otherwise.

#### Deceased customers

- 5.7.18 R Where a lender is required to contact a consumer under a provision of these rules and where the lender knows that consumer to be deceased or becomes aware that they are deceased, it must take all reasonable steps to instead communicate with:
- (1) a personal representative of the consumer's estate; or
  - (2) the beneficiaries of the consumer's estate.
- 5.7.19 R The provisions of *CONRED 5.7.13R* and *CONRED 5.7.14R* also apply in respect of a lender's communications with *persons* referred to in *CONRED 5.7.18R*.

## 5.8 Impact of complaints to the Financial Ombudsman Service on scheme deadlines

- 5.8.1 R Where a consumer makes a *complaint* to the *Financial Ombudsman Service* following a *redress determination* by a lender under this chapter, the remaining time period for completing any subsequent scheme steps is suspended between:
- (1) the date the *redress determination* is sent by the lender to the consumer; and

- (2) the date:
  - (a) the *complaint* is resolved by agreement between the lender and the consumer pursuant to *DISP* 3.5.1R; or
  - (b) the lender receives notification from the *Financial Ombudsman Service* of the outcome of the *complaint* in accordance with *DISP* 3.6.6R(5).

## 5.9 Consumer redress scheme: information requirements

Requests for information by the FCA

- 5.9.1 R In relation to any matter concerning or relating to the scheme, section 165 (Regulator’s power to require information: authorised persons etc.) of the *Act*, and any provision of Part XI (Information Gathering and Investigations) of the *Act* which relates to that section, apply to any *firm* and any successor which is an *unauthorised person* as if it were an *authorised person*.

Early start reporting requirements

- 5.9.2 G A lender must notify the *FCA* of its intention to implement any of the scheme steps during the implementation period, see *CONRED* 5.2.1R. The content of that notification is set out in the following *rules*.
- 5.9.3 R A lender must, within 15 *working days* of the scheme effective date, notify the *FCA*:
- (1) if it intends to implement any of the scheme steps during the implementation period; and
  - (2) of the name of the *senior manager* (or equivalent where there is no *senior manager*) responsible for oversight and overall delivery of the scheme and contact details (‘senior manager responsible’).
- 5.9.4 R (1) A lender must provide the information in (2) if, under *CONRED* 5.2.1R, the lender intends to implement any of the scheme steps before the end of the implementation period.
- (2) The information is:
- (a) the date the lender intends to begin processing scheme cases under *CONRED* 5.2.1R;
  - (b) the one-off information set out in *CONRED* 5.9.6R;
  - (c) a scheme implementation plan that contains the information set out in *CONRED* 5.9.7R; and

- (d) a forecast report that contains the information set out in *CONRED 5.9.9R*.
- (3) The information must be provided no later than 15 *working days* before the lender begins identifying scheme cases in accordance with the first and second scheme steps (as set out in *CONRED 5.2.9R* to *CONRED 5.2.17R*).
- 5.9.5 R (1) If a lender begins identifying scheme cases in accordance with the first and second steps (as set out in *CONRED 5.2.9R* to *CONRED 5.2.17R*) before the end of the implementation period, *CONRED 5.9.11R* to *CONRED 5.9.23R* apply with the modification in (2).
- (2) In *CONRED 5.9.11R* and *CONRED 5.9.13R*, the reference to ‘the end of the implementation period’ must be substituted with ‘the date on which the lender began processing scheme cases under *CONRED 5.2*’.

#### One-off information requirement

- 5.9.6 R A lender must, within 6 weeks of the scheme effective date, provide the *FCA* with the following one-off information:
- (1) the number of motor finance agreements in the lender’s starting population, identified in accordance with *CONRED 5.1.6R*;
- (2) the number of *complaints* relating to motor finance agreements received by the lender prior to the scheme effective date;
- (3) the number of *complaints* in (2) where complainants are represented by a professional representative, such as a claims management company or a solicitor;
- (4) the number of *complaints* in (2) where complainants are represented by multiple professional representatives, such as a claims management company or a solicitor; and
- (5) attestations from the senior manager responsible, confirming that the lender has the systems and controls to:
- (a) successfully identify the starting population of potentially impacted customers in accordance with the first and second steps set out in *CONRED 5.2.9R* to *CONRED 5.2.17R*;
- (b) identify which of its own records and information are relevant assessing motor finance agreements, as required by this chapter; and
- (c) take the steps under the scheme to obtain relevant records and information required to assess motor finance agreements from third parties where these are not held by the lender.

## Scheme implementation plan

- 5.9.7 R (1) A lender must provide a scheme implementation plan to the *FCA* at the same time as it provides the *FCA* with the one-off information set out in *CONRED 5.9.6R*.
- (2) A scheme implementation plan must include:
- (a) a lender's plan for complying with its obligations under the scheme; and
  - (b) a lender's policies and procedures addressing the lender's approach to the matters in (3).
- (3) The matters referred to in (2)(b) are:
- (a) data collection, including:
    - (i) the circumstances in which the lender will contact brokers; and
    - (ii) the name and firm reference number of each broker the lender will contact;
  - (b) the grouping of cases and approach to making cohort or group-based decisions about:
    - (i) cases which fall outside the subject matter of the scheme;
    - (ii) identifying cases the lender considers to be time-barred and excluded from the definition of scheme case under *CONRED 5.1.17R(1)(g)*;
    - (iii) identifying relevant arrangements at the first and second scheme steps;
    - (iv) identifying cases at the first and second scheme steps that are exceptions pursuant to *CONRED 5.2.20R* for captive and white label relationships;
    - (v) using rebuttals at stage 1 of the third scheme step, under *CONRED 5.3.14R* and at stage 2 of the third scheme step under *CONRED 5.3.22R*; and
    - (vi) issuing full and final early settlement offers at any stage of the scheme under *CONRED 5.2.7R(1)* if a lender is likely to make such offers;
  - (c) the build and use of automated processes, including for:

- (i) decision-making tools;
  - (ii) redress calculators; and
  - (iii) making payments to consumers;
  - (d) the use of outsourcing arrangements, including the name of the outsourcer, if applicable;
  - (e) the quality assurance of cases being processed under the scheme and their outcomes;
  - (f) preventing and detecting scams, including the approach to identifying and verifying a consumer's identity; and
  - (g) consumers with multiple professional representatives, such as a claims management company or a solicitor.
- (4) The scheme implementation plan must set out whether the lender intends to apply for a *waiver*, including an intention to request for an extension of time to complete any steps under the scheme.
- (5) If, following the submission of the scheme implementation plan to the *FCA*, the lender materially changes or updates its approach to any of the areas in (3) or (4) so that the scheme implementation plan is no longer accurate, the lender must promptly notify the *FCA* and provide details of its updated approach.

#### Forecast report

- 5.9.8 G (1) The *FCA* requires lenders to provide a report which forecasts how they expect to assess motor finance agreements and process scheme cases under the scheme, including a breakdown of the number of cases a lender expects to process each *month*, until the lender reaches the end of the scheme.
- (2) The forecast report is to be provided to the *FCA* at the 6-week point, alongside the one-off information and scheme implementation plan, and then an updated forecast report should be provided every 3 *months* from then.
- (3) The forecast report data should be reported separately for consumers who have complained, and consumers who have not complained, where this is applicable to the reported metric. The forecast report data should also be broken down by type and combination of relevant arrangement, where this is indicated in the provision.
- 5.9.9 R (1) A lender must report a delivery forecast to the *FCA* (a 'forecast report') in accordance with this *rule*.
- (2) The forecast report must contain the following information:

- (a) a *monthly* forecast of the number of motor finance agreements (by type of relevant arrangement, see *CONRED 5.9.23R*) to be processed each *month*, until all motor finance agreements that the lender must process have reached the end of the scheme;
- (b) the number of motor finance agreements in the lender's starting population, identified in accordance with *CONRED 5.1.6R*;
- (c) of the number reported in (b), the number of full and final early settlement offers in accordance with *CONRED 5.2.7R(1)* that the lender forecasts issuing;
- (d) of the number reported in (b), the number of motor finance agreements that the lender forecasts will be excluded from being a scheme case under *CONRED 5.1.17R(1)(d)*, for exceeding the total amount of credit set out in *CONRED 5.1.18R*;
- (e) of the number reported in (b), the number of motor finance agreements that the lender forecasts will be time-barred pursuant to *CONRED 5.1.17R(1)(g)*;
- (f) of the number reported in (b), the number of agreements that the lender forecasts will satisfy the conditions of a scheme case set out in *CONRED 5.1.17R*; ;
- (g) of the number reported in (f), the number of scheme cases that the lender forecasts have one or more relevant arrangements (by type of relevant arrangement, see *CONRED 5.9.23R*);
- (h) of the number reported in (g), the number of cases (by type of relevant arrangement, see *CONRED 5.9.23R*) where the lender intends to rely on:
  - (i) the exception for captive and white label relationships at the first and second scheme steps, set out in *CONRED 5.2.20R*;
  - (ii) *CONRED 5.3.14R* to rebut the presumption of unfairness at stage 1 of the third scheme step; or
  - (iii) *CONRED 5.3.22R* to rebut the presumption of loss or damage at stage 2 of the third scheme step;
- (i) of the number reported in (g), the number of cases (by type of relevant arrangement, see *CONRED 5.9.23R*) that the lender forecasts will proceed to a redress calculation in accordance with the fourth scheme step;

- (j) of the number reported in (i), the number of cases (by type of relevant arrangement, see *CONRED 5.9.23R*):
  - (i) where the lender forecasts that the consumer will be sent a *redress determination* of £0 in accordance with *CONRED 5.4.6R* (where the consumer paid a minimal cost of credit, offered to 5% of the market at the time); and
  - (ii) where the lender forecasts that the consumer will be sent a *redress determination* greater than £0 in accordance with *scheme rules*.
- (k) the lender's cash flow forecast for:
  - (i) redress payments under (2)(j); and
  - (ii) early settlement payments under (2)(c).
- (3) The information in (2)(a) to (k) should, as applicable, be separately reported for the number of cases involving a *complaint*, regardless of whether the *complaint* was received before or after the scheme effective date.
- (4) A forecast report must be sent to the *FCA*:
  - (a) within 6 weeks of the scheme effective date; and
  - (b) every 3 *months* thereafter until all motor finance agreements that the lender must process have reached the end of the scheme.

#### Baseline monthly report

- 5.9.10 G (1) The *FCA* requires lenders to provide a *monthly* report which sets out the actual number of motor finance agreements assessed, and scheme cases processed, at each scheme step, for every relevant *month*, under the same headings as the forecast report. The report must be provided on a *monthly* basis until the lender has processed all cases under the scheme.
- (2) The purpose of this *monthly* report is for the *FCA* to compare actual processing of agreements under the scheme to the lenders' forecasts. This *monthly* report must mirror the forecast report in order for this comparison to be made.
- 5.9.11 R (1) A lender must provide a baseline *monthly* report that comprises the information required in *CONRED 5.9.9R(2)* within one *month* of the end of the implementation period.

- (2) The information reported in the baseline *monthly* report pursuant to *CONRED 5.9.9R(2)* should be the actual number of motor finance agreements assessed, and scheme cases processed under the scheme, not forecasts or estimates.
- (3) The information in the baseline *monthly* report must be for the *month* prior to the *month* in which it is being submitted.
- (4) The information in the baseline *monthly* report should, as applicable, be separately reported for the number of cases involving a *complaint*, regardless of whether the *complaint* was received before or after the scheme effective date.
- (5) The baseline *monthly* report must be submitted to the *FCA*:
  - (a) each *month* no later than one *month* after the previous baseline *monthly* report was submitted to the *FCA*; and
  - (b) until such time as the lender has completed the scheme steps as set out in this chapter in respect of its entire population of scheme cases.

#### Detailed monthly report

- 5.9.12 G (1) The *FCA* requires lenders to provide a detailed *monthly* report alongside the baseline *monthly* report. The detailed report provides additional information that the lender is not required to forecast, and so not already included in the baseline *monthly* report.
- (2) The *monthly* data should be reported separately for consumers who have complained, and consumers who have not complained, where this is applicable to the reported metric. The *monthly* data should also be broken down by type and combination of relevant arrangement, where this is indicated in the provision.
  - (3) The lender needs to provide all the information described in *CONRED 5.9.14R* to *CONRED 5.9.20R* where this information becomes available to the lender as cases are processed through the scheme.
- 5.9.13 R (1) A lender must provide a detailed *monthly* report that comprises the information required in *CONRED 5.9.14R* to *CONRED 5.9.20R*, within one *month* of the end of the implementation period.
- (2) The information in the detailed *monthly* report must be for the *month* prior to the *month* in which it is being submitted.
  - (3) The information in the detailed monthly report should, as applicable, be separately reported for the number of cases involving a *complaint*, regardless of whether the *complaint* was received before or after the scheme effective date.

- (4) The detailed *monthly* report must be submitted to the *FCA*:
  - (a) each *month* no later than one *month* after the previous detailed *monthly* report was submitted to the *FCA*; and
  - (b) until such time as the lender has completed the scheme steps as set out in this chapter in respect of its entire population of scheme cases.

- 5.9.14 R The detailed *monthly* report must include the following information in relation to consumer decision-making:
- (1) the number of cases where:
    - (a) a consumer was invited to opt in to the scheme at the second scheme step (in accordance with *CONRED* 5.2.11R);
    - (b) of the number in (a), the number of scheme cases where a consumer did not opt in within the *6-month* deadline set out in *CONRED* 5.2.11R(2)(c)(ii); and
    - (c) of the number in (a), the number of scheme cases where a consumer did opt in to the scheme (within the *6-month* deadline);
  - (2) in relation to all motor finance agreements that must be assessed by the lender:
    - (a) the number of agreements in respect of which the lender sent a provisional redress decision at any step of the scheme;
    - (b) of the number in (a), the number accepted by a consumer, including:
      - (i) the number of decisions that were accepted by a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
      - (ii) the number of decisions that were accepted by a consumer not represented by a professional representative, such as a claims management company or a solicitor;
    - (c) of the number in (a), the number objected to by a consumer, including:
      - (i) the number of decisions that were objected to by a consumer represented by at least one professional

- representative, such as a claims management company or a solicitor; and
- (ii) the number of decisions that were objected to by a consumer not represented by a professional representative, such as a claims management company or a solicitor
- (d) of the number in (a), the number of which that were responded to by a consumer, confirming they wished to opt-out of the scheme, including:
- (i) the number of consumers represented by at least one professional representative, such as a claims management company or a solicitor, who wished to opt-out; and
  - (ii) the number of consumers not represented by a professional representative, such as a claims management company or a solicitor, who wished to opt-out;
- (3) in relation to the number of full and final early settlement offers issued by the lender at any stage of the scheme (as reported in the baseline *monthly* report), the number of offers which were:
- (a) accepted by a consumer, including:
    - (i) the number of acceptances by a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
    - (ii) the number of acceptances by a consumer not represented by a professional representative, such as a claims management company or a solicitor;
  - (b) rejected by a consumer, including:
    - (i) the number of rejections by a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
    - (ii) the number of rejections by a consumer not represented by a professional representative, such as a claims management company or a solicitor;
- (4) in relation to the number of *redress determinations* sent by the lender at any step of the scheme, the number which were:
- (a) accepted by a consumer, including:

- (i) the number of acceptances by a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
      - (ii) the number of acceptances by a consumer not represented by a professional representative, such as a claims management company or a solicitor;
    - (b) rejected by a consumer, including:
      - (i) the number of rejections by a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
      - (ii) the number of rejections by a consumer not represented by a professional representative, such as a claims management company or a solicitor.
- 5.9.15 R The detailed *monthly* report must include, in relation to credit brokers and in relation to all motor finance agreements that the lender must assess, the number of agreements in respect of which:
- (1) the lender requested relevant records and information from a credit broker (in accordance with *CONRED 5.2.25R* and *CONRED 5.3.4R*);
  - (2) the credit broker did not respond before the deadline of 1 *month* (in accordance with *CONRED 5.2.28R* and *CONRED 5.3.6R*);
  - (3) the lender sent a further request for relevant records and information from a credit broker (in accordance with *CONRED 5.2.27R* and *CONRED 5.3.5R*);
  - (4) the credit broker did not respond before the 14-day deadline (in accordance with *CONRED 5.2.27R* and *CONRED 5.3.5R*);
  - (5) the lender relied on the insufficient information provisions in *CONRED 5.2.13R* before sending a provisional redress decision stating that no redress was due.
- 5.9.16 R The detailed *monthly* report must include the following information in relation to *complaints* and professional representatives, such as a claims management company or a solicitor:
- (1) As of the date on which the lender starts to assess motor finance agreements in accordance with the first scheme step set out in *CONRED 5.2.9R*, the number of *complaints*:
    - (a) in relation to which the consumer is represented by either:
      - (i) a claims management company or a solicitor; or

- (ii) multiple professional representatives (including a claims management company and a solicitor);
    - (b) where a *final response* has not been issued by the lender; and
    - (c) that have been referred to the *Financial Ombudsman Service* and which the *Financial Ombudsman Service* has:
      - (i) upheld; and
      - (ii) rejected.
  - (2) After the lender has completed the first and second scheme steps pursuant to *CONRED 5.2.9R* and *CONRED 5.2.11R*, the number of scheme cases (as reported in the baseline *monthly* report) where the consumer is represented by either:
    - (a) a claims management company or a solicitor; or
    - (b) multiple professional representatives (including a claims management company and a solicitor).
- 5.9.17 R The detailed *monthly* report must include the following information in relation to redress:
- (1) in relation to all motor finance agreements which are determined to be scheme cases at the first and second scheme steps pursuant to *CONRED 5.2.9R* and *CONRED 5.2.11R*:
    - (a) the number of provisional redress decisions issued (in accordance with *CONRED 5.2.9R(2)(e)(i)* where the consumer obtained no redress because the lender did not identify a relevant arrangement;
    - (b) the number of scheme cases where one of the following relevant arrangement exceptions applied:
      - (i) the total amount of commission was £150 or less, as set out in *CONRED 5.2.19R(2)(a)*;
      - (ii) the annual percentage rate for the motor finance agreement was 0%, as set out in *CONRED 5.2.19R(2)(b)*;
      - (iii) in relation to a discretionary commission arrangement, the interest rate that applied under the motor finance agreement was the lowest rate of interest in the range of interest rates that could have been selected by the credit broker, as set out in *CONRED 5.2.19R(3)*; and

- (iv) in relation to a tied arrangement, the exception for captive and white label relationships described in *CONRED\_5.2.20R* applied;
- (2) in relation to all scheme cases which proceed to the third scheme step in *CONRED 5.3.1R*:
- (a) the number of provisional redress decisions issued under *CONRED 5.3.20R(2)(a)* where the lender determined there was not an unfair relationship in accordance with *CONRED 5.3.1R(1)* because:
    - (i) there was adequate disclosure as described in *CONRED 5.3.10R* (by type of relevant arrangement, see *CONRED 5.9.23R*);
    - (ii) the lender applied the consumer knowledge rebuttal set out in *CONRED 5.3.14R(1)*; or
    - (iii) the lender applied the unused tie rebuttal set out in *CONRED 5.3.14R(2)*;
  - (b) in relation to (2)(a), the number of provisional redress decisions where the consumer has objected to the decision within 1 *month*;
  - (c) in relation to (2)(b), the number of cases where the lender accepted the consumer's objection and proceeded to the next stage or step in the scheme pursuant to *CONRED 5.3.27R(6)*;
  - (d) the number of provisional redress decisions issued under *CONRED 5.3.26R(2)(a)* where the lender determined that the unfair relationship did not cause loss or damage to the consumer because the presumption was rebutted in accordance with *CONRED 5.3.22R(1)*;
  - (e) in relation to (2)(d), the number of provisional redress decisions where the consumer has objected to the decision within 1 *month*;
  - (f) in relation to (2)(e), the number of cases where the lender accepted the consumer's objection and proceeded to the next stage or step in the scheme pursuant to *CONRED 5.3.27R(6)*;
- (3) in relation to all scheme cases which proceed to the fourth and fifth scheme steps in *CONRED 5.4*:
- (a) the number of provisional redress decisions issued under *CONRED 5.4.36R(2)* where the lender calculated the redress payable to the consumer:

- (i) using the commission repayment remedy methodology set out in *CONRED 5.4.4R*; or
  - (ii) using the hybrid remedy methodology set out in *CONRED 5.4.22R*;
- (b) of the number reported for (3)(a)(ii), the number of decisions where redress has been capped under:
  - (i) the adjusted commission plus interest cap, as set out in *CONRED 5.4.19R*;
  - (ii) the adjusted realised cost of credit cap, as set out in *CONRED 5.4.20R*; or
  - (iii) the total cost of credit cap, as set out in *CONRED 5.4.21R*;
- (4) the total number of *redress determinations* issued by the lender at any step of the scheme;
- (5) of the number reported for (4), the number of *redress determinations* (by type of relevant arrangement, see *CONRED 5.9.23R*) issued where the lender made no offer of redress;
- (6) of the number reported for (4), the number of *redress determinations* which were referred to the *Financial Ombudsman Service* and which the *Financial Ombudsman Service*:
  - (a) rejected; or
  - (b) upheld;
- (7) the total value of redress paid:
  - (a) under this chapter, within 1 *month* of the acceptance of the *redress determination*, in accordance with deadline for payment in *CONRED 5.4.38R(3)*;
  - (b) under this chapter, outside of the 1-*month* deadline referred to in (7)(a); or
  - (c) following an award by the *Financial Ombudsman Service*
- (8) the total value of redress offered by the lender but not accepted by the consumer.

5.9.18 R The detailed *monthly* report must also include the following information in relation to financial resources:

- (1) the value of redress not paid yet;

- (2) the total liquid assets held (cash and cash equivalent);
  - (3) the net assets (or liability) position;
  - (4) a 3-month forecast of the total liquid assets held (cash and cash equivalent); and
  - (5) the amount of redress due that has neither been paid out nor provisioned for.
- 5.9.19 R The *rule* in CONRED 5.9.18R does not apply to a *dual-regulated firm*.
- 5.9.20 R The detailed *monthly* report must also include the following information in relation to timeliness:
- (1) the number of provisional redress decisions (sent in accordance with CONRED 5.3.20R(2)(a) and CONRED 5.3.26R(2)(a)) that were issued:
    - (a) within 4 weeks of starting the third scheme step; and
    - (b) within 6 weeks of starting the third scheme step;
  - (2) the number of provisional redress decisions (sent in accordance with CONRED 5.4.6R(2)(a) and CONRED 5.4.36R) that were issued:
    - (a) within 4 weeks of starting the fourth scheme step; and
    - (b) within 6 weeks of starting the fourth scheme step;
  - (3) the number of consumer responses to provisional redress decisions that (in accordance with CONRED 5.3.27R(2), CONRED 5.3.27R(3) and CONRED 5.3.27R(4)(a)) were responded to in the third scheme step by the lender:
    - (a) within a 7-day period beginning on the day the response was received; and
    - (b) outside of the 7-day period in (3)(a), including:
      - (i) the number of responses that were sent to a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
      - (ii) the number of responses that were sent to a consumer not represented by a professional representative, such as a claims management company or a solicitor;
  - (4) the number of consumer responses to provisional redress decisions that (in accordance with CONRED 5.4.37R(2), CONRED 5.4.37R(3)

and *CONRED* 5.4.37R(4)(a)) were responded to in the (fourth and fifth scheme steps in *CONRED* 5.4) by the lender:

- (a) within a *7-day* period beginning on the day the response was received; and
  - (b) outside of the *7-day* period in (4)(a), including:
    - (i) the number of responses that were sent to a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
    - (ii) the number of responses that were sent to a consumer not represented by a professional representative, such as a claims management company or a solicitor;
- (5) the number of *redress determinations* that (in accordance with *CONRED* 5.3.27R(5)(a) and *CONRED* 5.4.37R(5)) were:
- (a) where the lender received further details of the consumer's objection to the provisional redress decision:
    - (i) issued by the lender within *2 months* of the day the lender received the further details from the consumer; and
    - (ii) issued by the lender outside of the *2-month* period in (5)(a)(i), including:
      - (A) the number of *redress determinations* that were issued to a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
      - (B) the number of *redress determinations* that were issued to a consumer not represented by a professional representative, such as a claims management company or a solicitor.
  - (b) where the lender received no further details of the consumer's objection within *1 month* of the lender's acknowledgement requesting further details from the consumer:
    - (i) issued by the lender within *2 months* of the date of expiry of that *1-month* period; and
    - (ii) issued by the lender outside of the *2-month* period in (5)(b)(i), including:

- (A) the number of *redress determinations* that were issued to a consumer represented by at least one professional representative, such as a claims management company or a solicitor; and
  - (B) the number of *redress determinations* that were issued to a consumer not represented by a professional representative, such as a claims management company or a solicitor;
- (6) the number of *redress determinations* that (in accordance with *CONRED 5.3.27R(7)* and *CONRED 5.4.37R(6)*) were sent by the lender when the consumer did not respond to the provisional redress decision within 1 *month*:
- (a) within 1 *month* of the expiry of that period; and
  - (b) outside of the 1-*month* period in (6)(a);
- (7) the number of redress payments made under the scheme:
- (a) within 1 *month* of the consumer's acceptance of a *redress determination* (or provisional redress decision in *CONRED 5.4.37R(3)*); and
  - (b) outside of the 1-*month* period in (7)(a).

#### Notifications and reports to the FCA

- 5.9.21 G (1) *CONRED 5.9.22R* sets out the way in which lenders must report the information required by the *rules* in this section to the *FCA*. In most cases, all reporting must be done using the *FCA's* RegData platform in response to RegData Information Requests that a lender will receive through the platform.
- (2) In some limited circumstances, the *FCA* may request that the information required by the *rules* in this section be sent to the *FCA* by email, rather than using the method set out in *CONRED 5.9.22R(2)*. Where this is required, the *FCA* will give the lender 7 *days* written notice.
- 5.9.22 R (1) Notifications and other reports required by the *rules* in this section must be sent to the *FCA* using the method set out in (2) within the deadlines specified by the rules in this section.
- (2) Subject to the exception in (3), lenders must report all information and data required by the *rules* in this section through the *FCA's* data collection platform 'RegData'.

- (3) The *FCA* may require a lender to report the information and data required by the *rules* in this section by email, in which event the *FCA* would give 7 *days* written notice of this requirement.
- (4) Lenders must ensure that the individual acting as their ‘RegData Principal User’ is:
  - (a) familiar with the reporting requirements in this section;
  - (b) monitoring incoming data reporting requests from the *FCA*; and
  - (c) allocating data reporting requests to the relevant individual.

- 5.9.23 R Where a reporting requirement in this section requires a lender to report the number of agreements ‘by type of relevant arrangement’, the lender should split the number of agreements reported into the following categories:
- (1) agreements in relation to which there was a discretionary commission arrangement;
  - (2) agreements in relation to which there was a very high commission arrangement;
  - (3) agreements in relation to which there was a tied arrangement;
  - (4) agreements in relation to which there was a discretionary commission arrangement and a very high commission arrangement;
  - (5) agreements in relation to which there was a discretionary commission arrangement and a tied arrangement;
  - (6) agreements in relation to which there was a very high commission arrangement and a tied arrangement; and
  - (7) agreements in relation to which there was a discretionary commission arrangement, a very high commission arrangement and a tied arrangement.

## 5.10 Record-keeping requirements

- 5.10.1 R (1) A *firm* must keep the following records:
- (a) evidence of each communication sent in accordance with this chapter;
  - (b) a copy of each communication, *redress determination* and provisional redress decision sent in accordance with this chapter;

- (c) a record of any attempts to contact the consumer or obtain further information in accordance with *CONRED 5.7*;
  - (d) a record of any full and final settlement offers made to the consumer under *CONRED 5.2.7R(1)*;
  - (e) a record of any full and final settlement offers accepted by the consumer;
  - (f) the completed assessment for each scheme case assessed under the fourth scheme step; and
  - (g) all information on the consumer file and information received from the consumer.
- (2) Lenders and credit brokers must keep the records required by (1) for a minimum of 5 years from the date of their creation or (for the records in (1)(g)) the date when the information is located on the consumer file or obtained.

## 5.11 Publication of data

- 5.11.1 R The *FCA* may publish the data that was reported to the *FCA* in accordance with *CONRED 5.9* for each lender every 6 *months* during the period of the *scheme*.

## 5 Annex 1 Relevant records and information

- 5 Annex 1.1 G In gathering the information to determine whether a particular motor finance agreement is a scheme case, whether one or more relevant arrangements are present, whether there has been adequate disclosure of the relevant arrangements and whether redress is payable and the amount, the lender may consider the following sources of information:
- (1) records which detail the arrangements between the lender and the credit broker, such as (but not limited to) the rates and terms and terms of business, and which set out:
    - (a) the commission arrangements agreed between the parties and the minimum and maximum interest rates applicable;
    - (b) the terms of engagement or business between the lender and the credit broker, including (among other things) any ties or oversight arrangements by the lender with respect to the activities of the credit broker; or
    - (c) any financial records of the lender or the credit broker which show the amount of commission paid in respect of the motor finance agreement;

- (2) records which detail arrangements between:
  - (a) the lender and the manufacturer of the motor vehicle in the scheme case, such as (but not limited to) any terms of engagement or business between the lender and the manufacturer, and any oversight arrangements applying to the activities of the lender when using a trading name or branding commonly associated with motor vehicles manufactured by the manufacturer;
  - (b) the manufacturer of the motor vehicle and the credit broker in the scheme case, such as (but not limited to) any terms of engagement or business between the manufacturer and the credit broker, and any oversight arrangements applying to the activities of the credit broker when using a trading name or branding commonly associated with motor vehicles manufactured by the manufacturer;
- (3) personalised records with respect to the consumer, detailing the relationship between the consumer and either the lender or the credit broker, such as, but not limited to:
  - (a) an initial disclosure document;
  - (b) any motor finance agreement;
  - (c) any agreement detailing the credit arrangements between the consumer and the lender (if different from (b));
  - (d) any pre-contractual documents or explanations provided to the consumer by either the lender or the credit broker, such as, but not limited to, any credit broking information notice provided in accordance with *CONC* 4.4.3R;
  - (e) any records or documents created by the lender or the credit broker contemporaneously with the provision of information to the consumer, confirming that such information was provided (for example, a digital record generated by a data management system);
  - (f) any contemporaneous screenshots of data, extracted directly from the lender's or the credit broker's data management system, recording information directly referable to a motor finance agreement with a consumer;
  - (g) any personalised correspondence, file notes or other records recording communications between a consumer and either a lender or the credit broker with respect to a motor finance agreement with that consumer; and

- (h) any creditworthiness assessment undertaken by either the lender or the credit broker with respect to a consumer (such as, but not limited to, any assessment undertaken under *CONC* 5.2A); and
- (4) any other evidence which either supplements the evidence in (1) to (3) or, in the absence of that evidence, provides a basis upon which to make reasonable assumptions in accordance with these rules, such as (but not limited to):
- (a) transactional data which indicates at least some degree of detail about the relevant arrangements with respect to a consumer, including (but not limited to):
    - (i) the start date or execution date of a motor finance agreement;
    - (ii) the term of the loan or repayment;
    - (iii) the amount of credit provided;
    - (iv) the consumer's postcode (or portions of it);
    - (v) the total charge for credit;
    - (vi) the total realised cost of credit;
    - (vii) the annual percentage rate of charge;
    - (viii) the date the first regular payment or charge was due or made under the agreement;
    - (ix) the date the last regular payment was due or made under the agreement;
    - (x) the date by which any fee associated with taking ownership of the vehicle was due or made under the agreement; and
    - (xi) the date of any early settlement payment under the motor finance agreement;
  - (b) any structured data (for example, set out in spreadsheets) created by the lender or the credit broker from data held on its data management systems relating to its general approach with respect to motor finance agreements at a particular point in time;
  - (c) general corporate records setting out the lender's or the credit broker's approach with respect to motor finance agreements at a particular point in time, such as (but not limited to) board or

- committee papers or minutes and general policies and procedures;
- (d) general corporate records setting out the nature of any arrangements the lender may have had with the motor vehicle manufacturer at a particular point in time;
  - (e) general corporate records setting out the nature of any arrangements the credit broker may have had with the motor vehicle manufacturer at a particular point in time;
  - (f) general corporate records setting out the lender's or the credit broker's approach with respect to due diligence, regulatory developments and regulatory compliance;
  - (g) records of 'welcome packs' (if any) provided by the lender or the credit broker to the consumer;
  - (h) standardised or template marketing, disclosure or communications materials;
  - (i) policies or other corporate records setting out standards or requirements relating to:
    - (i) the presentation of the credit broker's premises to consumers (such as site design and layout standards);
    - (ii) communication, disclosure or marketing materials (including the use of names or branding commonly associated with motor vehicles commonly associated with a manufacturer);
  - (j) records relating to the monitoring of, or compliance with, the standards or requirements mentioned in (i);
  - (k) any other records not otherwise covered above which may be relevant to the lender's assessment of scheme cases in accordance with *CONRED 5.3* and redress calculations in accordance with *CONRED 5.4* such as, but not limited to, vehicle sales invoices, profit sheets, credit checks and part-exchange documentation.

## **5 Annex Provisional redress decision for scheme cases**

**2**

5 Annex 2.1 R This annex belongs to *CONRED 5.2.7R(1)*, *CONRED 5.2.14R(3)(a)*, *CONRED 5.3.20R(2)(a)*, *CONRED 5.3.26R(2)(a)*, *CONRED 5.4.6R(2)(a)*, *CONRED 5.4.25R*, *CONRED 5.4.36R(2)*.

The communication must include the following information, where relevant:

- (1) the lender's assessment of:
  - (a) whether the scheme case included any of the features giving rise to an unfair relationship under *CONRED* 5.2.19R; and
  - (b) whether there was an unfair relationship and the reasons for the lender's decision;
- (2) if there was an unfair relationship, a statement as to whether it caused loss or damage and the reasons for the lender's decision;
- (3) if there was no unfair relationship that caused loss or damage, a statement that no redress is due under the scheme;
- (4) if there was an unfair relationship that caused loss or damage:
  - (a) the total amount of redress payable to the consumer as an offer in full and final settlement of all claims against the lender within the subject matter of the scheme relating to the agreement, with the amount of compensatory interest as part of that redress clearly specified; and
  - (b) details of the calculations to determine the total amount of redress, clearly setting out the methodology used, any evidential assumptions and reconstructions relied on, the amount of compensatory interest included in these calculations and any proposed set-off for undisputed arrears or default sums;
- (5) if the lender determines, in accordance with *CONRED* 5.2.14R(3)(a), not to proceed with the case because the consumer opted in more than 6 *months* after being sent the opt-in communication:
  - (a) a statement of the date on which the consumer was sent the opt-in communication, the date of any opt-in follow-up communication, and the date by which the consumer was required to opt in to the scheme;
  - (b) a statement that the consumer did not opt in within the period required by the scheme and that, on that basis, no redress is due under the scheme; and
  - (c) an explanation that the time for opting in may be extended in exceptional circumstances, but that the lender does not consider any such circumstances to apply here;

- (6) information about the evidence relied on by the lender in reaching its decision, sufficient to explain the basis of that decision and to enable the consumer to challenge it;
- (7) if *CONRED* 5.4.6R applies, an explanation of the assessment of redress for hybrid cases with minimal cost of credit and reasons for that assessment;
- (8) a statement that compensatory interest has been calculated to the date of the provisional redress decision and that the final amount payable will be updated to reflect the date of payment;
- (9) information about any tax deducted from the redress payment;
- (10) information about any intention by the lender to apply set-off, including an explanation that the consumer may make representations as to why set-off should not be applied;
- (11) a statement that, if the consumer has been bankrupt or is in an individual voluntary arrangement, they should inform the lender and their insolvency practitioner of this communication, as this may affect who any compensation is paid to;
- (12) if the lender is making an early settlement offer under *CONRED* 5.2.7R:
  - (a) an explanation that the lender is making the offer without completing the remaining steps under the scheme; and
  - (b) a statement that the lender has calculated that the offer is no less than the maximum redress that the consumer could receive under the scheme.

5 Annex 2.2 R The communication must include the following information:

- (1) a statement that the consumer can accept the redress outcome immediately in full and final settlement of all claims against the lender relating to the subject matter of the scheme in respect of the case, including legal claims;
- (2) an explanation of how the consumer can accept the outcome and, if relevant, provide bank details or alternative payment instructions;

- (3) an explanation that, if the consumer disagrees with any aspect of the provisional redress decision, they must notify the lender within 1 *month* of the date of this communication;
- (4) a statement that, if the consumer does not notify the lender within 1 *month* that they disagree with the provisional redress decision, the lender will send a *redress determination* confirming the provisional redress decision; and
- (5) an explanation that the consumer may notify the lender within 1 *month* if they do not wish to have their case considered under the scheme.

### 5 Annex 3 Redress determination: scheme cases

- 5 Annex 3.1 R This annex belongs to *CONRED 5.2.16R(5)(a)*, *CONRED 5.2.16R(7)*, *CONRED 5.3.27R(5)(a)*, *CONRED 5.3.27R(7)*, *CONRED 5.4.25R*, *CONRED 5.4.37R(5)(a)*, *CONRED 5.4.37R(5)(b)*, *CONRED 5.4.37R(6)*.

The communication must include the following information, where relevant:

- (1) the lender's assessment of:
  - (a) whether the scheme case included any of the features giving rise to an unfair relationship under *CONRED 5.2.19R*; and
  - (b) whether there was an unfair relationship and the reasons for the lender's decision;
- (2) if there was an unfair relationship, a statement as to whether it caused loss or damage and the reasons for the lender's decision;
- (3) if there was no unfair relationship that caused loss or damage, a statement that no redress is due under the scheme;
- (4) if there was an unfair relationship that caused loss or damage:
  - (a) the total amount of redress payable to the consumer as an offer in full and final settlement of all claims against the lender within the subject matter of the scheme relating to the agreement, with the amount of compensatory interest as part of that redress clearly specified; and
  - (b) details of the calculations to determine the total amount of redress, clearly setting out the methodology used, any evidential assumptions and reconstructions relied on, the amount of compensatory interest included in these

calculations and any proposed set-off for undisputed arrears or default sums;

- (5) if the lender determines, in accordance with *CONRED* 5.2.14R(3), not to proceed with the case because the consumer opted in more than *6 months* after being sent the opt-in communication:
  - (a) a statement of the date on which the consumer was sent the opt-in communication, the date of any opt-in follow-up communication, and the date by which the consumer was required to opt in to the scheme;
  - (b) a statement that the consumer did not opt in within the period required by the scheme and that, on that basis, no redress is due under the scheme; and
  - (c) an explanation that the time for opting in may be extended in exceptional circumstances, but that the lender does not consider any such circumstances to apply here;
- (6) if the consumer has formally objected to a provisional redress decision, an explanation of how the lender has considered the objection, including any evidence the consumer submitted and how any redress calculations have changed, where appropriate, from the provisional redress decision;
- (7) a statement that the lender will pay the amount of redress within *1 month* of the date of the receipt of consumer's acceptance by bank transfer unless the consumer provides alternative payment instructions;
- (8) an explanation of how the consumer can accept the offer and provide bank details or alternative payment instructions;
- (9) information about the evidence relied on by the lender in reaching the *redress determination*, sufficient to explain the basis of that determination and to enable the consumer to challenge it;
- (10) a statement that compensatory interest has been calculated to the date of the *redress determination* and that the final amount payable will be updated to reflect the date of payment;
- (11) information about any tax deductions made from the redress payment;

- (12) information about any redress amount applied by way of set-off against outstanding principal and, where appropriate, signposting to a not-for-profit debt advice body, including how the consumer may access that support, so that the consumer can consider whether they may wish to object to set-off being applied where they have priority debts;
- (13) a statement that, if the consumer has been bankrupt or is in an individual voluntary arrangement, they should inform the lender and their insolvency practitioner about this communication, as this may affect who any compensation is paid to;
- (14) an explanation that the consumer may notify the lender if they do not wish their case to be considered further under the scheme, and of the mechanism for doing so; and
- (15) one of the following communication codes:
  - (a) RD03 – no unfair relationship and no redress (no relevant arrangement, including excepted relevant arrangements);
  - (b) RD04 – no unfair relationship and no redress (rebuttal); or
  - (c) RD05 – redress due, calculation provided.

This must be included clearly for the purposes of *Financial Ombudsman Service* identification.

5 Annex 3.2 R The communication must include the following information:

- (1) a statement that the consumer may accept the redress outcome immediately in full and final settlement of all claims relating to the subject matter of the scheme in relation to the case, including any legal claims;
- (2) a reminder that the consumer has the right to complain to the *Financial Ombudsman Service*, even if redress is paid under the scheme. The reminder should also explain the time limits for referring the complaint to the *Financial Ombudsman Service*;
- (3) a statement that if the consumer refers the *complaint* to the *Financial Ombudsman Service*, the *Financial Ombudsman Service* will consider the *complaint* against what, in its opinion, the outcome should have been under the scheme rather than by reference to what is, in the *Financial Ombudsman Service*'s opinion, fair and reasonable in all the circumstances of the case; and

- (4) details on how to contact the *Financial Ombudsman Service*.

**5 Annex 4 Provisional redress decision to customers who have previously complained where the scheme case does not include a relevant arrangement**

5 Annex 4.1 R This annex belongs to *CONRED* 5.2.9R(2)(e)(i). The communication must include the following information:

- (1) a statement to the consumer of the existence of the scheme and its subject matter;
- (2) an explanation of the relevant arrangements for identifying an unfair relationship;
- (3) a statement that no relevant arrangement was identified in relation to the consumer's agreement, or that, although an arrangement was present, it was not a relevant arrangement because an exception applies, and setting out the amount of commission that was paid in relation to the agreement;
- (4) a statement that, as a result, no redress is due;
- (5) information about the evidence the lender has relied on to reach its decision, sufficient to explain why the lender has determined that the case does not include a relevant arrangement;
- (6) if there are other parts of the consumer's *complaint* that are not dealt with under the scheme, an explanation of how the lender is dealing with these parts;
- (7) a statement that the consumer can accept the redress outcome immediately in full and final settlement of all claims against the lender relating to the subject matter of the scheme in respect of the case, including legal claims;
- (8) an explanation of how the consumer can accept the outcome;
- (9) an explanation that, if the consumer disagrees with any aspect of the provisional redress decision, they must notify the lender within 1 *month* of the date of this communication;
- (10) a statement that, if the consumer does not notify the lender within 1 *month* that they disagree with the provisional redress decision, the lender will send a *redress determination* confirming the provisional redress decision; and
- (11) an explanation that the consumer may notify the lender within 1 *month* if they do not wish to have their case considered under the scheme.

**5 Annex 5 Redress determination to customers who have previously complained confirming they are not a scheme case**

5 Annex 5.1 R This annex belongs to *CONRED 5.2.9R(2)(b)(i)*. The communication must include the following information:

- (1) a statement informing the consumer of the existence of the scheme and its subject matter;
- (2) a statement informing the consumer that the lender has assessed their *complaint* and that it does not meet the conditions of a scheme case;
- (3) an explanation of the reason why the case is not a scheme case;
- (4) a statement that the consumer may accept the redress outcome immediately in full and final settlement of all claims relating to the subject matter of the scheme in relation to the case, including any legal claims;
- (5) a reminder that the consumer has the right to complain to the *Financial Ombudsman Service*. The reminder should also explain the time limits for referring the *complaint* to the *Financial Ombudsman Service*;
- (6) the *final response* to the consumer's *complaint*, as required by *DISP 1.6.2R(1)*, explaining that this could be referred to the *Financial Ombudsman Service* to determine by reference to what is, in the *Financial Ombudsman Service's* opinion, fair and reasonable in all the circumstances of the case;
- (7) details on how to contact the *Financial Ombudsman Service*;
- (8) one of the following communication codes, as relevant:
  - (a) 'RD01 – not a scheme case (time-barred)'; or
  - (b) 'RD02 – not a scheme case (other reason)'.

This must be included clearly for the purposes of *Financial Ombudsman Service* identification.

**5 Annex 6 Opt-in invitations to customers who have not already complained confirming they are a scheme case and asking if they want to opt-in**

5 Annex 6.1 R This annex belongs to *CONRED 5.2.11R(2)(c)*. The communication must include the following information:

- (1) a statement informing the consumer of the existence of the scheme and its subject matter;
- (2) a statement that the consumer's motor finance agreement is within the subject matter of the scheme;
- (3) an explanation that the lender has identified at least 1 relevant arrangement that may give rise to an unfair relationship and that, as a result, the consumer may be owed redress under the scheme;
- (4) an explanation that the consumer must opt in to the scheme for the lender to proceed with the next steps under the scheme;
- (5) an explanation of how the consumer can notify the lender if they want to opt in; and
- (6) a statement that the consumer must opt in within 6 *months* starting with the day the communication is sent by the lender.

**5 Annex 7 Redress determination to customers who have not previously complained confirming they are not a scheme case**

5 Annex 7.1 R This annex belongs to *CONRED* 5.2.11R(2)(d). The communication must include the following information:

- (1) a statement informing the consumer of the existence of the scheme and its subject matter;
- (2) an explanation of:
  - (a) the details of the relevant arrangements identified in their case; and
  - (b) that their agreement is not a scheme case because the condition in *CONRED* 5.1.17R(1)(g) is not met, and the reasons for that assessment;
- (3) a statement that the consumer may accept the redress outcome immediately in full and final settlement of all claims relating to the subject matter of the scheme in relation to the case, including any legal claims;
- (4) a reminder that the consumer has the right to complain to the *Financial Ombudsman Service*. The reminder should also explain the time limits for referring the complaint to the *Financial Ombudsman Service*;
- (5) a statement that if the consumer refers the *complaint* to the *Financial Ombudsman Service*, the *Financial Ombudsman Service* will consider the *complaint* against what, in its opinion, the outcome

should have been under the scheme rather than by reference to what is, in the *Financial Ombudsman Service's* opinion, fair and reasonable in all the circumstances of the case;

- (6) details on how to contact the *Financial Ombudsman Service*; and
- (7) the following communication code: RD01 – not a scheme case (time-barred). This must be included clearly for the purposes of *Financial Ombudsman Service* identification.

## **5 Annex 8 Opt-in follow-up communications to consumers who have not responded**

5 Annex 8.1 R This annex belongs to *CONRED 5.2.14R(1)*. The communication must include the following information:

- (1) a statement informing the consumer of the existence of the scheme and its subject matter;
- (2) a statement about the lender's previous attempts to contact the consumer;
- (3) a statement that the consumer's agreement is a scheme case and includes at least 1 relevant arrangement;
- (4) an explanation that the lender has identified at least 1 arrangement which may give rise to an unfair relationship and that, as a result, the consumer may be owed redress under the scheme;
- (5) an explanation that the consumer must opt in if the lender is to proceed with considering the case under the scheme;
- (6) an explanation of how the consumer can notify the lender if they want to opt in; and
- (7) a statement that the consumer must opt in within 6 *months* starting with the day the original opt-in communication was sent.

## **5 Annex 9 Provisional redress decision to customers who have previously complained where the lender cannot determine, because records or information are missing or insufficient, whether the case is a scheme case and requires further information**

5 Annex 9.1 R This annex belongs to *CONRED 5.2.30R*. The communication must include the following information:

- (1) a statement informing the consumer of the existence of the scheme and its subject matter;
- (2) an explanation of why the lender has not been able to determine, on the basis of the records and information currently available, whether

the case is a scheme case and includes one or more relevant arrangements and, therefore, no redress is likely to be due to the consumer under the scheme;

- (3) a summary of the steps that the lender has taken to obtain relevant records and information;
- (4) a statement that the consumer can accept the redress outcome immediately in full and final settlement of all claims against the lender relating to the subject matter of the scheme in respect of the case, including legal claims;
- (5) an explanation of how the consumer can accept the outcome;
- (6) an explanation that, if the consumer disagrees with any aspect of the provisional redress decision, they must notify the lender within 1 *month* of the date of this communication and provide any supporting evidence;
- (7) a statement that, if the consumer does not notify the lender within 1 *month* that they disagree with the provisional redress decision, the lender will send a *redress determination* confirming the provisional redress decision; and
- (8) an explanation that the consumer may notify the lender within 1 month if they do not wish to have their case considered under the scheme, and how they may do so.

## **5 Annex 10 Acknowledgement of challenge to provisional redress decisions**

5 Annex 10.1 R This annex belongs to *CONRED 5.2.16R(4)(a)*, *CONRED 5.3.27R(4)(a)* and *CONRED 5.4.37R(4)(a)*. The communication must include the following information:

- (1) a statement acknowledging that the consumer disagrees with the provisional redress decision;
- (2) an invitation for the consumer to provide further details of their objection, including any supporting evidence supporting the objection, within 1 *month* of the date of this acknowledgment;
- (3) a summary of the evidence the lender relied on in reaching the provisional redress decision, sufficient to enable the consumer to understand and challenge that decision;
- (4) a statement that, if the consumer provides a formal objection within 1 *month* of the date of this acknowledgment, the lender will consider

that objection within 2 *months* of receiving it and send the consumer a *redress determination* or a further provisional decision; and

- (5) a statement that, if the consumer provides no formal objection within 1 *month* of the date of this acknowledgment, the lender will proceed to issue a *redress determination* unless an exceptional circumstance apply.

## 5 Annex Consumer factsheets 11

- 5 Annex 11.1 R Factsheet 1: <https://www.fca.org.uk/publication/information-sheets/motor-finance-scheme-factsheet-customers-invited.pdf>  
Factsheet 2: <https://www.fca.org.uk/publication/information-sheets/motor-finance-scheme-factsheet-customers-complained-lender.pdf>

Amend the following as shown. Underlining indicates new text and striking through indicates deleted text.

### Sch 1 Record keeping requirements

Sch 1.3 G ....

Sch 1.4 G [Editor's note: insert the requirements from CONRED 5.10 in tabular form]

Sch 1.5 G [Editor's note: insert the requirements from CONRED 6.10 in tabular form]

### Sch 2 Notification requirements

...

Sch 2.2 G ...

Sch 2.3 G [Editor's note: insert the notification requirements from CONRED 5.1.8R and CONRED 5.9]

Sch 2.4 G [Editor's note: insert the notification requirements from CONRED 6.1.8R and CONRED 6.9]

### Sch 3 Fees and other required payments

Sch 3 There are no provisions for fees in *CONRED*. As noted in *CONRED* 2.5.19G ~~and~~ *CONRED* 4.5.9G, *CONRED* 5.5.11G and *CONRED* 6.5.11G, a fee is payable in any case where the *FCA* exercises its powers under *CONRED* 2.5.12R ~~or~~ *CONRED* 4.5.1R, *CONRED* 5.5.1R or *CONRED* 6.5.1R to take steps instead of a firm, or appoint one or more competent persons to do so. This fee is as specified in the table at *FEES* 3.2.7R.