



FCA Consultation CP 13/10 – December 2013

The ABI's response to proposals for the FCA regime for consumer credit

The ABI is the voice of insurance, representing the general insurance, protection, investment and long-term savings industry. It was formed in 1985 to represent the whole of the industry and today has almost 350 members, accounting for some 90% of premiums in the UK.

The ABI's role is to:

- Be the voice of the UK insurance industry, leading debate and speaking up for insurers.
- Represent the UK insurance industry to government, regulators and policy makers in the UK, EU and internationally, driving effective public policy and regulation.
- Advocate high standards of customer service within the industry and provide useful information to the public about insurance.
- Promote the benefits of insurance to the government, regulators, policy makers and the public.

The ABI welcomes the opportunity to respond to the FSA's consultation paper on the proposals for the FCA regime for consumer credit.

1. General Comments

- 1.1 The ABI's main interest in this consultation is to ensure that customers can continue to pay for their annual insurance premiums in monthly instalments. We were disappointed that the Government did not align the Consumer Credit Act (CCA) to the Consumer Credit Directive (CCD) by exempting monthly payments from the CCA. Whilst the CCD exempts these contracts from the Directive, the Act states that these types of contracts can only be excluded if the payments are made in four instalments.
- 1.2 However, on 4 December the Government published 'The UK insurance growth action plan' which stated that it also wants to facilitate monthly payments for insurance, and committed HM Treasury to giving further consideration to the implementation of the CCD requirements in relation to consumer credit. We welcome this commitment and urge FCA to take account of it as it finalises the rules and guidance on consumer credit.
- 1.3 We ask the FCA to consider the unnecessary burden the rules will have on insurers and ultimately customers. Therefore, we propose the FCA takes a proportionate approach to the rules/guidance and supervision when applying these to general insurance contracts. We make a specific suggestion below on Guidance that might be adopted to ensure that the creditworthiness assessment reflects the low risk associated with monthly instalments, and we are keen to explore this further with the FCA.

- 1.4 Monthly payment by instalment schemes plays a key role in ensuring wider access to customers who cannot afford, or indeed prefer, to pay for their general insurance policies upfront. It allows greater flexibility to pay for a service that is essential to their lifestyle and sometimes a legal requirement (e.g. paying for motor insurance premiums). General insurance contracts are already regulated by the FCA under ICOBS. So we are very concerned that the proposed rules in this consultation will restrict access to core insurance products for these customers as insurers will struggle to meet these rules without reviewing their systems and the corresponding options for their general insurance customers. Therefore, we urge the FCA to make clear that it will tailor these rules should apply to insurance firms providing monthly payment by instalment schemes.
- 1.5 A key point to note is that the majority of retail motor and home policies are sold through comparison websites which provide the customer with a choice of paying for their premiums immediately in full or on a monthly basis. If a customer chooses to purchase their policy through this channel, the proposed rules will make this process more challenging for the comparison website, the insurer and more importantly, the customer. As is the case with most general insurance distribution channels, such policies are sold on a non-advised basis and it is not practical or desirable to conduct a full creditworthiness assessment as currently outlined. Additionally, there is no benefit to the customer as the checks are not relevant to the type of policy being purchased by the customer. Insurance monthly payment by instalment schemes are not the same as other credit agreements and therefore, present a much lower risk.
- 1.6 Insurers face an extremely challenging task in implementing the FCA rules within their current systems in a very short timescale. Even though many of the rules are being transposed from OFT guidelines, many insurers recognised that rigid application of these guidelines would work against customers because they act as barriers to accessing insurance products (particularly the creditworthiness and pre-contractual criteria) and accordingly did not apply all of the detailed requirements. The industry found that no adverse customer outcomes have resulted from adopting this approach. If the industry is required to fully comply with the proposed FCA consumer credit rules, it would jeopardise satisfactory customer outcomes (see below) and take time to implement. Therefore, we urge the FCA to consider the right regulatory approach when applying these rules to insurance and to extend the deadline to April 2015, particularly in light of the Government's newly announced reassessment of the legislative framework.

2. Monthly payment by instalments vs. standard credit agreements

- 2.1 Monthly payments by instalments differ from most credit agreements in a fundamental way. An insurance policy can be cancelled at any time usually without any monies being owed. This is different from credit agreements, where cancellation of the contract would require repayment of total outstanding credit and many credit providers would actively pursue consumers for the repayment.

- 2.2 The option of paying in monthly instalments is important to millions of customers who purchase general insurance policies. We estimate that around 50% of customers choose to pay their insurance policies on a monthly basis. The proposed rules will ultimately have a negative impact on these customers as insurers will struggle to adhere to these rules without incurring significant cost, which will ultimately be passed on to the customer. Insurers may also reduce the availability of monthly payment options to customers as a result of the disproportionate rules.
- 2.3 We believe that rigid application of the proposed rules will have adverse outcomes for customers as the rules require the insurer to carry out creditworthiness checks that are not necessary for insurance contracts paid on a monthly basis. Currently, the customer makes an active choice to pay the annual premium for their one year policy through monthly instalments, which in itself is a 'creditworthiness' check as the customer is being allowed the option to pay in instalments rather than making an immediate annual premium payment. If the proposed rules are stringently applied, insurers will have to undertake unnecessary checks to ensure the customer is 'eligible' to pay through this arrangement. If a customer does not meet the creditworthiness criteria, then they will be forced to pay for their policy in full, which may be more detrimental for them, or worse, they could be faced with the risk of being uninsured as they cannot afford to pay for the premium in full. This can be particularly harmful for vulnerable customers (e.g. pensioners) and may lead to an increase in uninsured drivers. Therefore, we believe that the creditworthiness checks act as a barrier to widening customer access for insurance products and the FCA should consider this key point when finalising and supervising these rules.

3. Duplicative Regulation

- 3.1 Whilst we understand that the FCA seeks to ensure customers are provided with adequate protection, current regulation already provides efficient protection for insurance customers.
- 3.2 For Financial Promotions, there are already existing regulations within ICOBS that reflect the same requirements in CONC 3.3.1R(2). In fact, we consider that the CONC requirements for financial promotions do not provide any additional protection for customers for firms already regulated by the FCA:
- ICOBS 2.2.2 - when a firm communicates information, including a financial promotion, to a customer or other policyholder, it must take reasonable steps to communicate it in a way that is clear, fair and not misleading.
 - ICOBS 4.1.9 - that all information to be provided to a customer must be communicated in a clear and accurate manner, comprehensible to the customer.
- 3.3 For Pre-contractual Information (e.g. the requirements in CONC 4.3.3 and 4.3.5), the same applies, as there are several rules within ICOBS that ensure customers are provided with adequate information at point of sale. The majority of general insurance products also already fall under the Distance Marketing Directive (DMD) requirements. For example:
- ICOBS 4.2.4 - a firm must take reasonable steps to ensure a customer understands he is responsible for deciding whether a policy meets his demands

and needs and that a policy's main characteristics include its significant benefits, its significant exclusions and limitations, its duration and price information.

- ICOBS 6.1.5 - a firm must take reasonable steps to ensure a customer is given appropriate information about a policy in good time and in a comprehensible form so that the customer can make an informed decision about the arrangements proposed.
- TCF Outcome 3 - Customers are provided with clear information and are kept appropriately informed before, during and after the point of sale.

3.4 For cancellation cover, under the CCA rules, firms are required to give the customer a 14 day cooling off period. This already exists under ICOBS, where the customer has the option to cancel their policy after 14 days.

- ICOBS 7.1 - A consumer has a right to cancel, without penalty and without giving any reason, within 14 days for any other contract of insurance or distance contract.

3.5 The existing rules within ICOBS demonstrate the necessity for the FCA to apply a proportionate approach when applying the proposed CONC rules to insurance products. Otherwise, insurers will be subject to dual regulation that will lead to considerable financial cost, which will be ultimately paid by the customer.

4. Higher risk vs. Lower risk

4.1 Under the proposed rules, all firms will be split into two categories: higher and lower risk. Firms where their main business is selling financial services are automatically considered to be higher risk under the proposals.

4.2 Whilst all insurers are therefore considered as “higher risk” under these proposals, the “consumer credit” activities they carry out should be considered “lower risk” and this should be made clear in the final rules/guidance. For example, under the proposals, non-financial services firms that carry out consumer credit lending but do not charge interest on the ‘credit’ are considered to be “lower risk”, such as sports clubs or gyms. We believe that the consumer credit activity of some insurers - for example where no interest is charged - is no different. Even where there are interest charges or fees, monthly instalments are low risk activities by comparison to standard consumer credit agreements, and the regulatory regime should reflect this.

5. Supervision and fees

5.1 On supervision, we believe that the FCA should avoid further unnecessary regulatory burden, by ensuring all insurers that fall within the scope of these rules are supervised via their existing supervisory teams to avoid potential confusion for both the firms and the supervision teams.

5.2 We are also concerned about the proposals for fees. The FCA proposes that firms which fall under the consumer credit rules should pay ‘application fees’ in order for the FCA to undertake their new role efficiently. Insurers already pay fees to the FCA in respect of insurance contracts under current regulations. Under the new proposals, insurers will be expected to pay further fees for in respect of the credit agreements that apply to the same contract. Therefore, we ask the FCA to consider their approach on fees when applying them to insurance firms who provide the option of annual premium payments by monthly instalments.

6. Affordability criteria – suggested approach for insurers

6.1 The rules on affordability and creditworthiness are complex, and appear to be repeated several times. They are not appropriate for monthly instalments for insurance contracts and we urge the FCA to adopt specific guidance on the regulatory regime for this important consumer payment option.

6.2 Under Section 5.2.3 (2), we propose the FCA consider applying the following wording to address the key difference between insurance monthly payment by instalments and other credit agreements:

‘In the case where the consumer opts to pay an annual premium for a one year regulated insurance contract in monthly instalments, payment by instalments is likely to be more immediately affordable and sustainable than a single one-off payment, which can be reflected in the simplified scope of any pre contract assessments undertaken. As with other credit agreements, the cost of credit (if any) for such agreements will be a relevant factor.’

6.3 Furthermore, having assessed the proposed criteria for the affordability checks placed on all firms who carry out consumer lending, we have suggested which rules we consider should apply to the paying of annual insurance premiums by monthly instalments. We propose the final guidance should make clear that the affordability criteria should be tailored for lower risk activities such as monthly payments for insurance contracts.

Rule (CONC 5.3.1)	Applies to insurers?
G (1) In making the <i>creditworthiness assessment</i> or the assessment required by CONC 5.2.2R(1), a <i>firm</i> should take into account more than assessing the <i>customer’s</i> ability to repay the <i>credit</i> .	By offering customers the option of paying by instalments, the insurer meets this criterion as it widens the customer’s options for paying the premium. According to CONC 4.3.6R, there is responsibility on the consumer to make a decision whether they can afford to pay the premium.
(2) The <i>creditworthiness assessment</i> and the assessment required by CONC 5.2.2R(1) should include the <i>firm</i>	If a customer is unable to keep up with their payments, the insurer will not add any additional pressure on the customer to pay

<p>taking reasonable steps to assess the <i>customer's</i> ability to meet <i>repayments</i> under a <i>regulated credit agreement</i> in a <i>sustainable</i> manner without the <i>customer</i> incurring financial difficulties or experiencing significant adverse consequences.</p>	<p>the monies owed. If after being provided with the opportunity to meet future payments, the customer is made aware that the cover under their policy will cease and that no further payments will be due.</p>
<p>(3) A <i>firm</i> in making its <i>creditworthiness assessment</i> and the assessment required by CONC 5.2.2R(1) may take into account future increases in income or future decreases in expenditure, where there is appropriate evidence of the change and the <i>repayments</i> are <i>sustainable</i> in the light of the change.</p>	<p>This does not apply to the payment by instalment scheme, as the rate does not change once the customer has chosen their policy and agreed the annual premium.</p>
<p>4) For the purposes of CONC “sustainable” means the <i>repayments</i> under the <i>regulated credit agreements</i> can be made by the <i>customer</i>:</p> <p>(a) without undue difficulties, in particular:</p> <p>(i) the <i>customer</i> should be able to make <i>repayments</i> on time, while meeting other reasonable commitments; and</p> <p>(ii) without having to borrow to meet the <i>repayments</i>;</p> <p>(b) over the life of the <i>regulated credit agreement</i>, or for such an agreement which is an <i>open-end agreement</i>, within a reasonable period; and</p> <p>(c) out of income and savings without having to realise security or assets; and</p> <p>“unsustainable” has the opposite meaning.</p>	<p>All the information about the payment scheme is provided in advance to the customer when purchasing any insurance contract. Therefore, these rules are not applicable.</p>
<p>(5) For a <i>regulated credit agreement</i> which is an <i>open-end agreement</i> the <i>firm</i>, in making its <i>creditworthiness assessment</i> or the assessment required by CONC 5.2.2R(1), should, at the time the agreement is entered into:</p> <p>(a) make a reasonable assessment of whether the <i>customer</i> is able to meet the repayments in a <i>sustainable</i> manner over the</p>	<p>This is not applicable as insurance contracts paid by monthly instalments are fixed contracts and mainly for one year only and are not ‘open ended’.</p>

<p>duration of the agreement;</p> <p>(b) make the assessment based on reasonable assumptions about the likely duration of the <i>credit</i>; and</p> <p>(c) consider the <i>customer's</i> ability to pay off the maximum amount of <i>credit</i> available (equivalent to the <i>credit limit</i>) under the agreement.</p>	
<p>(6) For a <i>regulated credit agreement for running account credit</i> the <i>firm</i>, in making its <i>creditworthiness assessment</i> or the assessment required by <i>CONC 5.5.2R(1)</i>, should:</p> <p>(a) use the assumption for the time required for repayment that would apply to a fixed-sum unsecured personal loan for an amount equal to the <i>credit limit</i>; and</p> <p>(b) not use the assumption of the amount necessary to make the minimum payment each month.</p>	<p>This is not applicable as insurance paid for by instalments is not running-account credit.</p>
<p>For a <i>regulated credit agreement for running account credit</i> the <i>firm</i> should set the <i>credit limit</i> based on the <i>creditworthiness assessment</i> or the assessment required by <i>CONC 5.5.2R(1)</i> and taking into account the matters in <i>CONC 5.2.2R(2)</i>, and, in particular, the information it has on <i>customer's</i> current disposable income taking into account any reasonably foreseeable future changes.</p>	<p>This is not applicable to payment by instalment schemes.</p>
<p>(8) An example of a reasonably foreseeable future change in disposable income which a <i>firm</i> should take into account in setting a <i>credit limit</i> may include where a <i>customer</i> is close to retirement and faces a significant fall in disposable income.</p>	<p>This does not apply to monthly payment by instalment schemes as it is a fixed annual contract. If the customer's financial circumstances do change during the course of the contract and they are unable to pay back the premium, the insurer will make the customer aware that the cover under their policy will cease and that no further instalments are due.</p>

<p>(9) It is not generally sufficient for a <i>firm</i> to rely solely for its <i>creditworthiness assessment</i> or its assessment required by CONC 5.2.2R(1), of the <i>customer's</i> income and expenditure, on a statement made by the <i>customer</i>.</p>	<p>Customers would not expect to have to provide evidence of their income and expenditure when purchasing what are often mandatory insurance covers and when deciding to pay their insurance premiums by instalments.</p>
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7. Pre-contractual information criteria – suggested approach for insurers

7.1 The rules on pre-contractual are not very clear and like the affordability rules, appear to be repeated several times. We have assessed the proposed criteria for pre-contractual information placed on all firms who carry out consumer lending and have suggested which rules we consider apply to the paying of annual insurance premiums in monthly instalments.

Rule (CONC 4.3)	Applies to insurers?
<p>G (1) <i>Firms</i> should consider the extent to which they can provide adequate explanations in relation to the regulated credit agreements referred to in CONC 4.3.2R.</p> <p>[Note: paragraph 3.1 (box) of <i>ILG</i>]</p>	<p>This should not be applicable to annual premiums payable by instalments.</p>
<p>(2) An example of how a <i>firm</i> might comply with the <i>Principles</i> by taking the <i>rules</i> in (1) into account as guidance would be where, before the <i>firm</i> enters into a <i>regulated credit agreement</i> secured on <i>land</i> (other than by a first legal mortgage), it highlights key risks to the <i>customer</i>, such as the potential consequences of missing payments or under paying, including the risk of repossession of the <i>customer's</i> property.</p> <p>[Note: paragraphs 3.1 (box) of <i>ILG</i> and 3.5 of <i>SCLG</i>]</p>	<p>Same as above.</p>
<p>(3) The <i>disclosure regulations</i> made under section 55 of the <i>CCA</i> which require information to be disclosed before a regulated agreement is made remain in force.</p>	<p>As Section 55 is due to be repealed and replaced with the proposed rules, this rule is not applicable.</p>
<p>(4) Failure to comply with the <i>disclosure regulations</i> has the effect that agreements are enforceable against a borrower or hirer (as defined in the <i>CCA</i>) only with an order of court and enforcement for that purpose includes a retaking of goods or <i>land</i> to which the agreement relates.</p>	<p>Please see the reference to the approach adopted by insurers in respect of the OFT guidelines on page 2 above.</p>
<p>(5) Other relevant disclosure requirements</p>	<p>Agree</p>

<p>are found in <i>CONC 2.7</i> (distance marketing) and <i>CONC 2.8</i> (electronic commerce), the Financial Services (Distance Marketing) Regulations 2004 (SI 2004/2095), the Electronic Commerce (EC Directive) Regulations 2002 (SI 2002/2013) and the Consumer Protection from Unfair Trading Regulations 2008 (SI 2008/ 1277) and the Cancellation of Contracts made in the Consumer's home etc Regulations 2008.</p>	
<p>Rule (CONC 4.3.4)</p>	<p>Applies to insurers?</p>
<p>R The pre-contractual information that must be disclosed under the <i>disclosure regulations</i> must take into account any preferences expressed, or information provided by, an <i>individual seeking credit</i>. [Note: paragraph 3.13 (box) of ILG]</p>	<p>This is not applicable, as annual premium payments by instalments are not like credit agreements where a customer is 'seeking' credit. Therefore, this rule is not appropriate for insurance contracts paid for by an instalment plan as there is no physical entity e.g. goods or land, to retake as a method of enforcement. Failure to pay an instalment results in the contract being cancelled.</p>
<p>Rule (CONC 4.3.5)</p>	<p>Applies to insurers?</p>
<p>R (1) Before making a <i>regulated credit agreement</i> the <i>firm</i> must:</p> <p>(a) provide the <i>customer</i> with an adequate explanation of the matters referred to in (2) in order to place the <i>customer</i> in a position to assess whether the agreement is adapted to the <i>customer's</i> needs and financial situation;</p> <p>(b) advise the <i>customer</i>:</p> <p>(i) to consider the information which is required to be disclosed under section 55 of the <i>CCA</i>; and</p> <p>(ii) where the information is disclosed in person, that the <i>customer</i> is able to take it away;</p> <p>(c) provide the <i>customer</i> with an opportunity to ask questions about the agreement; and</p> <p>(d) advise the <i>customer</i> how to ask the <i>firm</i> for further information and explanation. [Note: section 55A(1) of CCA]</p>	<p>This is already covered under ICOBS 4.2.4, 6.1.5 and TCF Outcome 3. Therefore, if the customer is given the same information through the <i>CCA</i> rules, it adds no further value to them.</p>
<p>(2) The matters referred to in (1)(a) are:</p> <p>(a) the features of the agreement which may make the <i>credit</i> to be provided under the</p>	<p>This section is not applicable to insurers for the most part as the type of 'credit' is different to the payment by instalment scheme that insurers offer to customers.</p>

<p>agreement unsuitable for particular types of use;</p> <p>(b) how much the <i>customer</i> will have pay periodically and, where the amount can be determined, in total under the agreement;</p> <p>(c) the features of the agreement which may operate in a manner which would have a significant adverse effect on the <i>customer</i> in a way which the <i>customer</i> is unlikely to foresee;</p> <p>(d) the principal consequences for the <i>customer</i> arising from a failure to make payments under the agreement at the times required by the agreement including, where applicable:</p> <p>(i) the total cost of the debt growing;</p> <p>(ii) incurring any default charges or interest, including reference to the approximate level of charges or interest in the event of default;</p> <p>(iii) impaired credit rating and its effect on future access to or cost of <i>credit</i>;</p> <p>(iv) legal proceedings, including reference to charging orders (or, in Scotland, inhibitions), and to the associated costs of such proceedings;</p> <p>(v) implications of insolvency;</p> <p>(vi) repossession of the customer's home or other property; and</p> <p>(vii) where an article is taken in <i>pawn</i>, that the article might be sold, if not redeemed; and</p> <p>(e) the effect of the exercise of any right to withdraw from the agreement and how and when this right may be exercised.</p> <p>[Note: section 55A(2) of CCA]</p>	
<p>(3) The adequate explanation and advice in (1) may be given orally or in writing, except where (4) applies.</p> <p>[Note: section 55A(3) of CCA]</p>	<p>Insurers already comply with this through meeting TCF requirements.</p>
<p>(4) Where the matters in (2)(a), (b) or (e) are given orally or to the <i>customer</i> in person, the explanation of the matters in (2)(c) and (d) and the advice required in (1)(b) must be given orally to the <i>customer</i>.</p> <p>[Note: section 55A(4) of CCA]</p>	<p>Agree.</p>

<p>(5) Paragraphs (1) to (4) do not apply to a <i>lender</i> if a <i>credit broker</i> has complied with those sub-paragraphs in respect of the agreement.</p> <p>[Note: section 55A(5) of CCA]</p>	<p>Agree.</p>
<p>(6) Where the <i>regulated credit agreement</i> is an agreement under which a person takes an article in pawn:</p> <p>(a) the requirement in (1)(a) only relates to the matters in (2)(d) and (e); and</p> <p>(b) the requirements in (1)(b) and (d) do not apply.</p> <p>[Note: section 55A(7) of CCA]</p>	<p>This is not applicable to insurers.</p>
<p>(7) This <i>rule</i> does not apply to:</p> <p>(a) a <i>non-commercial agreement</i>;</p> <p>(b) a <i>small borrower-lender-supplier agreement</i> for <i>restricted-use credit</i>.</p>	<p>Agree.</p>
<p>(8) Where this rule applies to a <i>borrower-lender agreement</i> to finance the making of the payments arising or connected with the death of a person, the payments in question are set out in (9).</p> <p>[Note: section 74(1F) of CCA]</p>	<p>This is not applicable to insurers.</p>
<p>(9) The payments referred to in (8) are:</p> <p>(a) inheritance tax chargeable in the <i>UK</i> on the death of any person;</p> <p>(b) fees payable to a court:</p> <p>(i) in England, Wales or Northern Ireland on an application for a grant of probate or of letters of administration;</p> <p>(ii) in Scotland, in connection with a grant of confirmation; and</p> <p>(iii) in the <i>UK</i>, on an application for resealing of a Commonwealth or colonial grant of probate or of letters of administration; and</p> <p>(c) payments in England, Wales or Northern Ireland to a surety in connection with a guarantee required as a condition of a grant of letters of administration or payments in Scotland to a cautioner in connection with a bond of caution required as a condition of issuing a grant of confirmation.</p> <p>[Note: regulation 2 of SI 1983/1554]</p>	<p>Same as above.</p>
<p>Rule (CONC 4.3.6)</p>	<p>Applies to insurers?</p>

<p>R The explanation provided by a <i>lender</i> or a <i>credit broker</i> under CONC 4.3.5R must enable the <i>customer</i> to make a reasonable assessment as to whether the <i>customer</i> can afford the <i>credit</i> and to understand the key associated risks.</p> <p>[Note: paragraph 3.3 (box) of ILG]</p>	<p>This is already covered under ICOBS 6.1.5 so would result in further duplication and provide no added value to the customer.</p>
<p>Rule (CONC 4.3.7)</p>	<p>Applies to insurers?</p>
<p>R In deciding on the level and extent of explanation required by CONC 4.3.5R, the <i>lender</i> or <i>credit broker</i> must consider (and each of them must ensure that anyone acting on their behalf must consider) factors including:</p> <p>(1) the type of <i>credit</i> being sought;</p> <p>(2) the amount of <i>credit</i> to be provided and the associated cost and risk to the <i>customer</i>;</p> <p>(3) to the extent it is evident and discernible, the <i>customer's</i> level of understanding of the explanation provided; and</p> <p>(4) the channel or medium through which the credit transaction takes place.</p> <p>[Note: paragraph 3.4 of ILG]</p>	<p>This is already covered under ICOBS 4.2.4, 6.1.5 and TCF Outcome 3, so would result in further duplication and provide no added value to the customer.</p>
<p>Rule (CONC 4.3.9)</p>	<p>Applies to insurers?</p>
<p>R Even where a <i>customer</i> states or implies that there is no need for an explanation of the <i>regulated credit agreement</i>, the <i>lender</i> or <i>credit broker</i> must continue to comply with CONC 4.3.5R.</p> <p>[Note: paragraph 3.10 of ILG]</p>	<p>This is already covered under ICOBS 4.2.4, 6.1.5 and TCF Outcome 3, so would result in further duplication and provide no added value to the customer.</p>
<p>Rule (CONC 4.3.10)</p>	<p>Applies to insurers?</p>
<p>R A <i>lender</i> or a <i>credit broker</i> must not encourage or induce a <i>customer</i> to waive the rights in CONC 4.3.5R.</p> <p>[Note: paragraph 3.10 of ILG]</p>	<p>This is not applicable to insurers as it goes against the TCF criteria. Insurers would feel that this would be an unacceptable approach to TCF.</p>
<p>Rule (CONC 4.3.11)</p>	<p>Applies to insurers?</p>
<p>R Before a <i>lender</i> concludes that CONC 4.3.5R(1) to (4) do not apply to it in relation to a <i>regulated credit agreement</i>, the <i>lender</i> must take reasonable steps to satisfy itself that an explanation of that agreement complying with CONC 4.3.5R has been provided to the <i>customer</i> by the <i>credit broker</i>.</p> <p>[Note: paragraph 3.11 (box) of ILG]</p>	<p>Insurers already comply with this under TCF.</p>

Rule (CONC 4.3.12)	Applies to insurers?
R The <i>lender</i> or the <i>credit broker</i> must enable a <i>customer</i> to request and obtain further information and explanation about a <i>regulated credit agreement</i> without incurring undue cost or delay. [Note: paragraph 3.16 (box) of <i>ILG</i>]	Agree.
Rule (CONC 4.3.13)	Applies to insurers?
R Neither a <i>lender</i> nor a <i>credit broker</i> may require a <i>customer</i> to acknowledge that the information and explanations it has provided are adequate to satisfy the requirements of CONC 4.3.5R. [Note: paragraph 3.30 (box) of <i>ILG</i>]	Under the current OFT guidelines, insurers will seek affirmation from customers but may not always be successful. By not obtaining such confirmation, there are no ensuing adverse customer outcomes.
Rule (CONC 4.3.14)	Applies to insurers?
G A <i>lender</i> or <i>credit broker</i> may require an acknowledgement that it has provided an explanation, and of receipt of any written information that forms a part of the explanation, but not an acknowledgement as to its adequacy. CONC 4.3.12R does not prevent the <i>lender</i> or <i>credit broker</i> asking if the <i>customer</i> has understood an explanation given. [Note: paragraph 3.30 (box) of <i>ILG</i>] Adequate explanations in relation to particular regulated credit agreements	As above under CONC 4.3.13
Rule (CONC 4.3.16)	Applies to insurers?
G Where a <i>customer</i> does not have a good understanding of the English language, the <i>lender</i> may need to present relevant information concerning the explanation required by CONC 4.3.5R to persons with such understanding who can assist the customer, for example, the <i>customer's</i> friends or relatives. [Note: paragraph 3.4 (box) of <i>ILG</i>] Guidance for adequate explanations where agreements are marketed by distance or electronic means	Insurers already comply with this through meeting TCF requirements.
Rule (CONC 4.3.17)	Applies to insurers?
G Since the use of distance means of communication (such as the internet) by their nature limit the <i>lender's</i> ability to ascertain the <i>customer's</i> level of understanding of	Under TCF, the insurer has to provide all the required information to the customer so that they can make an informed decision before purchasing the policy. Therefore, insurers

<p>explanations provided, a <i>lender</i> using those means may, for example, wish to provide local rate telephone contact details for <i>customers</i> who wish to seek further explanation.</p> <p>[Note: paragraph 3.6 (box) of <i>ILG</i>]</p>	<p>are already compliant under TCF and this rule is not necessary.</p>
<p>Rule (CONC 4.3.18)</p>	<p>Applies to insurers?</p>
<p>G Interaction is an important part of compliance with the requirement in <i>CONC 4.3.5R(1)</i>, for example, where the agreement is marketed and concluded by <i>electronic means</i>. For an online application, the requirement in <i>CONC 4.3.5R(1)(c)</i> (the right to ask questions) may be complied with by the <i>customer</i> being able to access an appropriately comprehensive set of answers to frequently asked questions about the agreement or by being able to speak to a representative of the online provider.</p> <p>[Note: paragraph 3.8 (box) of <i>ILG</i>]</p>	<p>Agree.</p>
<p>Rule (CONC 4.3.19)</p>	<p>Applies to insurers?</p>
<p>G For a <i>regulated credit agreement</i> marketed and concluded by <i>electronic means</i> to comply with <i>CONC 4.3.5R</i> the <i>customer</i> should pass through screens containing the required information and explanations, giving the <i>customer</i> the opportunity to see and read the explanations provided. Merely providing a link to where such information can be found may not satisfy the requirements in <i>CONC 4.3.5R</i>.</p> <p>[Note: paragraph 3.15 (box) of <i>ILG</i>]</p>	<p>Insurers already comply with this through meeting TCF requirements in respect of customer policies.</p>
<p>Rule (CONC 4.3.20)</p>	<p>Applies to insurers?</p>
<p>G For telephone or face-to-face transactions, interaction between the <i>customer</i> and the <i>firm's</i> representative is also important and, for example, the representative solely providing the <i>customer</i> with a written explanation of an agreement, or relying on a written script in relation to an agreement, is unlikely to comply with the requirement in <i>CONC 4.3.5R</i>.</p> <p>[Note: paragraph 3.9 (box) of <i>ILG</i>]</p>	<p>Insurers already comply with this through meeting TCF requirements in respect of customer policies.</p>

Consultation questions

Q5. Do you have any comments on our proposed regulatory reporting regime?

ABI response: Yes, we do not believe that the proposed regime is proportionate to the insurance industry. The FCA need to consider the ‘one size fits all’ regime and ensure the rules it applies to the industry are proportionate to the activity and risk to consumers of the “consumer credit” activity that individual firms carry out.

We would also welcome further clarification on the suggested data collection for firms conducting consumer credit activities. For example, we understand from the revised SUP 16.12.3 R that firms are required to input data on their insurance income only once – according to the lowest RAG number first. This means that for an insurance firm that charges no interest on their consumer credit activities, they will be reporting the following:

- Financial data: 0, as all insurance firms already have to submit this under RAG 2.1
- Volumes:
 - Fee mechanism: N/A, as no interest is charged
 - Revenue: 0, as no additional revenue is generated through paying by instalments
 - Total customers: number of customers paying by instalments Note: if a customer has both a household and motor insurance policy with the same insurer, it may be difficult for the firm to report this as one customer (as per the CCR002 guidelines), particularly if the customer has bought the policies through different distribution channels.
 - Total transactions: number of new/renewed transactions involving paying by instalments
- Lenders :
 - Value of loans outstanding: possibly N/A, as already reported under RAG 1.2 under provision for unearned premiums
 - Total loans: number of customers paying by instalments at the end of the financial reporting year – probably similar amount to Total customers (above) – apart from customers who have cancelled the contract mid-term - as general insurance contracts are annual and last 12 months.
 - Total # loans in arrears: number of customers who are still mid-way through their contract at the time of accounting
 - Total value of arrears: Covered under RAG 1.2
 - Total value of new advances in period: Covered under RAG 1.2
 - Average rate of interest: 0
 - Highest rate of interest: 0

On this basis, we suggest that the FCA may wish to consider regulating insurers as “limited-permission” lenders, as insurance paid by instalments falls under the definition of “restricted-use credit”, and the only information that is likely to be of any use to the FCA is the key data required for limited-permission firms i.e. revenue from credit-related activities, number of credit-related transactions, and number of complaints relating to credit-lending activity.

Q22. Do you agree with our proposed implementation timetable? If not, please give reasons.

ABI response: If the FCA decides to apply all the proposed rules to the insurance industry, the timescales for implementation of CONC-compliant processes are challenging and more importantly disproportionate to the activity they carry out. However, if the FCA does not reconsider its approach, then given the scale and impact of changes for the industry, we would expect a longer transition period to apply, potentially until 1 April 2015.

Q24. Do you agree with our proposal to allow all microenterprises to complain to the ombudsman service?

ABI response: Under current regulation, microenterprises already have the right to complain to the ombudsman service. We would ask the FCA to ensure that their definition of microenterprises is consistent with that of the Ombudsman in order to avoid confusion.