

**G-Regs™**

## Financial Promotions Overview



### Definition: 'Financial Promotion'

#### Financial Promotion includes the promotion/ advertising of consumer credit

An invitation or inducement to engage in investment activity that is communicated in the course of business and the communication is capable of having an effect in the UK; see Sect. 21 FSMA<sup>1</sup>

To engage in investment activity<sup>2</sup>, essentially means to 'enter or offer to enter into an agreement, the making or performance of which constitutes a controlled activity'<sup>3</sup>

**Relevant:** Credit broking in respect of relevant credit agreements<sup>4</sup> is a controlled activity (Para. 4B, Sch. 1, FPO<sup>5</sup> & 8.36.3G PERG); the definition mirrors the definition of credit broking in RAO<sup>6</sup> in that there are the same 6 categories (Art. 36A RAO). Car manufacturer/ brand will be regarded as credit broker in this instance, a 3rd party firm distributing promotions on behalf of a consumer credit provider.

**Guidance:** PERG (The Perimeter Guidance Manual 8<sup>7</sup> Financial Promotions and related activities) provides guidance on key expressions/ phrases in the definition<sup>8</sup>. Refer to PERG 8.17-A<sup>9</sup> for Financial Promotions concerning consumer credit.

'Promotion' is defined broadly (see PERG 8.10: Types of financial promotion) and covers most forms of communication including email, telephone calls, fax, letter, websites, TV/ Radio, leaflets and journals/ magazines, divided into real time and non-real time financial promotions 8.10.2G PERG)

SCOPE of this document: the rules outlined below apply to financial promotions that involve a communication with a consumer relating to 'credit broking', which in turn relates to regulated credit agreements<sup>10</sup> (see 3.5.1R (2) CONC and 3.1.3R (3) CONC)

<sup>1</sup> [Section 21](#) of the Financial Services and Markets Act 2000 FSMA (Restrictions on financial promotion), which does not actually refer to a 'financial promotion' but rather to the communication of 'an invitation or inducement to engage in investment activity' PERG  
<sup>2</sup> Full definition of 'engage in investment activity' see Sect. 21(8a) and (8b). See Art. 21 (9) FSMA for definition of 'controlled activity' and Art. 21 (10) FSMA for definition of 'controlled investment'.

<sup>3</sup> A controlled activity is an activity of a specified kind relating to an investment of a specified kind (See Art. 21(9) FSMA). The FPO (Art.4/ Sch. 1, Part I & II) defines and specifies/ lists the controlled activities and controlled investments. Also listed in PERG 8.36.3G and PERG 8.36.4G <https://www.handbook.fca.org.uk/handbook/PERG/8/36.html>. They are essentially similar to regulated activities and specified investments under the Regulated Activities Order (as explained 8.7.2GPERG). Credit broking (Para 4B FPO/ PERG 8.36.3G) is specified activity; Rights under a relevant credit agreement (Para 26D FPO /17A PERG 8.36.4G) is a specified investment.

<sup>4</sup> Defined in para. 28, sch. 1 FPO as a credit agreement within meaning of Art. 60B RAO other than a regulated mortgage contract or a regulated home purchase plan

<sup>5</sup> Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (SI 2005/1529) (FPO) Art. 17(6) [FSMA \(Reg. Activities\) Amendment No. 2\) Order 2013](#) inserts para. 4B into FPO; Art. 4 [The Financial Services and Markets Act 2000 \(Miscellaneous Provisions\) Order 2015](#) amends para. 4B Sch. 1(Part 1); Art. 10(8) [FSMA \(Reg Activities\) \(Amendment\) Order 2014](#) inserts para. 4B (1A) Sch. 1, Part 1 FPO

<sup>6</sup> Regulated Activities Order - Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (SI 2001/544). Art. 36A see [here](#) / see PERG 2.7.7E(G) which lists 6 activities

<sup>7</sup> <https://www.handbook.fca.org.uk/handbook/PERG/8/?view=chapter>

<sup>8</sup> 'Invitation or inducement' (see PERG 8.4); 'in the course of business' (see PERG 8.5); 'communicate' (see PERG 8.6); 'engage in investment activity' (see PERG 8.7); 'having an effect in the United Kingdom' (see PERG 8.8).

<sup>9</sup> <https://www.handbook.fca.org.uk/handbook/PERG/8/17-A.html>

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The credit broker<sup>11</sup> in this instance is the car brand/ manufacturer ('advertiser') assuming it is releasing the advertising and acting as a credit broker, where credit broking is ancillary to the main business; so the sale of goods or non-financial services i.e. Cars are the main business, and broking is a secondary activity to help finance their purchase

Whilst CONC does not apply directly to a firm's 'appointed representatives' (which will include Advertising agencies), the FCA will treat the actions of appointed representatives as actions of the firm and, in reality, firms will have to ensure that their appointed representatives comply with CONC (see 1.2.3G and 1.2.4G CONC)

### Clear, fair, and not misleading rule AND General Guidance

#### All Financial Promotions MUST:

- Comply with CONC 3<sup>12</sup>, the Consumer Credit Act 1974<sup>13</sup>, and other applicable legislation and codes (CPRs<sup>14</sup> and BPRs, CAP<sup>15</sup> and BCAP<sup>16</sup> Advertising Codes)
- **Be clear fair and not misleading** (3.3.1R (1) CONC) see FCA Guide on Financial Promotions and Adverts<sup>17</sup> (See 3.3.10G CONC for examples of practices that are likely to contravene the clear, fair and not misleading rule (in CONC 3.3.1R) AND guidance on clear, fair, and not misleading: 3.3.6G – 3.3.9G CONC)

This means they must be:

- Clearly identifiable as such
- Accurate and balanced, not emphasising any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks
- Presented in a way that is likely to be understood by the average member of the group to which it is directed, or by which it is likely to be received; and
- Does not disguise, omit, diminish or obscure important information, statements or warnings (3.3.1R 1A (a-e) CONC)

#### Financial Promotions must not (3.3.10G CONC AND 3.3.3R CONC):

- State or imply that the firm is a lender if it is not
- Suggest or state that credit is available, regardless of the customer's financial circumstances or credit status (3.3.3(r) CONC) and this could be in the form of a firm's/ brand's trading name, internet address or logo – 3.3.4(g)(1) CONC<sup>18</sup>
- Mislead the customer as to the availability of a particular credit product
- Conceal or misrepresent the identity or name of the firm
- Use false testimonials, endorsements or case studies; or
- Use false or unsubstantiated claims as to the firm's size, experience or pre-eminence

<sup>10</sup> Meaning – as per Art. 60B RAO (in the case of an agreement entered into on or after 1 April 2014), a credit agreement which is not an exempt agreement under articles 60C to 60H of the Regulated Activities Order. A credit agreement being (as per Art. 60B) an agreement between an individual ("A") and any other person ("B") under which B provides A with credit of any amount.

<sup>11</sup> See PERG 2.7.7E (G) / Art. 36A RAO/ Para. 4b FPO for definition of credit broker

<sup>12</sup> <https://www.handbook.fca.org.uk/handbook/CONC/3/?view=chapter>

<sup>13</sup> Part IV: Seeking Business <http://www.legislation.gov.uk/ukpga/1974/39/part/IV>

<sup>14</sup> <http://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

<sup>15</sup> Section 14: Financial Products - <https://www.cap.org.uk/Advertising-Codes/Non-Broadcast/Codeltem.aspx?cscid={b0127aa0-ee04-470c-b3b3-2277bca20fc3}#.VzxbdYQrKUm>

<sup>16</sup> Section 14: Financial products, services and investments <https://www.cap.org.uk/Advertising-Codes/Broadcast/Codeltem.aspx?cscid=%7b802fda5e-2d2b-49a4-8d71-9e50a89e0e52%7d#.VzxmXoQrKUm>

<sup>17</sup> <https://www.the-fca.org.uk/financial-promotions-and-adverts>

<sup>18</sup> A statement or an implication that credit is guaranteed or pre-approved, or is not subject to any credit checks or other assessment of creditworthiness, may contravene this rule (CONC 3.3.4(G)(2))

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- suggest that a customer's repayments will be lower under a proposed agreement without also mentioning (where applicable) that the duration of the agreement will be longer or that the total amount payable will be higher

**Factors to consider** when preparing financial promotions:

- Whether the omission of any relevant facts will result in the customer being given information which is not clear, fair and not misleading per 3.3.7G CONC
- Whether any comparison or contrast of products or services (whether or not provided by the firm) is fair and balanced, and is meaningful 3.3.1R (1B) and 3.3.8G CONC
- Use plain language that is easy to understand (i.e. intelligible; no jargon) (3.3.2R (1) CONC)
- Be easily legible/ readable or clearly audible in the case of TV, Radio and Cinema financial promotions (3.3.2R (2) CONC)

Usually included in small print of the advertisement:

- Specify:
  - o The name of the advertiser/ brand (3.3.2R (3) CONC) including their full legal entity name, as set out in the financial services register, in addition to any trading name used (CONC 3.7.5R / CONC 3.7.6G), plus the postal address<sup>19</sup> (3.5.3R (1b) CONC)
  - o The name of the lender where it is known, for example Black Horse Finance for JLR
  - o Prominently that the firm is a credit broker and not a lender (where this is the case; see Q.1 below) (3.7.7R (1) CONC)
- Include an appropriate statutory status disclosure as required by the FCA's General Provisions sourcebook (see GEN 4 how firms authorised by FCA (or PRA) must describe their regulatory status). Such disclosure should state the nature of the authorisation and regulation of the company concerned, eg. "Company X is authorised and regulated by the Financial Conduct Authority." (see disclosure in *GEN 4 Annex 1 R*<sup>20</sup>)
- Minimum financial promotion small print – see final section – must include: T&C's apply; Subject to status; 18s or over; Guarantee/ Indemnities may be required.

**Treating Customers Fairly Principle**

- Must comply with the FCA's Treating Customers Fairly (TCF) principle (Principle 6 from the Principles for Businesses sourcebook (PRIN<sup>21</sup>) contained within High Level Standards section of the FCA Handbook<sup>22</sup>) which states: **'A firm must pay due regard to the interests of its customers and treat them fairly'**. (see CONC 1.1.4G) (See CONC 2.2.2 G<sup>23</sup> for guidance on Principle 6)
- TCF is one of the fundamental principles underlying the FCA's regulatory regime. There are six consumer outcomes<sup>24</sup> that firms should strive to achieve to ensure fair treatment of customers. Outcomes 2,3, and 4 are particularly relevant to financial promotions of consumer credit.
- See this FCA Guide - The Responsibilities of Providers and Distributors for the Fair Treatment of Customers

<sup>19</sup> Except where the financial promotion is via TV, radio or a point of sale on dealer's premises – CONC 3.5.3R (3) (a&b)

<sup>20</sup> <https://www.handbook.fca.org.uk/handbook/GEN/4/Annex1.html#D39>

<sup>21</sup> PRIN - The Principles for Businesses (PRIN) = fundamental obligations that firms must comply with at all times. They apply to all authorised firms. <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter>

<sup>22</sup> <https://www.handbook.fca.org.uk/handbook/PRIN/2/?view=chapter>

<sup>23</sup> Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. Examples of behaviour by or on behalf of a firm which is likely to contravene Principle 6 include:

(1) Targeting customers with regulated credit agreements which are unsuitable for them, by virtue of their indebtedness, poor credit history, age, health, disability or any other reason

(2) Subjecting customers to high-pressure selling, aggressive or oppressive behaviour, or unfair coercion

(3) Not allowing customers who are unable to make payments a reasonable time and opportunity to meet repayments.

<sup>24</sup> [https://www.the-fca.org.uk/fair-treatment-customers?field\\_fcasf\\_sector=unset&field\\_fcasf\\_page\\_category=unset](https://www.the-fca.org.uk/fair-treatment-customers?field_fcasf_sector=unset&field_fcasf_page_category=unset)

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(RPPD)<sup>25</sup> - Point 1.19

Key Points:

- The car featured in the financial promotion should always be the one pictured. So the vehicle image and cost must match the offer shown. This will include the cost of metallic paint and any accessories. See CAP Advice Note: Price: General<sup>26</sup> (Ensuring price matches the product shown).
- It is considered good industry practice to specify the minimum deposit where there is such a requirement in the body copy (irrespective of whether it is more than 10% and where it is not included in Rep. Example table) and qualify it with the statement: "lower or no deposits will result in higher monthly payments" (this will ensure that the advert complies with the general requirement of "clear, fair and not misleading" under CONC 3.3.1R)

### 3 KEY QUESTIONS TO CONSIDER when putting together an advertisement

#### Q1. Will the prospective customers ONLY be able to obtain finance from one Lender/ financial provider?

The motor dealer/ credit broker must indicate the extent of its powers and in particular whether it works exclusively with one or more lenders or works independently (3.7.3R CONC; also s. 160A (3) of CCA)

If the answer is YES, the advertisement must include a statement along the following lines:

- "We (Dealer/ Broker name) work exclusively with ..... (Lender/ Financial provider name)" or "We only offer credit products for..... (Lender/ Financial provider name) (as per 3.7.3R CONC above)

If the answer is NO, the advertisement must include a statement along the following lines:

- "We (Dealer/ Broker name) can introduce you to a limited number of finance providers" or Credit is provided by external finance companies as determined by us (Dealer/ Credit broker name)

Additional statements to be included irrespective of whether the answer to the above question is Yes/No

- "We (Dealer/ Broker Name) act as a credit broker and not as a lender" (see CONC 3.7.4 G (1) and 3.7.7R (1)). This must be stated prominently, meaning that it must be presented in such a way that it is likely that the attention of the average person to whom the financial promotion is directed would be drawn to it (3.7.8(G) CONC)
- "We (Dealer/ Broker name) may receive commission for the introduction" (3.7.4G (2) CONC – the Dealer/ Broker must indicate to the customer in a prominent way the existence of any financial arrangements with a lender that might impact upon the firm's impartiality in promoting a credit product to a customer)

These statements tend to be included in the disclaimer or form the small print of the advertisement. The last two statements can be displayed in bold to help satisfy the prominence requirements.

A firm can only describe itself as independent if it is able to provide access to a representative range of credit products from the relevant product market on competitive terms and is not constrained in providing such access, for example, because of one or more agreements with lenders; and ensure that any disclosure about the extent of its independence is prominent and in accordance with the clear, fair not misleading rule in CONC 3.3.1 R, clear and easily comprehensible. (as per 3.7.4 (G) (3) & (4) CONC). This will apply to independent financial brokers, not motor dealerships.<sup>27</sup>

#### Q2. Does the advert include an interest rate or an amount relating to the cost of credit?

<sup>25</sup> [https://www.handbook.fca.org.uk/handbook/document/rppd/RPPD\\_Full\\_20160321.pdf](https://www.handbook.fca.org.uk/handbook/document/rppd/RPPD_Full_20160321.pdf)

<sup>26</sup> <https://www.cap.org.uk/Advice-Training-on-the-rules/Advice-Online-Database/Prices.aspx#Ensure>

<sup>27</sup> An 'Independent' dealer / broker could state "We can introduce you to a wide range of finance providers depending on your needs"

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(ref. 3.5.3 R (1) & (2) CONC and 3.5.4G (1) CONC)

Interest rate means: Any rate of interest, whether annual, monthly, weekly, daily or APR<sup>28</sup> (Annual Percentage Rate); reference to 0% credit/ finance, but where the APR is 0%, a representative example is not required - see heading "0% APR" after Q. 3 (CONC 3.5.12R which prohibits use of the expression 'interest free' or any similar expression, unless in the case of credit financing goods or services the total amount payable does not exceed the cash price). Also note 3.5.4G (2) CONC<sup>29</sup>.

Amounts relating to cost of credit means: Costs such as administration costs, commissions, taxes, any fees/ charges (including any dealer/ broker fees charged to the customer) or interest amounts / amounts relating to repayment of credit (i.e. buy this car from £250 per month)

**If the answer is YES, the advertisement should include:**

- A postal address of the advertiser / person making the financial promotion – 3.5.3R (1b) CONC (except in relation to television or radio adverts or any point of sale material which remains on the premises of the dealer 3.5.3R (3a&b) CONC)
- A full representative example of the credit on offer (3.5.3R (1a) CONC)

A representative example MUST include ALL of the following information, known as 'Standard Information' which must be representative of the agreements to which the Rep. APR applies<sup>30</sup> (3.5.5R CONC):

- **The rate of interest**, (state whether it is fixed or variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down) Also: where the rate of interest applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown 3.5.4G (2) CONC. Also refer to 6.13 BIS Guidance
- **The nature and amount of any other charge** included in the total charge for credit (TCC<sup>31</sup>) e.g. a description and amount of any fees (option to purchase, arrangements fee, document fee, where known and ascertainable at the relevant time, the cost of any compulsory ancillary service, whether PPI/ other insurance<sup>32</sup>) or charges, other than interest, included in TCC; where the amount is estimated, it must be made clear it is an estimate (see 3.5.6G (4) CONC). It is also considered good practice to indicate when these fees are payable (option to purchase fee is payable with final payment), which is usually referenced in small print
- **The total amount of credit**<sup>33</sup>
- **The representative APR**<sup>34</sup> (displayed as e.g. "3.5% APR Representative / Representative 3.5% APR" if the interest rate or charges comprising the APR may vary during the period of the agreement, the APR must be

<sup>28</sup> The APR is an annualised rate which reflects the total cost of borrowing for the customer – not only the interest expense on the loan (or interest rate) but also all fees and other costs involved in procuring the loan - and thereby helps customers to compare the cost of different credit deals. In reference to CONC it is defined as the annual percentage rate of charge for credit (which is the rate of the total charge for credit - calculated in accordance with CONC App 1.2.4 R - expressed as an annual percentage of the total amount of credit) determined in accordance with the rules in CONC App 1.2 and CONC 3.5.13 R. Must be expressed as %APR and accompanied by word "Variable" if subject to change (3.5.9R CONC)

<sup>29</sup> Where the rate of interest applies for only a limited period, the duration of the period and the rate or amount following that period, if known or ascertainable, should be shown 3.5.4(G)(2) CONC

<sup>30</sup> See 3.5.5(R)(2) CONC and Guidance on the Representative example 3.5.6G CONC/ BIS Guidance Chapter 6

<sup>31</sup> TCC – the true/ total cost to the borrower of the credit provided: the sum calculated in accordance with the rules in CONC App 1.2 and, in relation to financial promotions, the rules in CONC 3.5.13R (definition of TCC Glossary of CONC)

<sup>32</sup> See 6.27 BIS Guidance and CONC App 1.2.3R (4) (TCC)

<sup>33</sup> This means the credit limit or the total sums made available under a consumer credit agreement. This equates to the sum available to the borrower to use and does not include financed charges; those are part of the total cost of credit (see 6.13 BIS Guidance - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/34687/12-1264-consumer-credit-directive-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/34687/12-1264-consumer-credit-directive-guidance.pdf) and decision of Southern Pacific Securities 05-2 Plc v Walker and Another [2010 UKSC 32] which confirmed that "credit" must be interpreted in accordance with section 9(4) CCA 1974 which excludes charges for credit.

<sup>34</sup> The Representative APR is the rate at or below which the advertiser reasonably expects, at the date on which the advertisement is published, that credit would be provided under at least 51% of the agreements which will be entered into as a result of the advertisement. In short, the representative APR must reflect at least 51% of business expected to result from the advertisement.

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accompanied by the word “variable”; see 3.5.9R CONC); where the APR has more than one decimal place, it should be rounded to one decimal place in accordance with CONC App 1.2.6R (3(f)<sup>35</sup>. Also refer to 3.5.13R CONC for permitted tolerances for APR)

Ancillary Services: Where it is compulsory to enter into an ancillary service contract<sup>36</sup> in order to obtain credit or obtain it under terms and conditions advertised, AND the cost of the service cannot be determined in advance, this fact/ obligation must be included in a clear, concise and prominent statement – presented together with the Representative APR. (3.5.10R CONC). Where the cost can be determined in advance it should be included in the total charge for credit (BIS Guidance)

- **The cash price** of the vehicle (the total cash price of all items should be shown, together with the price of each item individually – 3.5.6G (6) CONC)
- **The amount of deposit** of other advance payment
- **The duration of the agreement** term – usually expressed in months
- **The total amount payable**<sup>37</sup>; and
- **The amount (and frequency) of each repayment of credit** (usually as monthly (re) payments; if one month is different this should be made clear – see 6.13 BIS Guidance). Frequency of repayments (i.e. weekly/ monthly) can only be referenced on condition it is provided for in the finance agreement 3.5.12R (2) CONC)

This ‘Standard Information’ MUST be (3.5.5R (5a-d) CONC):

- **Specified in a clear, concise, and prominent way** usually in the form of a table; this also helps satisfy 3<sup>rd</sup> bullet point below
- **Accompanied by the words “Representative Example”** usually as a heading to the standard information
- **Presented together with each item of information being given equal prominence** this is to ensure that important information concerning the cost of the credit can be viewed together as a whole, so that the borrower can assess suitability and affordability in the round. It is not permissible to ‘cherry-pick’ particular items by making them more prominent. So individual items within the representative example/ table must not be highlighted or repeated in a headline outside of the rep example/ table, as this would give greater prominence to the cherry-picked items).
- **Given no less prominence than** i.e. must be at least as prominent as
  - Any other information in the advertisement relating to the cost of the credit<sup>38</sup>, and
  - Any Representative APR triggers (as referenced in Q.3 / indications or incentives referred to 3.5.7R CONC)

Meaning of the term ‘Prominence’

Under CONC 3.2.3G: for information or a statement to be treated as prominent in relation to other content, it must be presented in such a way that it is likely that the attention of the average customer would be drawn to it.

The Regulations do not require any particular font size or positioning, nor do they limit the prominence given to other information unrelated to the cost of credit. It is important to consider colour, positioning of text, text size, capitalisation, underlining and bolding (non-exhaustive list) when deciding whether the rep example is at least as prominent as the trigger information/ information about the cost of credit.

BIS Guidance (6.17) stated that prominence may depend upon the nature and context of the advertising medium, so

<sup>35</sup> f) the result of the calculation shall be expressed with an accuracy of at least one decimal place; if the figure at the following decimal place is greater than or equal to 5, the figure at that particular decimal place shall be increased by one;

<sup>36</sup> Ancillary Service: a service that relates to *entering into a regulated credit agreement as lender* and includes, in particular, an insurance or payment protection policy.

<sup>37</sup> Meaning: the sum of the total charge for credit and the total amount of credit payable under the credit agreement, as well as any advance payment.

<sup>38</sup> This is not limited to rates and amounts triggering the representative example, but would include any other cost information (6.15. BIS Guidance)

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prominence of the 'Representative Example' needs be assessed in the context of the advertisement as a whole. The standard information should stand out as much as other information relating to the cost of credit and should be easily legible or audible for a typical customer – hence why this is usually in the form of a table – to ensure it is clear.

Also consider: FCA Financial promotions guidance: Prominence<sup>39</sup> dated 2011, last modified 20/10/2014

**If the answer to Q2 is NO, proceed to Q3 (\*where the APR is 0%, proceed to heading "0% APR" following Q.3)**

### Q3 Does the advert include any 'triggers'

When we refer to trigger we mean a piece of information usually in the form of a statement<sup>40</sup> which when included in the advert, means that a representative APR must also be included in the advert. (Ref: 3.5.7R and 3.5.8G CONC)

There are 3 types of 'Trigger Information/ statements':

**1. Sub-prime Triggers** – where the advertisement states or implies that credit is available to those individuals who might consider their access to credit restricted. This could be done by promoting the availability of credit to borrowers with poor credit history/ rating or using wording in an advert such as:

- Do you have CCJs and find it difficult to obtain credit?
- Been refused credit?
- Availability of credit to non-status borrowers

**2. Comparative Triggers** – where the advertisement includes a favourable comparison (whether express or implied) with another person/ product/ service This could be achieved by using terms/ statements such as:

- Buy now, pay later
- No deposit required (no deposit on orders over £xxx)
- Low rates until 31st March / low cost loans/ low interest rates/ our lowest rates ever/ 3% off our usual rates / Drive away a vehicle for under £xxx per month
- No fee loans (no fees on loans over £xxx)

**3. Incentive Triggers** where the advertisement includes an incentive to apply for credit or to enter into an agreement under which credit is provided.

(a) This includes statements/ terms or similar relating to matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available. A statement will be an incentive where it is likely to persuade or influence a customer to apply for credit, or is presented in a way which is likely to have that effect. Examples include:

- Funds in your account within the hour/ Money in 24 hrs/ Fast Payment
- Easy finance/ Easy monthly payments
- Quick and easy application for credit/ Decision in minutes/ Quick decision

(b) Other examples of things which could be incentives are gifts, special offers, discounts and rewards:

- Cashback available with credit only
- Get a free gift/ Any gift or added extra only available with credit
- Free insurance/ deposit contribution

*These examples are not comprehensive, and the FCA may handle interpretation of what constitutes a trigger statement on a case-by-case basis.*

<sup>39</sup> <http://www.fca.org.uk/static/pubs/final/fg-fin-proms-prominence.pdf>

<sup>40</sup> Although - a firm's trading name, website address or logo could also trigger the requirement for Rep. APR if it includes the relevant trigger information/ statements. (see. 3.5.8(G)(1) CONC)

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**If the answer to Q.3 is YES, then the advert should include:****- A representative APR**

The representative APR must be given no less prominence than any of the "Trigger Information / Statements" (3.5.7R (2) CONC)

It must be shown as "%APR" to one decimal place and accompanied by the word "representative" (as per 3.5.9R CONC - refer to Q2 and "Rep. APR" as listed in the standard information for additional information)

See Q2 for full explanation of term 'Prominence'. Under CONC 3.2.3G: for information or a statement to be treated as prominent in relation to other content, it must be presented in such a way that it is likely that the attention of the average customer would be drawn to it. For example, this includes colour, position, text size, capitalisation, underlining and bolding (not exhaustive list)

*Note: The representative APR is itself a 'rate of interest' that would, on the face of it, appear to trigger the requirement to include a representative example. However, where a representative APR is included in an advert only because it has itself been triggered by the inclusion of an incentive, comparative indicator or reference to poor credit history, the representative APR will not trigger the displaying of a representative example (see 3.5.3R (2b) CONC)*

**If the answer to Q.3 is NO and the advert does not include financial information as referred to in, Q.2 (interest rate/ amount relating to cost of credit), then:**

It will be possible to advertise the Financial Provider and its services by way of an image advertisement.

Image advertising is a communication which consists of one or more of the following:

- The Financial Provider's name / trading name
- The logo or other image associated with the firm
- A contact point - e-mail address, telephone, facsimile number and website address
- A brief, factual description of the type of product or service provided

Under CONC 3.1.7R (1), CONC 3 (with exception of provisions in 3.1.7R (2) CONC) does not apply to a financial promotion which consists of **only** one or more of points above.

**Remember (CONC 3.1.8G):**

- This does not mean that detailed information can be given about credit available, whether in the name/ website address/ brief description.

- A name or logo may trigger the requirement to include a representative APR (as per CONC 3.3.4G (1))

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

**"0% APR"**

Amendments to CONC 3.5<sup>41</sup> - via Consumer Credit (amendment No 3) Instrument 2016/38<sup>42</sup> - effective 31/05/2016 - summarised in Quarterly Consultation Paper No. 11 CP15/42<sup>43</sup> Dec 2015 (in response to feedback<sup>44</sup> on Consultation Paper 15/6<sup>45</sup>) - have affected financial promotions in the following ways:

1) Representative Example - "0% APR" is no longer regarded as a "rate of interest" which triggers the need for a

<sup>41</sup> Relating to financial promotions about credit agreements not secured on land

<sup>42</sup> [https://www.handbook.fca.org.uk/instrument/2016/FCA\\_2016\\_38.pdf](https://www.handbook.fca.org.uk/instrument/2016/FCA_2016_38.pdf)

<sup>43</sup> See ss. 8.9-8.12 and ss. 8.13-8.15 and Appendix 8 (Annex A) <http://www.fca.org.uk/static/documents/consultation-papers/cp15-42.pdf>

<sup>44</sup> PS15/23 Consumer credit - feedback on CP15/6 and final rules and guidance (September 2015) <https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-23>

<sup>45</sup> CP15/6 Consumer credit - proposed changes to our rules and guidance (Feb 2015) <https://www.fca.org.uk/static/fca/documents/cp-15-06.pdf>

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representative example (amendments inserted as 3.5.3R (2A) CONC and 3.5.4G (1) CONC). CONC 3.5.3R states that a financial promotion must include a representative example, containing standard information, in cases where the promotion indicates a rate of interest or an amount relating to the cost of credit. This requirement no longer applies where the promotion relates to agreements where the annual percentage rate of charge (APR) is 0%.<sup>46 47</sup>

2) Representative APR - CONC 3.5.7R requires a representative APR to be shown if the financial promotion includes certain types of information, commonly referred to as 'triggers' and comprising 'sub-prime' indications, comparative indications and incentives. This requirement no longer applies where the promotion relates to agreements where the APR is 0% (amendment inserted as 3.5.7R (3b) CONC).

**Note:** The original purpose of this requirement, in cases where no representative example is triggered, was to ensure 'balance' in advertising, with the representative APR providing a cost indicator to counter-balance emphasis on benefits in the promotion. However, this serves no useful purpose where there are no TCC charges and so the representative APR is 0% (8.15 CP15/42)

**SO in relation to point 1 above:** A (monthly) payment may only be shown without a full representative example where the APR is 0%. It is considered good practice that in addition to the monthly payment, the following information is also included:

- Customer deposit - required for advertised payment
- Deposit contribution - where applicable)
- Term - in months
- Optional Final Payment - 'balloon payment' (applies to PCP only)
- Annual Mileage - PCP only, include in small print
- Options available to the customer at the end of the finance period (in case of PCP, include 3 PCP clauses: at the end of the agreement there are 3 options: 1 part exchange the vehicle; 2 pay the Optional Final Payment to own the vehicle or 3 return the vehicle)

#### RESTRICTED EXPRESSIONS - Use of incentives, comparisons or gifts (CONC 3.5.12R)

- **"Interest-free"** or any similar expression can only be included where there are no fees or charges; i.e. where the total amount payable in respect of the transaction financed by credit is the same amount that a cash purchaser would have had to pay for the same transaction. So total amount payable for credit must not exceed cash price in order for the expression "interest-free" to be used.
- **"No deposit"** or any similar expression can only be used where no advance payment is required from the customer.
- **"Gift", "present"** or any similar expression can only be used if the customer can keep them, even when the finance application is not completed (there must be no conditions which would require the customer to repay the credit or to return the gift/ present that is the subject of the claim)
- **Frequency of repayments / Periodical payments** can only be mentioned in a financial promotion if it is provided for under the agreement. For example, a weekly or monthly payment amount can only be referenced if weekly or monthly payments are allowed under the finance agreement.

<sup>46</sup> Under 8.10 CP15/42: this is permissible under the CCD, given that article 2(2) (f) exempts agreements where the credit is granted free of interest and without any other charges: if the APR is 0%, the total charge for credit (TCC) is zero. We consider that including a representative example in such cases gives no material benefit to consumers.

<sup>47</sup> Under 8.11 CP15/42: Exempting such promotions from the requirement for a representative example will reduce costs to firms advertising interest-free credit, and facilitate promotions in media where space is limited. By reducing the amount of information we require in promotions, it will also make it easier for consumers to focus on key facts. The representative example does not, in any case, include non-TCC charges such as default fees. It includes the amount of any deposit payable, but if failure to mention this in a particular case would make the promotion misleading, this can be tackled under CONC 3.3.1R (which requires financial promotions and communications to be clear, fair and not misleading).

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## TERMS AND CONDITIONS / SMALL PRINT: Other information to include in the advert/ financial promotion

- Finance cannot be offered regardless of the customer's financial circumstances and status<sup>48</sup>, so the following statements should be included:
  - "Credit provided subject to status."
  - "Finance available to UK residents of 18 or over"; abbreviated as 18s or over
  - "Terms and conditions apply"; abbreviated to T&Cs apply
- Any other terms that could prevent customers qualifying for the offer advertised should be stated.
- If the credit advertised requires security, a statement including the nature of the security must be included: i.e. "Guarantees/ Indemnities may be required"<sup>49</sup>
- If a premium rate telephone number is included in the advert, the firm must indicate in a prominent way the likely total cost of a premium rate call including the price per minute of a call, the likely duration of calls and the total cost a customer would incur if the customer calls for the full estimated duration – CONC 3.3.9G.
- Status Disclosure:
  - "(brand name) is authorised and regulated by the Financial Conduct Authority"; must not use abbreviated form FCA (See GEN 4 Annex 1)
  - Full legal entity name, trading name: (Brand name) as it appears on FCA Register trading as (trading name) acts as a **credit broker and not a lender** usually in bold type as needs to be stated prominently; We work exclusively with (Finance Provider)/ We can introduce you to a limited number of finance providers; **We may receive a commission for the introduction** requirement to be stated prominently as well<sup>50</sup> (as per 3.7 CONC)
  - In case where rep. example has to be included, postal address should be included, except for TV, Radio, Showrom; usual to state: "(Brand name) is registered in England and Wales with company number: ..... and registered office:....."
  - Name of Finance Provider; can include registered address, company number, Status disclosure – whether authorised by PRA / FCA or both
- Small print must state the finance product being promoted where the offer is available on only one product type e.g. Conditional Sale, i.e. 5.9% APR representative available on Conditional Sale
- Length of offer/ promotion; stating the end date. 'Offer ends (date)'
- Where there is no rep. example stating the information, the available term of the contract should be stated (available over 24, 30, 36 and 48 months)<sup>51</sup>
- Offers eligibility where there are restrictions; if the offer is only available to certain people e.g. PCP is not usually available to corporate entities, or with a certain derivative of car e.g. body style of a particular model, then this should be made clear ideally as part of the main body copy (i.e. available on new (Range Rover

<sup>48</sup> Under CONC 3.3.3R - A firm must not in a financial promotion or a communication to a customer state or imply that credit is available regardless of the customer's financial circumstances or status. Under CONC 3.3.4G (2) this includes a statement or an implication that credit is guaranteed or pre-approved, or is not subject to any credit checks or other assessment of creditworthiness.

<sup>49</sup> Under CONC 3.5.11R Where a financial promotion concerns a facility for which security is or may be required, the promotion must:

(1) state that security is or may be required; and  
 (2) specify the nature of the security.

<sup>50</sup> 3.7.4G (2) CONC A firm should in a financial promotion: indicate to the customer in a prominent way the existence of any financial arrangements with a lender that might impact upon the firm's impartiality in promoting a credit product to a customer

<sup>51</sup> Good practice; where the term is exceptional, unusual or choice of terms is restricted, it should be stated in body copy i.e. available over 24 months

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Evoque) registered between 01st April and 30th June 2016 at participating Retailers only).

- In case of advertising a Conditional Sale, Hire Purchase or Personal Contract Purchase finance product, T&C's should contain the following statement: "You will not own the vehicle until all payments are made" (legal title is not passed to customer until all payments have been made). This is considered good practice; danger that clear, fair and not misleading rule will be contravened if such a statement is not provided.
- In case of advertising a PCP finance product on a 0% APR Representative offer, where representative example is not required, reference to the excess mileage charges should be made in the small print (e.g. "Rep. example / Offer based on xxxx miles per annum; excess mileage charge of 13.5p per mile applies")
- Note: PCP Clauses should be included for all PCP financial promotions where Optional Final Payment is stated, whether in Rep. example or in body copy for 0% APR financial promotions: "At the end of the agreement there are 3 options: 1. Part exchange the vehicle; 2. Pay the Optional Final Payment to own the vehicle or 3. Return the vehicle. Further charges may be made subject to the condition or mileage of the vehicle".

#### What's needed when advertising specific finance products:

##### Main types of car finance offered for private car buyers<sup>52</sup>:

**Conditional Sale**<sup>53</sup> Conditional Sale is a purchase agreement between the finance company and the customer, where the customer agrees to buy the car. It is similar to a Hire Purchase (HP) agreement, however with a Conditional Sale agreement, the customer is obliged to buy the vehicle at the end of the agreement, becoming the legal owner of the vehicle once all payments have been made. Under HP, the customer has a genuine choice on whether to take legal title at the end. Balloon payments are also used under Conditional Sale agreements but not under HP.

Common Profile: Optional Deposit – Arrangement Fee – Fixed interest rate and Fixed period of repayments (usually up to 5 years) – Balloon Payment. There are no mileage restrictions. Lenders can provide restrictions on use and location of the vehicle – for example, it can only be used in EU. Obligation for car to be kept insured and in good condition.

**Hire Purchase**<sup>54</sup> Hire agreement between the customer and a finance company secured against the car, which gives the customer the option of owning the car at the end of the term. The finance company HIRES the vehicle to the customer (the supplier has sold the car to the finance company/ creditor) for an agreed period of time at an agreed monthly sum. The customer can gain ownership (title to the car) by paying an additional sum called the Option to Purchase Fee. The customer must, however, have paid everything else off to get title to the vehicle.

Common Profile: Optional deposit (or min/ max amount might be set by lender) – Arrangement Fee – Regular Payments (Fixed cost / fixed period – usually 3/4 years) – Option to Purchase Fee (determined before agreement) transfers title to customer and usually paid with final payment. This is a genuine option and if it is not paid then it return to the lender. No mileage restrictions, although restrictions can be placed on use and location as per Conditional Sale. Obligation for car to be kept insured and in good condition.

**Personal Contract Purchase** – (PCP) – It is often given other names by manufacturer finance companies (e.g. BMW Select, Volkswagen Solutions, Toyota Access, etc.) It is similar to a Hire Purchase agreement but it has a final balloon

<sup>52</sup> These are Tri-Partite transactions – 3 parties are involved in the process of providing vehicle finance agreement – Supplier/ Car Manufacturer; Debtor (Customer); and Creditor (Lender/ Finance Provider)

<sup>53</sup> In accordance with article 60L of the Regulated Activities Order, an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain with the seller (notwithstanding that the buyer is to be in possession of the goods or land) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

<sup>54</sup> In accordance with article 60L of the Regulated Activities Order, an agreement:

- (a) which is not a conditional sale agreement;
- (b) under which goods are bailed or, in Scotland, hired to a person ("P") in return for periodical payments by P; and
- (c) the property in the goods will pass to P if the terms of the agreement are complied with and one or more of the following occurs:
  - (i) the exercise by P of an option to purchase the goods;
  - (ii) the doing by any party to the agreement of any other act specified in the agreement; or
  - (iii) the happening of any event specified in the agreement

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payment that is guaranteed by the manufacturer or finance company - a predicted minimum future value (balloon payment) which is offset until the end of the agreement, called a Guaranteed Minimum Future Value (GMFV), also known as Optional Final Payment. This is set by the finance company before entering into the agreement and is calculated according to estimated annual mileage and length of agreement. Monthly repayments are then determined by the size of the deposit, the predicted mileage/ GFV and the length of the agreement. The monthly payments are effectively paying off the depreciation of the car and not the whole value. At the end of the agreement the customer has 3 options:

- 1) Retain the car; pay the GMFV plus any Option to Purchase fee that is part of the agreement – and legal ownership will transfer to the customer
- 2) Renew the car / Part-exchange; choose another car, using any excess part exchange value that is above the GMFV towards the deposit
- 3) Return the car; there's nothing more to pay provided the car is in good condition; not worse than 'fair wear and tear' and within the agreed mileage terms

Common Profile: Deposit, usually min/ max deposit – Arrangement Fee – Fixed Monthly Payments over fixed term, usually 2/3 years – GMFV.

#### What is needed:

- Include the full name of the finance product being advertised, explaining any abbreviations such as PCP – Personal Contract Purchase. The type of finance is usually included as a heading alongside the representative example
- T&C's/ small print of the advertisement should contain the following statement: "You will not own the vehicle until all payments are made"
- In the case of HP and PCP financial promotions , the options available to the customer at the end of the agreement should be explained. In the case of PCP financial promotions where the Optional Final Payment/ GMFV is stated (whether in rep. example or in body copy for 0% APR financial promotions) the 3 options<sup>55</sup> must be stated/ explained (some include in main body copy or in T&C's of the advertisement)
- Where the PCP financial promotion is shown without a rep. example (0% APR Offer) then reference to excess mileage charges should be stated in the small print

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**We cannot accept any liability arising from the contents of this summary. Agencies are strongly recommended to seek independent legal advice before publishing any form of financial promotions. Failure to comply with the Advertising Regulations could lead to prosecution and the withdrawal of the FCA interim permission/ authorisation. These notes are in summary form only, and do not contain the full text of the regulations. Full text of the Regulations can be obtained from the Financial Conduct Authority: <http://www.fca.org.uk/>**

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<sup>55</sup> Usually along the lines: *At the end of the agreement there are 3 options: 1- Part exchange the vehicle; 2 – pay the Optional Final Payment to own the vehicle or 3- return the vehicle. Further charges may be made subject to the condition or mileage of the vehicle*

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