

Full title of law or regulation                      This document provides the full summary of rules related to Consumer Credit marketing communications, and supplements the abbreviated version on the [www.wikiregs.com](http://www.wikiregs.com) website

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Title of relevant section                      3. CREDIT

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#### Legislation and guidance

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- Rules and Guidance. FCA Handbook, Specialist Sourcebooks: Consumer Credit Sourcebook (CONC); [Section 3: Financial promotions and communications with customers](#) entry into force 01/04/2014, replacing rules in the Consumer Credit (Advertising) Regulations 2004 and 2010; significant sections of CONC 3 stem from these regulations, however. CONC3 is the principal binding regulatory instrument in Consumer Credit. The note [here](#) sets out some exemptions and where the individual rules apply
  - Guidance: The BEIS (Department for Business, Energy & Industrial Strategy) [Guidance on the Regulations implementing the Consumer Credit Directive updated for EU Commission Directive 2011/90/EU](#) Chapter 6, Advertising; this document refers to the Consumer Credit (Advertisements) Regulations 2010, now repealed, but it still contains important guidance on Consumer Credit advertising
  - Principle 6 from the Principles for Businesses sourcebook: Treating Customers Fairly, known as the TCF principle, is the cornerstone of the FCA Regulatory regime; see. pp 10-12 [FCA Guide for Consumer Credit Firms](#) and FCA Guide [The Responsibilities of Providers and Distributors for the Fair Treatment of Customers](#)
  - Section 21 Financial Services Markets Act 2000 (FSMA), which sets out general restrictions on financial promotions, and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, which sets out controlled activities and investments. The significance of the FSMA in this context is that it defines in S. 21 (extracted and linked below) a financial promotion, and it is 'financial promotions' in particular that are subject to the regulations  
<http://www.gregsregs.com/downloads/UKCarsConsumerCreditNote.pdf>
  - FCA Guidance on Financial Promotions in Social Media. This is also important guidance in the context of complex and heavily regulated financial instruments promoted in transient digital media. Various examples of compliant and non-compliant approaches in e.g. Tweets are shown. Details are in the relevant channels in Channel Section C of this website:  
<https://www.fca.org.uk/static/documents/finalised-guidance/fg15-04.pdf>
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#### Self- Regulation

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- Note that in most circumstances the ASA will not take up complaints about financial advertising in non-broadcast media, and will likely refer the complaint to the FCA
- CAP Code s.14 [Financial Products](#)
  - BCAP Code s. 14 [Financial Products, Services and Investments](#) applying to all ads on radio and television services licensed by Ofcom (14.2: ads to comply with relevant legislation); see also 14.11 when broadcasting financial promotions, broadcasters must comply with the relevant provisions in [Appendix 4](#) of Ofcom Broadcasting Code, as per 9.35 and 10.13 of Ofcom Code
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#### Regulatory Authorities

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- Rules for Consumer Credit advertising are now from the Financial Services and Markets

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Act 2000 (FSMA). Under FSMA, the [Financial Conduct Authority](#) (FCA) is responsible for regulating consumer credit, replacing the OFT in April 2014

- [FCA Guide](#) for Consumer Credit Firms (p. 35 Financial Promotions); the principle that communications should be clear, fair and not misleading is the backbone of the FCA approach to financial promotions such as advertising and other marketing; see 3.3.1R CONC and FCA [Financial Promotions and Adverts](#). FCA proactively monitors promotions across all media, and acts on complaints received from the public and via the Advertising Standards Authority
- CAP note: [Consumer Credit Advertising](#) (role of FCA and ASA)
  - FCA: technical aspects of non-broadcast advertising, such as APRs and representative examples, are subject to statutory control by the FCA
  - ASA: considers all complaints about “non-technical” aspects of ads in all media, for example, offence, social responsibility, fear and distress and competitor denigration. The ASA also assesses all complaints about broadcast ads and liaises with the FCA on technical matters covered by their rules. More [here](#)

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#### Key definition and scope

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- The regulatory term for the credit aspect of car marcoms is ‘financial promotion’, defined as ‘an invitation or inducement to engage in investment activity’ that is made ‘In the course of business’ and is ‘capable of having an effect in the UK’. (s. 21 Financial Services and Markets Act 2000 – FSMA)
- Requirements apply to all forms of financial promotions and communications, including those online and via telemarketing, aimed at consumers in the UK, published by all FCA-authorized firms, including motor finance companies and car manufacturers
- The key requirements set out below are available in full from the [FCA \(Financial Conduct Authority\) Consumer Credit \(CONC\) Sourcebook, Section 3](#). Section 3 or ‘CONC 3’ governs financial promotions made by firms. Full regulations are linked, and as this is sensitive territory, final texts should be checked with company lawyers

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#### 3.1. The Clear, Fair, and not Misleading Rule CONC 3.3.1R

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(1) A firm must ensure that a communication or a financial promotion is clear, fair, and not misleading;

Guidance on clear, fair, and not misleading 3.3.6G CONC, 3.3.9G CONC. Examples of practices that are likely to contravene this rule are contained in 3.3.10G CONC.

(1A) A firm must ensure that each communication and each financial promotion:

- (a) is clearly identifiable as such
- (b) is accurate
- (c) is balanced and, in particular, does not emphasise any potential benefits of a product or service without also giving a fair and prominent indication of any relevant risks
- (d) is sufficient for, and 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
- (e) does not disguise, omit, diminish or obscure important information, statements or warnings

(1B) A firm must ensure that, where a communication or financial promotion contains a comparison or contrast, the comparison or contrast is presented in a fair and balanced way and is meaningful (CONC 3.3.8G (Guidance)). A comparison or contrast to which CONC 3.3.1B

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(1B) applies may be a comparison or contrast with another person, or with another product or service, whether offered by the firm or by another person)

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### 3.2. General Requirements CONC 3.3.2R

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Every financial promotion must:

- Use plain and intelligible language
- Be easily legible or audible, and
- Specify the name of the advertiser (The full regulation (3) states 'The name of the person making the communication or communicating the financial promotion or the person on whose behalf the financial promotion is made'), and
- In the case of a communication or financial promotion in relation to credit broking, indicates to the customer the identity of the lender (where it is known)

Further important general rules and guidance, together with examples of those practices that are likely to contravene the clear, fair and not misleading rule can be found under [CONC 3.3](#)

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### 3.3. Content of Financial Promotions; Representative example CONC 3.5.3R

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1) Where a financial promotion includes a rate of interest or an amount relating to the cost of credit whether expressed as a sum of money or a proportion of a specified amount, the financial promotion must also:

(a) Include a representative example in accordance with [CONC 3.5.5R](#) (the way the APR must be communicated, set out later below in 3.5.9R) and  
b) Specify a postal address at which the person making the financial promotion may be contacted; this rule does not apply to TV/ Radio marcoms, when in the dealer's premises unless on material intended for take-away, when the name and address of the dealer or credit broker is included

2) Paragraph 1a does not apply where the financial promotion:

a) Falls within CONC 3.5.7R (which lists the 'information triggers' - pieces of information which, when included in the advert, mean that the Representative APR (RAPR) must also be included in the promotion; the full requirements are set out below), and

b) Does not indicate a rate of interest or an amount relating to the cost of credit other than the representative APR

2 (A) Paragraph (1) (a) also does not apply where the financial promotion relates only to credit agreements in respect of which the APR is 0%

*Guidance: A rate of interest for the purpose of the above CONC 3.5.3R (1) is not limited to an annual rate of interest but would include a monthly or daily rate or an APR. It would also include reference to 0% credit (but where the APR is 0% and CONC 3.5.3R (2A) applies, a representative example is not required). An amount relating to the cost of credit would include the amount of any fee or charge, or any repayment of credit, where it includes interest or other charges (3.5.4 G Guidance CONC)*

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### 3.4. Representative Example – Standard Information CONC 3.5.5R

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1) The representative example must include the following items of information, known as 'Standard Information':

- a. The rate of interest, whether fixed, variable or both, expressed as a fixed or variable percentage applied on an annual basis to the amount of credit drawn down
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- b. The nature and amount of any other charge included in the total charge for credit
  - c. The total amount of credit
  - d. The representative APR
  - e. For credit in the form of a deferred payment for specific goods, services, land or other things, the cash price and any required advance payment
  - f. The duration of the agreement
  - g. The total amount payable and
  - h. The amount of each repayment of credit
- 5) The information required by (1) must be:
- a. Specified in a clear, concise and prominent way
  - b. Accompanied by the words 'representative example'
  - c. Presented together with each item of information being given equal prominence
  - d. given no less prominence than:
    - i. Any other information relating to the cost of credit in the financial promotion except for any statement relating to an obligation to enter into a contract for an ancillary service referred to in [CONC 3.5.10 R](#)
    - ii. Any indication or incentive of a kind referred to in [CONC 3.5.7 R](#)

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Other financial promotions requiring a representative APR, known as 'Information Triggers' (CONC 3.5.7R)

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1. A financial promotion except one for an authorised non-business overdraft agreement, must include the representative APR if it:

(a) states or implies that credit is available to individuals who might otherwise consider their access to credit restricted ('sub-prime trigger'); OR

(b) includes a favourable comparison relating to the credit, whether express or implied, with another person, product or service ('comparative trigger'); OR

CONC Guidance

- *A comparison with another person, product or service includes a reference (whether stated or implied) to:*
  - *the terms on which, or the way in which, credit is offered or made available; or*
  - *the nature or quality or any other aspect of the service relating to the credit that the person offers or provides (or does not offer or provide)*
- *The financial promotion does not need to specify a particular person, product or service for there to be a comparison (3.5.8 (2) G CONC)*
- *A financial promotion does not necessarily include a comparison where it merely refers to a person, product or service in a factual manner, but there will be an implied comparison for the purposes of CONC 3.5.7R (1) (b) if it may reasonably be inferred that a comparison is being made (3.5.8 (3) G CONC)*

(c) Includes an incentive to apply for credit or to enter into an agreement under which credit is provided ('incentive trigger').

CONC Guidance:

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- *A statement about matters such as the speed or ease of processing, considering or granting an application, of entering into an agreement, or of making funds available, may constitute an incentive - this will depend on the context of the statement and the circumstances in which it is made. A statement will be an incentive where it is likely to persuade or influence a customer to apply for credit or to enter into an agreement under which credit is provided, or is presented in a way which is likely to have that effect (3.5.8 (4) G CONC)*
  - *Other examples of things which could be incentives are gifts, special offers, discounts and rewards (3.5.8 (5) G CONC)*

2. The representative APR must be given no less prominence than any of the matters in (1). Guidance on 'Prominence' from the FSA is here:

<https://www.fca.org.uk/publication/finalised-guidance/fg-fin-proms-prominence.pdf>

3. This rule does not apply to a financial promotion:

(b) For a credit agreement in respect of which the APR is 0%

- A firm's trading name, website address or logo could trigger the requirements in CONC 3.5.7R 1 (CONC 3.5.8 (1) Guidance)
- Exemptions linked here:

<http://www.g-regs.com/downloads/UKCarsCONCExemptions.pdf>

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### 3.5. Annual Percentage Rate of Charge (APR) CONC 3.5.9R

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1. An APR must be shown as '%APR'
2. Where an APR is subject to change it must be accompanied by the word 'variable'
3. The representative APR must be accompanied by the word 'representative'

The Representative APR is an APR at or below which the advertiser (firm communicating or approving the financial promotion) reasonably expects, at the date on which the promotion is communicated or approved, that credit would be provided under at least 51% of the credit agreements which will be entered into as a result of the promotion – Glossary definition

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### 3.6. Restricted Expressions CONC 3.5.12R

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(1) A financial promotion must not include the expression:

(a) 'Overdraft' or any similar expression as describing any agreement for running-account credit, except where an agreement enables a customer to overdraw on a current account  
(b) 'Interest free' or any similar expression indicating that a customer is liable to pay no greater amount in respect of a transaction financed by credit than he would be liable to pay as a cash purchaser for the like transaction, except where the total amount payable does not exceed the cash price

(c) 'No deposit' or any similar expression, except where no advance payments are to be made

(d) 'Gift', 'present' or any similar expression, except where there are no conditions that would require the customer to repay the credit or to return the item that is the subject of the claim.

(2) A financial promotion must not include for a repayment of credit the expression 'weekly equivalent' or any expression to like effect or any expression of any other periodical

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equivalent, unless weekly repayments or the other periodical payments are provided for under the agreement.

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Checklist

The linked document below provides a round-up of key legislative background, definitions etc. with a checklist from CONC that guides the correct assembly of the Credit offer:

<http://www.g-regs.com/downloads/UKCarsConCreditChecklistrb.pdf>

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