FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

FINAL NOTICE

To: **TFS Loans Limited (In Administration) ("TFS")**

Ref No: 724439

Address: Opus Restructuring LLP
4th Floor, Euston House
24 Eversholt Street
London
NW1 1DB

Date: 9 June 2022

1. ACTION

1.1 For the reasons given in this Final Notice, the Authority hereby impose on TFS

(1) a financial penalty of £811,900 pursuant to section 206 of the Act; and

(2) a requirement, under section 55L of the Act, to provide redress to guarantors who have suffered loss as a result of its failings.

1.2 TFS agreed to resolve this matter and qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £1,159,988 on TFS.

1.3 TFS is in administration and as such the realisation of saleable assets is currently uncertain. The Authority will give preference to creditors with a valid provable debt, ahead of its financial penalty, in order to maximise redress to guarantors.

2. SUMMARY OF REASONS

2.1 TFS offered guarantor loans as its sole business line. Guarantor loans are regulated credit agreements under which an individual other than the borrower provides a guarantee or indemnity. Guarantor loan customers are typically borrowers with a poor credit history who may otherwise find it difficult to obtain a loan. If the borrower does not make the required payments on the loan, then the guarantor is legally obligated to pay the loan on the borrower's behalf.

2.2 The Authority’s rules require guarantor lenders to undertake creditworthiness assessments to determine whether a potential guarantor’s commitments in respect of the loan could adversely impact the guarantor’s financial situation. For such an assessment to be effective, a lender must collect and analyse adequate information regarding an individual’s actual income and expenses.

2.3 Principle 6 of the Authority’s Principles for Businesses requires a firm to pay due regard to the interests of its customers, and to treat its customers fairly. Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

2.4 Between 2 November 2015 and 10 April 2018, TFS breached Principles 6 and 3 of the Authority’s Principles for Businesses and CONC 5.3.2R, CONC 5.2.5R, and CONC 7.3.4R by failing to consider sufficient information to enable it to carry out effective creditworthiness assessments of individuals acting as guarantors of loans which it issued, and by overcharging customers in arrears an ‘arrears management fee’ in contravention of its own policies.

2.5 In the same period, TFS failed to take reasonable care to ensure that its guarantor creditworthiness assessment procedure complied with relevant rules. In particular, from at least April 2015, TFS management was aware that CONC would be amended to require a firm to assess whether a guarantor loan might have an adverse impact on the prospective guarantor. TFS did not take sufficient care to ensure that its policies and procedures in relation to creditworthiness assessments of guarantors complied with the CONC 5.2.5R, the new rule, when it came into force in November 2015.

2.6 TFS failed to consider essential information regarding prospective guarantors’ individual circumstances. TFS screened potential guarantors based on their credit scores but did not accurately assess whether a particular guarantor could afford the monthly payments for which they might become liable: TFS only collected data regarding the guarantor’s income, mortgage or rent payments, and any credit commitments that appeared on the prospective guarantor’s credit report. TFS did not collect any information regarding the guarantor’s other expenses such as food, clothing, energy, childcare costs, or medical expenses.

2.7 TFS took a formulaic approach to assessing guarantors’ creditworthiness. In its assessment, TFS subtracted the known housing and credit commitments from the guarantor’s income, and then made an assumption that the guarantor’s household expenditure was equal to 50% of the remaining figure. TFS considered that the guarantor would have available the remainder to make payments on the TFS loan if needed. This approach is fundamentally flawed because it makes assumptions based on very little information regarding a guarantor’s actual circumstances.

2.8 The Authority acknowledges that a relatively low number of the 3,150 guarantors affected were directly impacted by TFS’s flawed procedure for assessing guarantor creditworthiness, in part because the guarantor would only be responsible for the payments if the primary borrower did not make them. However, this failing had the potential to cause serious harm to all guarantors who were pursued for payment, and the Authority found that the majority of guarantors struggled in the event that they were called on to make loan payments: two thirds of guarantors who entered into a formal arrangement to take over payments on a TFS loan issued during the

Relevant Period entered into a forbearance arrangement with TFS due to being unable to afford the normal monthly payments.

2.9 TFS also caused customers harm by failing to follow its policy on arrears management fees. When customers fell into arrears, TFS charged a £25 arrears management fee. It was TFS's policy only to charge the arrears management fee for 3 consecutive months in any given arrears period. However, contrary to its own terms, TFS often charged customers in arrears for more than 3 months in a row. This impacted 177 loan agreements during the Relevant Period.

2.10 The Authority has taken into account the fact that TFS has agreed to a requirement under section 55 of the Act to conduct an appropriate redress programme to ensure that customers affected by its failure to carry out effective creditworthiness assessments of guarantors are not disadvantaged. TFS has already provided redress to customers who were overcharged the arrears management fee.

2.11 The Authority has also taken into account the fact that TFS demonstrated a high level of cooperation with this investigation. TFS management agreed to hold a voluntary roundtable interview at a very early stage in the investigation. All members of the TFS management team attended the session and participated in an open and candid manner, as well as freely admitting to having overcharged the arrears management fee. TFS also waived its right to claim legal professional privilege and unreservedly shared all information requested by the Authority throughout the course of the investigation, including sensitive material and material which would otherwise have been protected by privilege.

2.12 The Authority regards these failings as serious, in particular, because:

a) Even when TFS had information available to it regarding guarantors' individual financial circumstances, TFS's agents and underwriters did not take this into account;

b) TFS's failure to conduct an effective creditworthiness assessment created a high risk that individuals acting as guarantors would suffer financial detriment when they were called upon to pay TFS loans in place of the borrowers;

c) The failure to effectively evaluate guarantors' creditworthiness also created a risk of harm to the borrowers, who typically had low credit scores or were vulnerable in other ways. TFS's borrowers should have been able to rely on their guarantors to step in and be able to pay their TFS loans on their behalf in the event they experienced financial difficulty; and

d) By overcharging the arrears management fee, TFS imposed an additional financial burden on customers who were already in financial distress.

2.13 The Authority hereby impose a financial penalty on TFS of £811,900 pursuant to section 206 of the Act.

2.14 This action will advance the Authority's consumer protection objective.

3. DEFINITIONS

3.1 The definitions below are used in this Notice:

"the Act"	means the Financial Services and Markets Act 2000;
"the Authority"	means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority;
"CCJ"	means County Court Judgement;
"CONC"	means the Consumer Credit sourcebook, part of the Authority's Handbook;
"the OFT"	means the Office of Fair Trading;
"the Relevant Period"	means 2 November 2015 to 10 April 2018 (inclusive);
"TFS"	means TFS Loans Limited;
"the Tribunal"	means the Upper Tribunal (Tax and Chancery Chamber)

4. FACTS AND MATTERS

Background

4.1 TFS was incorporated in March 2008 and began offering consumer credit products in 2010.

4.2 TFS offered guarantor loans as its sole business line. Guarantor loans are regulated credit agreements under which an individual other than the borrower provides a guarantee or indemnity. If the primary borrower does not make the required payments on the loan, then the guarantor is legally obligated to pay the loan on the borrower's behalf. The existence of this guarantee or indemnity may enable the borrower to access credit in circumstances where this would otherwise be precluded (for example, because the borrower has a poor credit record). As such, guarantor loans inherently present a higher risk to borrowers, and guarantor lenders should take the interests of vulnerable customers into proper account when they design their policies and procedures.

4.3 TFS specialises in lending to applicants who are not able to access unsecured credit from high street banks. TFS's target customers are likely to have had applications for credit declined before seeking a guarantor loan from TFS. TFS's website advertises, "*Wouldn't it be good if you could borrow money on the relationships you have instead of your credit score or history?*" The premise is that a customer with a poor credit history or no credit history is able to obtain credit because a friend or family member who is acting as guarantor will hold the customer accountable or step in to help if necessary.

4.4 A guarantor for a loan will typically be in a better financial position than the borrower; for example, TFS required the guarantor to be a homeowner. In contrast, at least 36% of TFS's customers who took out loans in the Relevant Period lived with family or friends. It was not unusual for the guarantor of a TFS loan to be the borrower's parents, which highlights the level of dependence between some borrowers and guarantors.

4.5 During the Relevant Period, TFS issued 3150 new guarantor loans, totalling around £15,000,000 in value. The guarantor made at least one payment in over 30% of those loans, a sizeable minority.

Regulatory background

4.6 The Authority took over responsibility for regulating the consumer credit industry on 1 April 2014. Prior to that time, the OFT regulated firms that conducted consumer credit activities. The Authority introduced rules known as CONC in place of what had previously been a mixture of legislation and guidance by the OFT. Consumer credit firms, including TFS, were required to adhere to the Authority's Principles for Businesses and CONC from 1 April 2014, when the interim permission regime took effect.

4.7 During the Relevant Period, CONC required consumer credit firms to carry out creditworthiness assessments prior to issuing a guarantor loan and to establish and implement clear and effective policies and procedures to make such an assessment. In addition, Principle 6 of the Principles for Businesses required that a firm must pay due regard to the interests of its customers and treat them fairly. Principle 3 required a firm to reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

Purpose and requirements of creditworthiness assessments

4.8 Firms offering guarantor loans were required under CONC to carry out creditworthiness assessments of both the primary borrower and the guarantor through most of the Relevant Period.

4.9 CONC 5.2.1R was in force from 1 April 2014 and required firms to consider (a) the potential for commitments under the credit agreement to adversely impact the borrower's financial situation; and (b) the ability of the borrower to make repayments as they fall due over the life of the credit agreement. CONC 5.2.5R, which took effect on 2 November 2015, required firms to assess the potential for the guarantor's commitments in respect of the regulated credit agreement to adversely impact the guarantor's financial situation. A firm was required to consider sufficient information to enable it to make a reasonable creditworthiness assessment, taking into account the information of which the firm is aware at the time the loan is entered into.

4.10 It is important for consumer credit firms to conduct adequate creditworthiness assessments of potential guarantors as well as primary borrowers to determine whether the proposed loan is affordable. This is because both parties are responsible for ensuring payments on a guarantor loan are made. Guarantors will most often be family or friends of borrowers. As a result, emotion plays a part in the decision to act as a guarantor, potentially to the extent that emotional considerations outweigh purely rational considerations.

4.11 Creditworthiness assessments accordingly provide an important data point for individuals who are considering acting as a guarantor for a friend or family member, in addition to being a screening mechanism to enable lenders to avoid issuing unaffordable loans. The Authority has been clear that a potential guarantor must receive sufficient, clear information from a lender about the risks involved in acting as guarantor to enable good decision-making. A potential guarantor who does not have access to such information may be more likely to act as guarantor, and as a consequence may suffer harm. A high-quality creditworthiness assessment that provides a true picture of whether the loan would have an adverse impact on the guarantor's financial situation is one key piece of information that can mitigate this risk.

4.12 It is not necessary for a firm to use the same creditworthiness assessment for both the primary borrower and the guarantor. However, the assessment should be rigorous enough to determine whether the guarantor can make repayments in a sustainable manner without incurring financial difficulties or experiencing significant adverse consequences, given that a guarantor may be required to take over payments in the event the primary borrower cannot do so. CONC 5.2.6(1)G stated during the Relevant Period that the assessment should "be sufficient in depth and scope having regard to the potential obligations which might fall on the guarantor."

Creditworthiness assessments carried out by TFS

TFS's customer onboarding process

4.13 During the Relevant Period, TFS sold guarantor loans to both new and existing customers. Its customers predominantly applied for loans following referrals from third party brokers by way of a telephone call. However, a proportion of customers applied via online applications.

4.14 As part of the application process, primary borrowers were required to provide income and expenditure information along with details of their proposed guarantor. TFS then completed a series of calls and checks to confirm whether the primary borrower met its eligibility criteria. This included checks completed by external third-party providers to determine the credit risk presented by the primary borrower and to verify the accuracy of the income reported by the primary borrower. If successful, the primary borrower was then sent an application pack to complete and sign.

4.15 After the primary borrower completed and submitted the application, TFS passed the case to an inhouse underwriter to undertake a creditworthiness assessment of the primary borrower.

4.16 Concurrent with its checks on the primary borrower, TFS carried out a separate process with the potential guarantor. TFS contacted proposed guarantors following submission of their details by the primary borrower. TFS's policy required the guarantor to be a homeowner, aged between 18 and 78, with a regular source of income.

4.17 During the conversation with the guarantor, TFS would discuss general points such as the cost and term of the loan. As part of this process, TFS would also inform the guarantor of the guarantor's obligations under the agreement. Like the primary borrower, the guarantor was subject to a series of checks to confirm eligibility. This included checks completed by external third-party providers to determine the customer's credit risk and to verify the guarantor's credit risk and to verify the accuracy of the income reported.

4.18 Following the initial call with TFS, the guarantor was sent an application pack to complete and sign. The application form requested information regarding the guarantor's rent or mortgage payment, number of dependants, employment, and monthly income after tax. The form did not include any questions regarding a guarantor's expenses other than rent or mortgage.

4.19 Upon receipt of the completed application, TFS passed the case to an inhouse underwriter to undertake the creditworthiness assessment. The underwriter was required to complete a 'criteria sheet' confirming that certain requirements were met, and certain documents were collected. The 'criteria sheet' set out a minimum credit score based on the amount of the loan. For example, TFS required a prospective guarantor to have an Experian credit score of at least 500 to act as guarantor for a loan between £1,000 and £5,000. TFS required guarantors to have incrementally higher credit scores for higher value loans.

4.20 As part of this process, the underwriters would also speak to guarantors when required to verify the information collected.

4.21 TFS then contacted guarantors again for a final verification call. The purpose of the call was to verify the guarantor's identity by asking them to confirm their name, date of birth, time at address and time in employment. In the call, TFS also asked guarantors to confirm that they understood their obligations, were happy to act as guarantor and had not been placed under any pressure to do so. Following this call, the funds were paid to the guarantor to disburse to the primary borrower.

TFS's creditworthiness assessment – primary borrowers

4.22 TFS used very different procedures for assessing the creditworthiness of the primary borrower and the guarantor, respectively.

4.23 The primary borrower creditworthiness assessment comprised of an information-gathering exercise to determine the primary borrower's income and expenditure. The assessment was recorded on a form which captured various forms of potential income including employment, benefits, guaranteed bonuses and overtime payments. The form also captured a range of potential expenses, including committed expenditure such as mortgage, credit card and loan payments; basic essential expenditure such as rent, council tax, travel and utility bills; and quality-of-living costs such as clothing, childcare and fuel.

4.24 TFS calculated the primary borrower's monthly 'net disposable income' by deducting monthly outgoings from the verified income. TFS considered that a loan was affordable so long as the monthly payments were equal to or less than the customer's net disposable income. TFS's policy did not provide for circumstances where a consumer was left with little or no disposable income after the loan repayment was taken into account.

4.25 The Authority considers that where a firm's creditworthiness assessment allows for situations where a customer can be left with no or minimal disposable income after taking account of the loan repayments, then the firm must take a robust approach to assessing affordability to allow for variances in income or unforeseen expenditure. This may be particularly important if a firm's business model is to engage with higher risk customers. A firm should ensure in cases where it seeks to estimate the customer's income and/or expenditure that such estimations are credible and are based on individual customer's circumstances.

TFS's creditworthiness assessment – guarantors

4.26 As will often be the case, the creditworthiness assessment for the guarantor substantially differed from that of the primary borrower.

4.27 Although the assessment included an information-gathering exercise to determine guarantors' income and expenditure, the questions on expenditure were much less thorough: the only items of expenditure that TFS took into account were mortgage payments and committed expenditure such as credit cards, personal loan payments, and child maintenance. This information was derived solely from the guarantor's credit report. TFS did not routinely ask for information regarding guarantors' household expenses such as food, clothing, heating, lighting, car maintenance, or childcare, nor did it take this information into account even if it were offered by the guarantor. TFS only obtained verbal confirmation from guarantors that they could meet their own obligations and those of the loan in question. Additionally, though the initial application to act as guarantor requested information regarding the prospective guarantor's number of dependants, it does not appear that TFS accounted for any of the costs of caring for these dependants other than child maintenance in its creditworthiness assessment for guarantors.

4.28 TFS subsequently determined whether a guarantor could afford the loan by deducting the committed expenditure (as per the guarantor's credit report) from the verified income. TFS would then make an assumption that 50% of the remaining sum was sufficient to cover the guarantor's living expenses. TFS's practice was then to lend an amount equal to or less than the remaining 50%. For example, for a guarantor with a verified income of £1,500 and committed expenditure totalling £750, TFS would make its lending decision based on the assumption that £325 (i.e. half of £750) was sufficient to cover that guarantor's living expenses. TFS would then allow the individual to act as guarantor for a loan with monthly payments equal to or less than the remaining £325.

<u>2015 consultation paper and rule change: TFS's response</u>

4.29 The Authority published Consultation Paper CP15/6, *Consumer credit – proposed changes to our rules and guidance*, in February 2015. This consultation paper set out the proposed CONC rule 5.2.5R, which would require a firm "*to assess the potential for the guarantor's commitments in relation to the credit agreement to adversely affect the guarantor's financial situation. The firm must consider sufficient information to enable it to make a reasonable assessment.*"

4.30 The consultation paper made a distinction between the need to determine whether a guarantor would be able to make payments on a loan on the one hand, and the need to determine whether the guarantor could afford the loan without experiencing financial hardship on the other. The paper explained that firms' pre-existing processes for determining guarantors' creditworthiness may need to be revised to give greater consideration to the prospective guarantor's personal finances: *"[L]enders are likely to have strong incentives to conduct good credit risk assessments of guarantors. However, it is possible that the incentive to assess the* *affordability of guarantors, in effect a higher test, is less strong.*" The paper contemplated that the impact of the rule would be to "*require the incidence and/or standard of affordability assessments to increase.*"

4.31 Accordingly, firms offering guarantor loans were put clearly on notice that their existing creditworthiness assessments for guarantors might not meet the standards of CONC 5.2.5R. TFS had a creditworthiness assessment procedure for guarantors in place at the time the consultation paper was published, as described above. The Authority considers that this creditworthiness assessment was focused on assessing credit risk to TFS rather than determining whether the loan was affordable for the prospective guarantor. This is because TFS only considered guarantors' income and credit commitments and disregarded any information it held regarding guarantors' individual circumstances and household expenses.

4.32 TFS did not sufficiently consider whether its creditworthiness assessment for guarantors complied with CONC 5.2.5R. CONC 5.2.5R came into force on 2 November 2015. TFS management was aware that the new rule was coming into force, but instead of assessing whether its guarantor creditworthiness assessment met the requirements of CONC 5.2.5R, it focused on the narrow question of whether the same procedure had to be used to assess the creditworthiness of both the borrower and the guarantor. TFS did not make any changes to its guarantor creditworthiness assessment between the publication of Consultation Paper CP15/6 and the date of the rule change. In fact, TFS's guarantor creditworthiness assessment remained the same until April 2018 when it revised it after the intervention of the Authority.

4.33 It is clear on its face that TFS's guarantor creditworthiness assessment relied on unsubstantiated assumptions to calculate a guarantor's household expenses. Moreover, a statistical analysis and a customer file review undertaken by the Authority demonstrate the poor outcomes experienced by guarantors who took over payments on loans issued by TFS.

Customer outcomes: statistical analysis

4.34 Guarantors were called upon to make a significant number of payments in a relatively small number of cases, but those guarantors who did become responsible for paying loans issued by TFS frequently found it difficult to make the payments.

4.35 The Authority has examined data relating to customers who were onboarded after CONC 5.2.5R came into force. The analysis below focuses on guarantors who entered into a formal arrangement to pay the TFS loan on behalf of the borrower, as the Authority considers that such guarantors have demonstrated a good-faith effort to meet their obligations under the loan.

4.36 TFS issued 3,150 new loans in the period from 2 November 2015 to 10 April 2018. The guarantor made a substantial number of payments on behalf of the primary borrower (three or more) in 466 of the loans. In 209 of these loans (44.8%), the guarantor entered into a forbearance-based payment arrangement. In 123 of these 209 loans (58.9%), TFS agreed to allow the guarantor to pay less than the original payment agreed with the borrower. Hence, of the guarantors who made three or more payments on behalf of the borrower, TFS allowed 26.4% to pay less than the original payment agreed with the borrower.

4.37 A guarantor being offered a forbearance-based payment arrangement indicates recognition by TFS that the guarantor was struggling to meet the payments on the loan. TFS would only agree to a lower payment for guarantors who satisfied it that they could not afford the normal payment: TFS's policy was to agree a long-term reduction in the monthly payment only after the guarantor completed a 'statement of means' form and provided 3 months of bank statements. This form calculated individual income and expenses on a far more individualised and detailed level than TFS's guarantor creditworthiness procedure.

4.38 Accordingly, while guarantors formally agreed to take over the payments on loans issued by TFS in a relatively small number of cases, the figures above suggest that the guarantors who did so struggled to afford the payments.

4.39 The Authority considers that this is a strong indication that TFS's guarantor creditworthiness assessment procedure was ineffective in determining whether a loan would have an adverse impact on a guarantor's financial situation.

Customer file review

4.40 The Authority reviewed customer files for 23 loans which were underwritten during the Relevant Period. The Authority considers that TFS's creditworthiness assessment procedure for guarantors is fundamentally flawed because it relies on faulty assumptions regarding the expenses of guarantors. Within the customer file review sample, the Authority identified a number of guarantors who suffered financial detriment as a result of TFS's deficient creditworthiness assessment. In many cases, primary borrowers also suffered detriment as a result of the fact that the guarantor could not make payments in their place.

4.41 The findings of three customer files reviews are set out below to illustrate some of the deficiencies the Authority identified in TFS's approach to assessing creditworthiness. TFS adopted a formulaic approach to creditworthiness and these examples demonstrate the inadequacies of a creditworthiness assessment which fails to make a reasonable assessment based on an individual's specific financial circumstances.

<u>Customer File 1: Example of a vulnerable guarantor taking on an unaffordable debt obligation, resulting in a lasting financial impact</u>

4.42 The borrower (Mr A) was a 38-year-old man who took out a new loan in February 2016 to refinance his existing TFS debt, and to provide funds for a car purchase. At the time, Mr A was employed full time and received overtime payments on occasion.

4.43 Mr A's 68-year-old father (Mr C) acted as guarantor for the loan. Mr C was a retired pensioner who received a monthly income of £716.48. The Authority considers that Mr C was vulnerable at the time of the application due to a combination of factors: he was elderly, retired, received a relatively low income, and repeatedly told TFS agents that he was not computer literate though the TFS application process was largely completed online.

4.44 TFS placed reliance on Mr A's overtime income when conducting his creditworthiness assessment and it does not appear that TFS considered the possibility that he may not receive overtime income on a consistent basis. As a result, Mr A's income was overstated, and when his overtime was subsequently suspended, this contributed to issues maintaining his repayments.

4.45 When assessing Mr C's creditworthiness to act as guarantor, TFS failed to take into account information provided by Mr C regarding his expenses. Mr C stated in a call regarding his income and expenditure that he split his expenses jointly with his wife (Mrs C), and "*it's all the one money now.*" Mr C explained that his financial situation was different when they were both working. TFS did not question Mr C at that time regarding Mrs C's expenses or her income. Mr C's credit report included information on Mrs C's commitments. However, TFS disregarded the information on Mr C's credit report which showed Mrs C had significant financial commitments with a combined balance of £30,971. It later came to light that Mrs C suffered from MS, and that Mr C was her carer.

4.46 Mr A made one contractual payment, after which the loan fell into arrears. Mr A entered into a Trust Deed arrangement around April 2016, which meant TFS was unable to pursue him for payment. TFS required the guarantor Mr C to step in, but Mr C was unable to pay the full contractual amount. Therefore, TFS pursued legal action against Mr C only.

4.47 Mr C completed a Time to Pay Application which included a more detailed creditworthiness assessment. This demonstrated that the TFS loan was not affordable for Mr C. The application revealed Mr C's actual disposable income (before paying the TFS loan) was £54.32. In the application, Mr C offered a payment of £40 per month, which was substantially less than the monthly repayment of £122.93. As described in paragraphs 4.26 – 4.28, TFS only considered monthly income and committed expenditure as part of its guarantor creditworthiness assessment. In contrast, the Time to Pay Application requested information about Mr C's specific individual expenses. In the application, Mr C enumerated monthly expenses that TFS had not previously recorded including council tax, gas, electricity, food and life insurance.

4.48 It does not appear from the file review that there were any changes to Mr C's circumstances between the time the loan was taken out in February 2016 and the date he provided further information regarding his income and expenditure in October 2016. Therefore, the Authority considers that the expenses detailed in the Time to Pay Application were probably accurate at time of application, and as such the loan was not affordable for Mr C at the time TFS approved him as guarantor.

4.49 TFS placed Mr C on an arrangement of £40 per month. Mr C is currently making payments under this arrangement. At the current rate of repayment, the loan is anticipated to continue for another 5 years, 8 years longer than its original term. By the time of completion, Mr C will be 79 years of age.

<u>Customer File 2: Example of a guarantor unable to afford the TFS debt obligation</u>

4.50 The borrower (Mrs B) was a 32-year-old woman who had a disability and supported five dependants. She applied for the loan in January 2016 to help fund a holiday. Mrs B's 66-year-old mother-in-law (Mrs G) acted as guarantor for the loan. Mrs G was a retired pensioner with a monthly income of £812.50, placing her in the bottom 10% of income among pensioners in the UK. TFS's formulaic creditworthiness assessment did not take into account Mrs G's relative poverty, despite the fact that in her personal circumstances there would not be much margin for error.

4.51 TFS made errors in its creditworthiness assessment of Mrs B which made it more likely that the guarantor, Mrs G, would have to step in and make payments on her behalf. For example:

a) TFS overstated Mrs B's income. TFS's policy required it to verify a borrower's declared income using a third-party verification system. Where the search met the required parameters of this system, no further proof of income was requested. However, for certain scores TFS was required under its policy to apply a 15% deduction to the declared income figure. Mrs B's income verification check indicated that a 15% deduction was to be applied. However, TFS failed to apply this correctly. As a result, Mrs B's salary was overstated by £139.70.

b) TFS incorrectly recorded items of expenditure that Mrs B incurred on a weekly basis as monthly expenditures. For example, Mrs B's childcare was recorded as £79 per month, when £79 was the weekly charge. The monthly childcare expense should have been recorded as £342.33. This is around 77% more than the amount recorded. Additionally, Mrs B also had a home credit product which was recorded as £64 per month when this was the weekly charge. The monthly expense for this product should have been recorded as £277.33, which is also around 77% more than the amount recorded.

4.52 As a result, TFS incorrectly recorded Mrs B's disposable income as £219.64 with the TFS loan. Had TFS calculated Mrs B's income correctly and accounted for all payments properly, the disposable income with the TFS loan taken into account would have been -£404.40, deeming the loan unaffordable.

4.53 There were similar deficiencies in Mrs G's guarantor creditworthiness assessment, as again TFS incorrectly recorded weekly items of expenditure as monthly. For example, TFS recorded that Mrs G paid £50 toward her existing loan and home credit product, when she actually paid £200 per month. This is 75% more than the amount recorded.

4.54 In addition, TFS disregarded information on Mrs G's credit report which showed her actual monthly credit card expenditure. TFS's policy was to estimate a customer's monthly credit card expenditure by taking 3% of the outstanding balance. Mrs G's actual monthly expenditure was higher than the estimated figure that TFS used to calculate her disposable monthly income. In total, TFS understated Mrs G's monthly consumer credit commitments by about £149.21 despite having this information available.

4.55 TFS agents did not discuss Mrs G's expenses with her to confirm that the figures used in the income and expenditure form were correct. Had an agent taken measures to understand Mrs G's actual expenditure, these errors might have been avoided. Furthermore, the income and expenditure calculation did not take into account any of Mrs G's additional household expenses such as food, transportation, or clothing.

4.56 The loan account fell into arrears from the outset as the borrower, Mrs B, failed to make the first payment. Despite continued arrears, TFS only ever received sporadic payments from Mrs B. As such, TFS required the guarantor Mrs G to step in. However, Mrs G never paid the full contractual amount. Instead, the borrower's husband (Mrs G's son) was added to the loan as a third party in May 2017. TFS came to a forbearance arrangement with Mrs G and her son under which Mrs G's son covered the contractual amount and Mrs G paid an additional £67.14 each month to clear the arrears. The arrangement was set up to cover a period of 12 months, and all payments were made until the arrears were cleared.

4.57 It is not clear what Mrs G's financial position was at the time this arrangement was made because TFS did not complete an updated statement of means or creditworthiness assessment to confirm her circumstances and financial position. However, the fact that Mrs G never paid the full amount on the loan, and that the forbearance arrangement provided that she contribute only £67.14 rather than the higher monthly payment of £169.47, suggests that the loan was not affordable for Mrs G.

<u>Customer File 3: Example of guarantor taking on the debt obligation of a work colleague borrower who failed to make most of the scheduled debt payments</u>

4.58 The borrower (Mr D) was a 32-year-old man who was employed full-time as an engineer. He applied for the loan in June 2017 to purchase an engagement ring. The guarantor was Mr D's 55-year-old work colleague (Mr E), whose income was around £2,065 per month.

4.59 TFS's policy required it to estimate the amount that a customer had to pay each month for past payment defaults by using 2% of the outstanding balance for any default registered in the two years prior to the loan application. However, TFS appears to have disregarded a county court judgement showing on Mr D's credit report when conducting its creditworthiness assessment.

4.60 TFS also overlooked information that it had available regarding the guarantor, Mr E's, finances. For example, Mr E informed TFS during the application stage that he was paying more towards his mortgage than the amount showing on his credit file. However, instead of probing further, TFS relied on the monthly payment that was set out in Mr E's credit file.

4.61 The loan account fell into arrears from the outset as Mr D failed to make the first payment. Mr D made no payments for first four months of the loan. It is not clear whether Mr D experienced financial difficulty, as during this time he either told TFS agents that he had not paid the loan due to difficulty accessing his funds, or he simply gave no reason for the lack of payment. Due to the continued arrears, TFS issued a default against Mr D and a formal demand against both Mr D and Mr E. Despite this, Mr D never made more than a few payments towards the loan.

4.62 TFS continued its legal action and a CCJ was issued to both parties in February 2018. Shortly after, in May 2018, both Mr D and Mr E were made redundant as their employer went into administration. Following a period of arrears, TFS conducted a subsequent, more thorough creditworthiness assessment of Mr E in May 2019. This showed a change in his circumstances as he was self-employed, with a salary that was £334.60 higher each month than it was at the point of sale.

4.63 The updated creditworthiness assessment, which took Mr E's actual household and other expenses into account, showed that he had a disposable monthly income of £182.43. This sum was insufficient to meet the monthly repayment of £211.83. This suggests the loan was not affordable for Mr E from the outset.

4.64 Mr E reported paying large sums for fuel and work-related clothing as part of the updated creditworthiness assessment. Because TFS did not enquire about these items during the underwriting process, it is impossible to know what Mr E's monthly outlay was for these items at the relevant time. However, it appears likely that many of Mr E's stated expenditures would have existed at the time Mr E agreed to act as guarantor. Mr E lived in the same property that he did at application. The Authority therefore considers that Mr E's council tax, buildings insurance, electricity, gas, water, TV licence and phone/broadband were unlikely to have changed. Given the fact that Mr E's salary increased and many of his expenses stayed the same during this period, the Authority considers it likely that TFS would have found that Mr E could not afford the loan had it carried out a higher quality creditworthiness assessment at the point of sale.

4.65 TFS placed Mr E on a forbearance arrangement for a reduced payment of £150, leaving him with a new disposable income of £32.43. The loan remained open and in arrears at the time the Authority reviewed this customer file.

4.66 A number of factors suggest that the TFS loan may not have been affordable for Mr E from the outset: Mr E never paid the full contractual amount when he took over payments on the TFS loan; a more thorough creditworthiness assessment found that the monthly loan repayment amount exceeded Mr E's disposable income; and this subsequent creditworthiness assessment was completed after Mr E began receiving a higher salary.

4.67 In addition, TFS's failure to take into account the fact that Mr D had previously had a county court judgment entered against her suggests that TFS did not pay due regard to the interest of Mr E. The Authority considers that the unsatisfied CCJ should have been a red flag to TFS that the likelihood of Mr E being called upon to make payments in place of Mr D was high.

4.68 The Authority recognises that Mr E experienced a change of circumstances in the period between issue of the loan and the time that TFS carried out a more thorough creditworthiness assessment. However, Mr E's customer file demonstrates that TFS did not collect enough information about Mr E's circumstances at the outset of the relationship to fully understand his essential outgoings and household expenses. The Authority considers that this failure is compounded by the failure to engage with the red flag presented to it in respect of Mr D's unsatisfied CCJ, as together the failures expose Mr E to the risk of considerable harm.

<u>TFS's policy for arrears management fees</u>

4.69 An arrears management fee is a set charge that is applied to a loan account following a late or returned payment. Although firms have a contractual right to apply this fee, CONC 7.7.5R provides that it must not be higher than necessary to cover the typical costs that a firm would incur in pursuing the payment.

4.70 In the unsecured lending sector, the typical fee for arrears management is around £25. However, this amount varies across the sector, and is subject to the discretion of each firm.

4.71 TFS charged its customers a £25 fee. This fee had several name variations throughout the Relevant Period including "Return Direct debit fee", "Late payment fee" and "Arrears Management fee". The fee was to be applied to a customer's account when:

a) a direct debit was returned unpaid;

b) a payment was not received on or before the due date (where there was no direct debit set up); or

c) a cheque was not honoured by the customer's bank.

4.72 The purpose of the fee was to cover the costs incurred for any associated collections activity. This included staff costs, bank charges and system related costs for the calls, texts and letters sent to customers throughout the period of arrears.

4.73 TFS did not have a formal written policy detailing the application of its arrears management fee. However, its informal policy was that the fee could only be charged once per calendar month, for a maximum of three months. After three consecutive months, the fee would be suspended for that period of arrears. Further fees would only be applied to the account once a payment had been received from either the customer or guarantor. By way of an example, if a customer missed a payment in January and February but cleared the arrears in March, the customer could be charged further fees of up to £75 (three consecutive months) for any future arrears.

4.74 In 2017 the Authority conducted multi firm work on complaints handling in the Consumer Credit Sector. The review identified several instances in which TFS had failed to follow its own fee policy, and as a result some of its customers were overcharged. The Authority consequently asked TFS to address its concerns around the use and level of arrears management fees. In response, TFS agreed to conduct a redress exercise.

4.75 TFS carried out a manual review covering every agreement from the point it began issuing loans in 2010 until May 2018 when the Authority's concerns were brought to light. In total, TFS identified 287 affected agreements where customers were overcharged. This comprised 177 cases from the Relevant Period, approximately 62% of the total affected loans.

4.76 TFS paid a total of £14,075 in redress, of which £7,900 was paid to the customers from the Relevant Period. For existing customers, the refund was applied directly to the loan account. For the accounts that were closed, TFS contacted the affected customers by phone, email and SMS to organise their refund. TFS was unable to reach a small number of customers. In those instances, the firm issued a cheque to the last known address.

4.77 Of the 23 customer files it reviewed, the Authority identified 5 instances in which TFS had overcharged its arrears management fee during the Relevant Period. In each of these 5 cases, the Authority considered that TFS caused undue hardship in adding the fee to the loan. For example, in one file TFS failed to identify the customer's financial difficulty and the fact that the loan was taken out in part to support the customer's rent payments. Though the customer made no payments towards the loan throughout the entire loan term, TFS increased the customer's indebtedness by overcharging the arrears management fee. In another instance, the Authority observed that TFS misapplied the arrears management fee for 15 consecutive months, resulting in an additional £300 being charged to the loan account.

4.78 There was (and remains) no requirement for firms to reduce or waive fees for customers in arrears. However, CONC 7.3.5G (1) advises firms to consider doing so, as part of treating customers with forbearance. In line with this and the wider responsibility to treat customers fairly, firms in the unsecured lending sector usually have a policy to waive or cap fees to avoid causing undue hardship, especially where customers are vulnerable or experiencing financial difficulty. The Authority considers that TFS's misapplication of the arrears management fee demonstrates that TFS did not always implement this guidance in practice.

4.79 TFS has since amended its policy in respect of arrears management fees. It has now introduced a grace period under which all fees are suppressed. Further, it has introduced a cap to ensure customers are not overcharged.

5. FAILINGS

5.1 The regulatory provisions relevant to this Notice are referred to in Annex A.

5.2 Based on the facts and matters described above, the Authority considers that TFS has breached Principles 6 and 3 and CONC 5.2.5R, 5.3.2R, and 7.3.4R.

<u>Principle 6</u>

5.3 Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. CONC 5.2.5R requires a lender to undertake an assessment of the potential for a guarantor's commitments in respect of a regulated credit agreement to adversely impact the guarantor's financial situation before entering into the regulated credit agreement. CONC 7.3.4R provides that a firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

5.4 TFS failed to pay due regard to the interests of its customers and treat them fairly in that:

a) It failed to take into account basic, essential expenditures when assessing guarantors' creditworthiness as required by CONC 5.2.5R. As a result, TFS allowed individuals to act as guarantors for loans that they could not afford. This led to both customers and guarantors suffering detriment; and

b) When customers fell into arrears, TFS frequently levied an arrears management fee for more than 3 consecutive months in violation of its own policy, and in breach of CONC 7.3.4R. As a result, customers who were already suffering financial difficulties took on the additional burden of paying fees that they should not have been charged.

Principle 3

5.5 Principle 3 requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems. CONC 5.3.2R requires a firm to establish and implement clear and effective policies and procedures to make a reasonable creditworthiness assessment.

5.6 TFS failed to establish and implement such appropriate policies and procedures as required by CONC 5.3.2R, and failed to take reasonable care to organise and control its affairs as required by Principle 3, in that:

a) When TFS management became aware that the Authority intended to implement CONC 7.5.2R, it failed to take reasonable care to ensure that its guarantor creditworthiness assessment procedure complied with relevant rules; and

b) TFS failed to implement a guarantor creditworthiness assessment procedure that effectively determined whether the contemplated credit agreement would adversely impact prospective guarantors' financial situations.

6. SANCTION

6.1 The Authority has considered the disciplinary and other options available to it and has concluded that a financial penalty is the appropriate sanction in the circumstances of this particular case.

6.2 The Authority's policy on the imposition of financial penalties is set out in Chapter 6 of DEPP. In determining the proposed financial penalty, the Authority has had regard to this guidance.

6.3 The Authority's policy came into force on 6 March 2010. TFS's failings occurred after 6 March 2010 and, therefore, the Authority has determined the appropriate financial penalty under its current penalty policy.

6.4 DEPP 6.5A sets out a five-step framework to determine the appropriate level of financial penalty. The Authority describe the application of this framework to these circumstances below.

Step 1: disgorgement

6.5 Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.6 DEPP 6.5A.1G(2) states that, where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, or where the Authority decides to impose a redress programme, the Authority will take this into consideration. In such cases, the final penalty might not include a disgorgement element or the disgorgement element might be reduced.

6.7 TFS has voluntarily paid redress of £7,900 to 177 customers potentially impacted by the overcharging of arrears management fees. In addition, TFS has agreed to a requirement under section 55 of the Act to conduct an appropriate redress programme to ensure that customers affected by its failure to carry out effective creditworthiness assessments of guarantors are not disadvantaged.

6.8 The Authority considers that, in the circumstances, it is not appropriate to make a proposal for there to be a disgorgement element within the penalty.

6.9 The Step 1 figure is therefore £0.

Step 2: the seriousness of the breach

6.10 Pursuant to DEPP 6.5A.2G, at Step 2 the Authority will determine a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the particular product or business line.

6.11 The Authority considers that in this case the revenue generated by borrowers and the guarantors is indicative of the harm or potential harm caused by the failings. The Authority therefore considers the relevant revenue for the Relevant Period to be £12,888,752.

6.12 In deciding the percentage of the relevant revenue that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage of that revenue between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the failings: the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.13 In assessing the seriousness level, the Authority takes into account various factors that reflect the impact and nature of the breach and considers whether the firm committed the breach deliberately or recklessly. The factors that the Authority considers to be relevant to TFS's breaches are set out below:

Impact of the breach

(1) The breach had an effect on particularly vulnerable people, whether intentionally or otherwise (DEPP 6.5A.2G(6)(d));

(2) The inconvenience and distress caused to consumers (DEPP 6.5A.2G(6)(e));

6.14 While the breaches revealed serious or systemic weaknesses in TFS's procedures, and vulnerable customers were impacted by the breach, the Authority does not consider that TFS committed the breach deliberately or recklessly.

Nature of the breach

(1) The nature of the rules, requirements or provisions breached (DEPP 6.5A.2G(7)(a)); and

(2) There is no evidence that the TFS's senior management, or a responsible individual, sought to conceal their misconduct (DEPP 6.5A.2G(8)(c)).

6.15 DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 or 5 factors'. The Authority considers the following factors to be relevant:

(1) The breach caused a significant loss or risk of loss to individual consumers (DEPP 6.5A.2G(11)(a));

(2) The breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business (DEPP 6.5A.2G(11)(b)); and

6.16 The Authority has not found that TFS acted deliberately or recklessly (DEPP 6.5A.2G(11)(f)).

6.17 DEPP 6.5A.2G(12) lists factors likely to be considered 'level 1, 2 or 3 factors'. Of these, the investigation team considers the following factor to be relevant:

(1) Little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly (DEPP 6.5A.2G(12)(a)).

(2) The breach was committed negligently or inadvertently (DEPP 6.5A.2G(12)(e)).

6.18 The Authority considers that the breach revealed systemic weaknesses in TFS's procedures and management controls, and that it caused a significant loss to individual customers, most or all of whom were vulnerable due to their inability to obtain credit through other means, and many of whom may have been in financial distress. However, TFS does not appear to have made substantial profits as a result of the breach, and it appears that the breach was the result of negligence on the part of TFS management.

6.19 Taking all these factors into account, the Authority considers the seriousness of the breach to be level 3 and so the step 2 figure is 10% of £12,888,752.

6.20 The Step 2 figure is therefore £1,288,875.

Step 3: mitigating and aggravating factors

6.21 Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of financial penalty arrived at after Step 2 but not including any amount to be disgorged as set out in Step 1 to take into account factors which aggravate or mitigate the breach.

6.22 The Authority has taken account of the various factors, including the previously published messages to the consumer credit industry in respect of guarantor lending market and the steps taken by TFS since the commencement of the investigation to review its policies and procedures to carry out a suitable creditworthiness of the guarantors.

6.23 TFS has voluntarily undertaken to provide financial redress to the consumers who were likely to have been impacted by the failings. This is described in more detail at paragraphs 2.10, 4.73, 4.75, and 6.7 above. The Authority has also taken account of the degree of cooperation the firm showed during the investigation as described in more detail at paragraph 2.11 and, as a result, considers that the Step 2 figure should be reduced by 10%.

6.24 The Step 3 figure is therefore £1,159,988.

Step 4: adjustment for deterrence

6.25 Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.26 The Authority considers that the Step 3 figure of £1,159,988 represents a sufficient deterrent to TFS and others, and so has not increased the penalty at Step 4.

Step 5: settlement discount

6.27 Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement.

6.28 The Authority and TFS reached agreement at Stage 1 and so a 30% discount will be applied to the Step 4 figure.

6.29 The Step 5 figure will therefore be £811,900 (rounded down to the nearest £100).

Penalty

6.30 The Authority therefore imposes a total financial penalty of £811,900 (£1,159,988 before Stage 1 discount) on TFS for breaching Principles 6 and 3 of the Authority's Principles for Businesses and CONC 5.3.2R, CONC 5.2.5R, and CONC 7.3.4R.

Serious financial hardship

6.31 Pursuant to DEPP 6.5D.4G, the Authority will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the Authority will have regard, amongst other things, to the firm's financial strength and viability.

6.32 Although the Authority acknowledges there is some uncertainty surrounding the position of TFS's administration, there remains a prospect that there will be sufficient funds to enable a distribution to unsecured creditors, albeit the quantum of any dividend is currently unknown and is dependent on future recoveries, and the final level of creditors' claims.

6.33 Whilst the imposition of a financial penalty may cause TFS serious financial hardship, the Authority does not propose to reduce the financial penalty to £nil in this case. Instead, the Authority proposes to impose a financial penalty (which will be debt provable in TFS's administration) but will subordinate the Authority's claim in the administration in order that unsecured creditors with valid provable debts are satisfied prior to any funds realised in the administration being used to pay some, or all, of the financial penalty. The FCA considers that this would best advance its operational objectives as set out in sections 1B (3) of the Act.

7. PROCEDURAL MATTERS

7.1 This Notice is given to TFS under section 207 and in accordance with the section 390 of the Act.

7.2 The following statutory rights are important.

Decision maker

7.3 The decision which gave rise to the obligation to give this Notice was made by the Settlement Decision Makers.

Publicity

7.4 Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the Authority must publish such information about the matter to which this notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

7.5 For more information concerning this matter generally, contact Steve Page at the Authority (direct line: 020 7066 1420/email: Steve.Page@fca.org.uk).

Nicholas Hills
Head of Department
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A – RELEVANT AND STATUTORY AND REGULATORY PROVISONS AND GUIDANCE

Relevant extracts from FCA Handbook (PRIN: Principles of Business)

1. Principle 3 (Management and Control) states:
"A firm *must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems."*

2. Principle 6 (Customers' interest) states:
"A firm *must pay due regard to the interests of its* customers *and treat them fairly".*

Relevant extracts from FCA Handbook (CONC: Consumer Credit sourcebook)

CONC 5.2 Creditworthiness assessment: before agreement

Creditworthiness assessment where there is a guarantor etc

3. CONC 5.2.5R was in force from 2 November 2015 to 1 November 2018. This provision states:

(1) *"This rule applies if, in relation to a regulated credit agreement:*

(a) an individual other than the borrower (in this rule referred to as "the guarantor") is to provide a guarantee or an indemnity (or both); and

(b) the lender is required to undertake an assessment of the customer under CONC 5.2.1R or CONC 5.2.2R.

(2) Before entering into the regulated credit agreement, the lender must undertake an assessment of the potential for the guarantor's commitments in respect of the regulated credit agreement to adversely impact the guarantor's financial situation.

(3) A firm must consider sufficient information to enable it to make a reasonable assessment under this rule, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made.

(4) For the purposes of (2), CONC 5.2.3G, CONC 5.2.4G and CONC 5.3.1G to CONC 5.3.8G apply as if:

(a) references to the customer were references to the guarantor; and

(b) references to CONC 5.2.2R(1) were references to CONC 5.2.5R(2).

(5) For the purposes of this rule, a guarantee does not include a legal or equitable mortgage or a pledge."

CONC 5.3 Conduct of business in relation to creditworthiness and affordability

Creditworthiness and sustainability

4. CONC 5.3.2R was in force from 1 April 2014 to 1 November 2018. This provision states:

"A firm must establish and implement clear and effective policies and procedures to make a reasonable creditworthiness assessment, or a reasonable assessment required by CONC 5.2.2R (1)."

CONC 7.3 Treatment of customers in default or arrears (including repossessions): lenders, owners and debt collectors

Forbearance and due consideration

5. CONC 7.3.4R came into force on 1 April 2014. This provision states:

"A firm must treat customers in default or in arrears difficulties with forbearance and due consideration."