

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Explanatory Note

The Private Motor Insurance Market Investigation Order 2015

This note is not a part of the Order

Introduction

1. The Competition and Markets Authority (CMA) published its findings in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Private motor insurance market investigation: Final Report* on 24 September 2014 (the Report).
2. The Report set out the CMA's findings that there are features of the market for Private Motor Insurance (PMI) which alone or in combination adversely affect competition.
3. The CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the adverse effects on competition that it found arising from the following features:
 - (a) information asymmetries between motor insurers and consumers in relation to the sale of no claims bonus protection insurance; and
 - (b) wide most-favoured nation clauses in contracts between the providers of PMI and price comparison websites.
4. The Private Motor Insurance Market Investigation Order 2015 dated 18 March 2015 (the Order) gives effect to these remedies. Different articles in the Order will come into force on different days. Unless otherwise stated, it is not intended that there should be any further transitional period in relation to any of the provisions contained within the Order.

Possible consequences of not complying with the Order

5. Section 167 of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.

6. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
7. Section 167 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

Review of the Order

8. The CMA has a duty under section 162 of the Act to keep under review the carrying out of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. PMI Providers and PCWs (as defined in the Order) may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it. In the Report (paragraph 11.65), the CMA recommended that the FCA should review the NCB Protection remedy within two years of the Order. In view of the revised date for the entry into force of Article 3, the CMA would expect the FCA to carry out its review in the summer of 2018.

Status of this Explanatory Note

9. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

Structure of the Order

10. The Order is divided into six parts and has four Schedules:
 - (a) Part 1 contains general provisions, which include specifying when the Order comes into force, the scope of the Order and definitions that are used throughout the Order (and which are also used in this Explanatory Note).
 - (b) Part 2 requires PMI Providers and PCWs to give the information in Schedules 1a, 1b and 2 about NCB Protection when making, or providing access to, an NCB Protection Offer.
 - (c) Part 3 prohibits PCWs and PMI Providers from entering into or performing agreements containing Wide MFN Clauses and prohibits Designated PCWs from engaging in Equivalent Behaviour.

- (d) Part 4 contains an obligation on PMI Providers and Designated PCWs to produce compliance statements and submit them to the CMA.
- (e) Part 5 contains provisions allowing the CMA to give directions as to compliance with the Order.
- (f) Part 6 relates to the provision of information to the CMA for the purposes of monitoring compliance with the Order and reviewing its operation.
- (g) Schedules 1a and 1b contain the NCB Protection Statement that PMI Providers and PCWs, respectively, are required to provide under Part 2.
- (h) Schedule 2 contains the NCB Protection Information that PMI Providers are required to provide under Part 2.
- (i) Schedule 3 contains a template compliance statement to be submitted by PMI Providers on an annual basis.
- (j) Schedule 4 contains a template compliance statement to be submitted by a Designated PCW, on a quarterly or annual basis.

Part 1 – General and Interpretation

11. Article 1 provides that the Order applies to any PMI Provider and any PCW in relation to the provision of PMI and related goods and services in the UK. It provides that the Order shall come into force on different dates as follows:
 - (a) Parts 1, and 4 to 6 will come into force on 19 March 2015;
 - (b) Part 2 (Information requirements) will come into force on 1 August 2016;
and
 - (c) Part 3 (Prohibitions on Wide MFN Clauses and Equivalent Behaviour) will come into force on 19 April 2015.
12. Article 2 includes definitions of various terms used in the Order, some of which were not defined in the Report. A key definition is PMI Provider, which means a ‘PMI Broker’, a ‘PMI Insurer’, and a group of interconnected bodies corporate comprising multiple PMI Brokers, PMI Insurers, or both. They have a consumer-facing relationship and are required by the Order to give the NCB Protection Information and NCB Protection Statement when making an NCB Protection Offer. Other key definitions for the purposes of the Order are listed below:
 - (a) PCW means:

- (i) a price comparison website directly accessible by consumers that provides comparisons between, and access to, personalised quotes for PMI Products;
 - (ii) other internet-based price comparison services directly accessible by consumers, for instance, services provided through a mobile or tablet app or other computer program which can be downloaded or accessed by consumers and which provides comparisons between, and access to, personalised quotes over the internet for PMI Products;
 - (iii) the owner, operator or host of such website or service.
- (b) PMI Broker means a person with a consumer-facing relationship who is an insurance intermediary, and who arranges, administers or concludes PMI Products. For the avoidance of doubt the term does not include a PCW (to the extent that it does not arrange, administer or conclude PMI Products), nor does it include a person who provides advice on one or more PMI Products or on other insurance products (for instance by providing assistance in identifying the best available product for a particular customer) but does not arrange, administer or conclude contracts to supply PMI Products. It follows that only where a person arranges, administers or concludes contracts to supply PMI Products¹ will that person fall within the meaning of PMI Broker and, therefore, be a PMI Provider and subject to the requirement to give the prospective customer the NCB Protection Information and NCB Protection Statement under Article 3.
- (c) PMI Insurer means an insurer who is authorised to effect and carry out PMI Products and who supplies PMI Products in the United Kingdom.
13. The Order applies to PMI Products, ie PMI contracts that cover risks relating to the use of a privately-owned motor car (excluding motorcycles), as referred to in the Report. It does not apply to other motor vehicles unless they are classified by a PMI Provider as a motor car for the purposes of the insurance contract. The Order also does not apply to commercial motor insurance. It includes all policies that cover use of a motor car for (mainly) social, domestic and personal use (irrespective of whether the policies also allow for some form of commercial or business use), but does not include policies that cover use of a motor car (mainly) for commercial or business purposes. With respect to NCB Protection Offers relating to multi-vehicle insurance contracts,

¹ Including a PCW undertaking these activities.

Article 3 of the Order applies in relation to privately-owned motor cars (excluding motorcycles), but does not prevent PMI Providers from providing consumers with similar information in relation to other vehicles.

Part 2 – Information requirements

14. The aim of Article 3 is to ensure that PCWs and PMI Providers give consumers more transparent information about NCB Protection, including information assisting consumers to assess the value of NCB Protection at the point they consider purchasing it, ie at the time a PMI Provider makes, or a PCW provides access to an NCB Protection Offer in relation to a PMI Product. An NCB Protection Offer, from a PMI Provider or made available through a PCW, is an offer or invitation to purchase NCB Protection, made orally or in writing, as an additional option to a PMI Product. When the PMI Product is being purchased on a PMI Provider's Own Website, an NCB Protection Offer is made when the prospective purchaser, having selected NCB Protection in order to include it with the PMI Product (or having failed to deselect NCB Protection), is provided with a quote.
15. Where multiple PMI Products (rather than a single PMI Product) are being offered, such as through a PMI Broker, the NCB Protection Offer is made at the time a PMI Product is selected by a prospective purchaser. On a PCW, the NCB Protection Offer will generally be made accessible when the option to include NCB Protection is offered to the consumer, and the NCB Statement must be made available at that time.
16. If a quote is given for a future date (eg through a renewal invitation made by post), the Order applies as at the date the applicable quote is generated (eg the date of the renewal letter) and the information to be given is that which is correct at the time the quote is provided. If, therefore, a renewal offer or invitation includes NCB Protection, this will amount to an NCB Protection Offer. Conversely, if a renewal offer or invitation does not include NCB Protection and a prospective customer is required to make separate arrangements with the PMI Insurer to purchase NCB Protection, an NCB Protection Offer would only be made when the prospective customer subsequently requests information concerning NCB Protection from the PMI Insurer. The Order will not generally apply to a mid-term adjustment to an existing contract for a PMI Product, unless such adjustment leads to an extension of the duration of the contract, or to the addition of NCB Protection to the contract (ie if a new NCB Protection Offer is made), or both.
17. For the avoidance of doubt, where NCB protection is integral to the PMI Product in question, ie it is not an optional feature of the PMI Product that can be added or removed, by its nature the NCB protection does not fall within the

definition of NCB Protection and so it is outside of the scope of Article 3 of the Order.

18. Schedules 1a, 1b and 2 set out the NCB Protection Statement and the NCB Protection Information to be provided by PMI Providers and/or PCWs for this purpose. For the avoidance of doubt, the Order does not prevent PCWs or PMI Providers from giving further information on NCB Protection, to the extent that doing so does not undermine the aim of Article 3.

Obligation to provide the NCB Protection Statement and the NCB Protection Information

19. The NCB Protection Statement must be provided:
 - (a) by a PMI Provider pursuant to Article 3.1 and Schedule 1a, when an NCB Protection Offer is made by the PMI Provider (even if the NCB Protection Statement has previously been given by a PCW pursuant to Article 3.2); and
 - (b) by a PCW pursuant to Article 3.2 and Schedule 1b, when the PCW is providing access to an NCB Protection Offer.
20. Article 3.1 also provides that the NCB Protection Information must be provided by the PMI Provider at the time of making the NCB Protection Offer. Schedule 2 specifies that the NCB Protection Information must contain:
 - (a) the information set out in paragraph 1 when the NCB Protection Offer is made in writing on the PMI Provider's Own Website, or in another written form whether sent electronically or by a postal service;² or
 - (b) the information set out in paragraph 2 when the NCB Protection Offer is made orally (for instance by telesales or in a branch).
21. Article 3.3 provides that when the PMI Provider has given the NCB Protection Information orally (for instance, when the PMI Product has been purchased by telesales), the NCB Protection Information set out in paragraph 1 of Schedule 2 must be sent to the purchaser in writing with the policy documents, as required under section 8(1) of The Financial Services (Distance Marketing) Regulations 2004.
22. Articles 3.1 and 3.2 provide that the NCB Protection Statement (and NCB Protection Information) must be provided clearly and prominently by PMI Providers and PCWs at the same time as making or providing access to the

² As defined in the Postal Service Act 2011.

NCB Protection Offer. Article 3.4 defines prominently to mean either (i) that, when assessing, as a whole, the NCB Protection Offer, the NCB Protection Statement and the NCB Protection Information are provided with sufficient prominence so that prospective purchasers' attention can reasonably be expected to be drawn to it, or (ii) that the NCB Protection Statement and the NCB Protection Information are no less prominent than other similar information provided contemporaneously in relation to the PMI Product.

23. We would expect this to be achieved, for instance, by setting out the NCB Protection Statement and NCB Protection Information on the same webpage as the NCB Protection Offer, or by opening a pop-up window containing the NCB Protection Statement and NCB Protection Information.
24. When the NCB Protection Offer is made in writing, this means that the text and tables should be displayed in a clear and legible manner, using an appropriate font size. In the case of PCWs, we would expect the NCB Protection Statement to be provided through a prominent link leading to the NCB Protection Statement. The requirement to 'link' to further information set out in Article 3.2 and in paragraph 3 of Schedule 1a is not a defined term, and therefore has its ordinary meaning as something which connects one thing to another. It is a requirement to provide a simple and direct way for customers to access information available elsewhere, but is not prescriptive as to the technology or methodology to be used. As such, a link might be achieved, for instance, by using a hyperlink, a pop-up box, a hover box or a connection to another screen in a mobile or app-based solution, a reference to where in an enclosed physical document the relevant information can be found, or other approach as is appropriate to the relevant sales channel for the PMI Product, whilst satisfying the requirement to be clear and prominent.
25. When the PMI Product is being purchased orally (eg by telesales or in a branch), the NCB Protection Offer is made by the PMI Provider asking whether the prospective purchaser wishes to include NCB Protection in the PMI Product for an additional premium. In some cases this may alternatively be triggered at the request of the prospective purchaser. The NCB Protection Statement and NCB Protection Information must be given clearly and prominently at the time NCB Protection Offer is made. The information must be provided prominently and in a similar manner to the other information relevant to the PMI Product and other add-on insurance products being described and offered in the rest of the conversation. It should be delivered at a similar time, pace and tone of voice, and should be given an appropriate weight.
26. When the PMI Product is being purchased by email or postal service (eg a renewal), an NCB Protection Offer is made when the quote for a PMI Product

is sent to the prospective purchaser that includes NCB Protection as an option. In this case, the NCB Protection Statement and NCB Protection Information must be provided clearly and prominently in the email or letter.

Possible conflict with regulatory rule or enactment

27. The Report noted that, due to its standardised nature, the NCB Protection Statement may not be accurate for all PMI Products and that, in certain circumstances, a PMI Provider may believe it could not truthfully make such statement. An inaccurate statement might breach a PMI Provider's obligation under ICOBS Rule 3.1.8 to take reasonable steps to communicate information to customers in a way that is clear, fair and not misleading.³ For example, the NCB Protection Statement might be inaccurate in the case of NCB Protection which guarantees that a PMI Product's premium would not increase as a direct result of a Claim.
28. Article 3.5 provides that, if a PMI Provider is prohibited, by any regulatory rule or enactment (such as ICOBS Rule 3.1.8.), from giving the NCB Protection Statement or NCB Protection Information, the PMI Provider will provide at the time of the NCB Protection Offer the Alternative Information. The Alternative Information is the NCB Protection Statement or NCB Protection Information amended to the minimum extent necessary to avoid a breach of any rule or enactment. The CMA considers such cases will be rare but, if they were to arise, the PMI Provider may apply for a direction from the CMA (under Article 8 of the Order) and must notify the CMA of the Alternative Information it is providing, identify the regulatory rule or enactment which prohibits it giving the standard information, and set out its reasons for providing the Alternative Information.

NCB Protection Statement

29. Schedule 1a sets out the NCB Protection Statement that must be provided at the time of the NCB Protection Offer by a PMI Provider, either in writing (paragraph 1) or orally (paragraph 2).
30. When the NCB Protection Offer is made on the PMI Provider's Own Website or by email, the second paragraph of the NCB Protection Statement set out in Schedule 1a (paragraph 1(b) – referring to step-back procedures) must contain a link,⁴ which is displayed prominently, leading to a clear description of the Step-back Formula for that PMI Product. This description should link to

³ Insurance: Conduct of Business Sourcebook (ICOBS).

⁴ As described in paragraph 24.

the table set out in paragraph 1(c) of Schedule 2 and, if the PMI Provider considers it appropriate, may also refer to a brief description of the consequences that a Claim and, if different, multiple Claims in the relevant time frame will have on the NCB Discount, specifying the benefit of NCB Protection within the context of the relevant PMI Product. When the NCB Protection Offer is made by a postal service, the second paragraph of the NCB Protection Statement set out in Schedule 1a (paragraph 1(b) – referring to Step-back procedures) must contain a clear reference to the document (including page and/or paragraph number) where the information can be found, which might be within the policy document itself. Such document must be enclosed with the NCB Protection Offer.

31. Schedule 1b sets out the NCB Protection Statement that must be provided by a PCW when it provides access to an NCB Protection Offer.
32. Paragraph 4 of Schedule 1a and paragraph 2 of Schedule 1b provide that, in the text of the NCB Protection Statement, the terms ‘no claims bonus’ (and the acronym ‘NCB’) can be replaced by other similar terms, such as ‘no claims discount’ (and the acronym ‘NCD’) when the PMI Provider uses these other terms in its marketing and policy documents for that PMI Product to describe its NCB Discount and NCB Protection policy. Within this context, the PMI Provider may decide to use or not use acronyms (provided that acronyms are clearly defined) and to capitalise or not these terms in the written NCB Protection Statement.

NCB Protection Information

33. Paragraph 1 of Schedule 2 sets out the NCB Protection Information that must be provided in writing pursuant to Articles 3.1 and 3.3, which included the Implied Price of NCB Protection and two tables that will need to be prepared by PMI Insurers and provided to prospective purchasers of the PMI Product and to PMI Brokers arranging, administering or concluding the PMI Product (together with the other terms and conditions relating to the PMI Product).
34. For the avoidance of doubt, the Implied Price of NCB Protection is to be calculated by all PMI Providers (ie PMI Brokers and PMI Insurers) when making an NCB Protection Offer. It must reflect the difference in the retail price between the PMI Product which is the subject of the NCB Protection Offer (including, as applicable, any add-on products selected) with, and without, NCB Protection. The Implied Price of NCB Protection is, therefore, particular to the given PMI Product being offered by that PMI Provider, and does not take into account the price of any other PMI Products that may or may not include NCB Protection. The Order does not prevent a PMI Broker from informing a prospective consumer that a different PMI Product available

from its panel of PMI Insurers is cheaper with or without NCB Protection (as the case may be).

35. Paragraph 1(b) of Schedule 2 prescribes the information that must be included in a table concerning an NCB Protection Offer. Although the exact format (eg font type, colour schemes, spacing) is a matter for PMI Providers, we expect the table to be structured as Table 1 below.

Table 1

Number of years No Claims Bonus	Average NCB Discount in [year]
One year NCB	4%
Two years NCB	9%
Three years NCB	18%
Four years NCB	29%
Five years NCB	38%
Six years NCB	44%
Seven years NCB	49%
Eight years NCB	53%
Nine years or more NCB	59%

36. Illustrative figures have been used in Table 1. The table to be included by PMI Providers as part of the NCB Protection Information pursuant to paragraph 1(b) of Schedule 2 must be generic to all PMI Products supplied by the PMI Insurer or to a smaller subset determined in accordance with paragraph 4 of Schedule 2 (see further paragraph 42 below). PMI Providers shall adapt Table 1 to the terms and conditions of an NCB Protection Offer, by:

- (a) including in the left-hand column (under ‘Number of years No Claims Bonus’) each relevant level of NCB Years for the PMI Product (or range of

NCB Years, eg 'Zero to two years NCB'; 'Nine years or more NCB'), and adding or removing rows as appropriate; and

(b) including in the right-hand column, the Average NCB Discount associated with each level of NCB Years, rounded to the nearest whole percentage.

37. Paragraph 1(c) of Schedule 2 prescribes the information that must be included in a second table concerning an NCB Protection Offer. Again, although the exact format (eg font type, colour schemes, spacing) is a matter for PMI Providers, we expect the table to be structured as Table 2 below.

Table 2

	No Claims Bonus at next renewal date <u>without</u> NCB protection			No Claims Bonus at next renewal date <u>with</u> NCB protection		
Number of years No Claims Bonus at this renewal	1 claim in next 12 months	2 claims in next 12 months	3 claims in next 12 months	1 claim in next 12 months	2 claims in next 12 months	3 claims in next 12 months
Three years NCB	One year	Nil	Nil	Three years	One year	Nil

38. Illustrative figures have been used in Table 2. PMI Providers must adapt Table 2 to the Step-back Formula of an NCB Protection Offer, by:
- (a) including in the second row the relevant number of Claims within the relevant time frame of the Step-back Formula, adding or removing columns as appropriate; and
 - (b) including in the third row the number of NCB Years at the date of purchase of the NCB Protection and the number of NCB Years at the next date of purchase of NCB Protection.
39. Where a PMI Provider offers a PMI Product that will 'guarantee' the number of NCB years (ie regardless of the number of claims the prospective customer makes in a year, their number of NCB Years will be protected), the above table must still be provided. In such a case, the Step-back Formula that would be applied at next renewal in the event of a Claim or multiple Claims is that no step-back takes place and the number of NCB Years remains the same (or increases by one, depending on the terms of the policy). The right-hand side column (under 'No Claim Bonus at next renewal with NCB Protection') must therefore contain a suitable representation of the (absence of) effect of one or more Claims on the NCB Years at the next renewal date. This will allow the prospective customer to compare the benefits of the cover provided by the PMI Product with, and without, the optional NCB Protection.
40. Where a Step-back Formula takes into consideration Claims made in previous years on a cumulative basis, this must be reflected in the table. This can be achieved either by providing a table which shows the impact of only future Claims on the number of NCB Years of the individual policyholder to whom the NCB Protection Offer is made (ie having taken into consideration any relevant Claims made in previous years), or by providing a generic table which shows the impact of the total number of Claims in a given period (ie including both future and past Claims) on the number of NCB Years. PMI Providers are not prevented from including separately other relevant information relating to an individual customer.
41. Paragraphs 2 and 3 of Schedule 2 set out the NCB Protection Information that must be provided when (a) the NCB Protection Offer is made orally and (b) following acceptance of an oral NCB Protection Offer, respectively.
42. Paragraph 4 of Schedule 2 describes how the Average NCB Discount is to be calculated (subject to paragraph 5 of Schedule 2, as discussed in paragraphs 44 and 45 below). It is the discount to the price of the PMI Product that the PMI Insurer typically makes to customers (directly or indirectly via a PMI Broker) holding the same number of NCB Years as the prospective customer

holds. It may be calculated in the following two ways, at the PMI Insurer's option:

- (a) calculated across all PMI Products supplied by the PMI Insurer (including those supplied directly or indirectly via a PMI Broker); or
- (b) calculated across a smaller subset of PMI Products, for instance, across different types of PMI Product; across different brands; across different sales channels; or some other sub-set.

It is calculated as the average (mean) percentage of all historic actual NCB Discounts awarded in the relevant calculation period by the PMI Insurer for all the PMI Products or the relevant sub-set of PMI Products for that level of NCB Years.

- 43. For the avoidance of doubt, the Average NCB Discount is calculated based on the amount the PMI Insurer has discounted the PMI Products or relevant subset of PMI Products. The Average NCB Discount is not always based on the final price paid for the PMI Product since, in the case of sales made through a PMI Broker, the PMI Insurer may not know the final price paid for the PMI Product. The intention of the Report is for the Average NCB Discount to be an illustrative historical figure, rather than the actual NCB Discount the consumer will individually receive. It is not based on notional figures held on the PMI Insurer's internal systems, nor on a sample or basket of products. As identified in paragraph 18 above the Order does not prevent PMI Providers from providing further information, such as the actual NCB Discount a prospective purchaser will receive.
- 44. In order to comply with Schedule 2, the PMI Insurer must calculate by 1 February each year the Average NCB Discount (in relation to all its PMI Products or to a subset of PMI Products for any given number of NCB Years) that it and PMI Brokers who sell its products, will use to make NCB Protection Offers from 1 February of that year to 31 January of the following year. In practice, this will allow PMI Insurers one month to calculate the average NCB Discount applicable from the end of the previous calendar year.
- 45. However, pursuant to paragraph 5 of Schedule 2, for NCB Protection Offers made between 1 August 2016 and 1 February 2017, PMI Insurers must use an Average NCB Discount calculated either as a reasonable estimate of the NCB Discount to be applied to that PMI Product, for the applicable number of NCB Years, or, if they choose to, as an Average NCB Discount on the basis of PMI Products supplied in the calendar year 2015 (ie as per paragraph 4 of Schedule 2). Similarly, if the PMI Insurer to which the PMI Product relates supplied PMI Products in the previous calculation period for less than six

months, the Average NCB Discount must be a reasonable estimate of the NCB Discount to be applied to that PMI Product, for the applicable number of NCB Years.

46. For instance, if a new PMI Insurer entered the market on or after 1 July 2017, when determining the Average NCB Discount that it must include in the NCB Protection Information for offers made as from 1 February 2018, the PMI Insurer must use a reasonable estimate of the Average NCB Discount which it will apply from 1 February 2018 to 31 January 2019 to that PMI Product, for the applicable number of NCB Years. If the PMI Insurer supplied PMI Products for more than six months in the previous calculation period the Average NCB Discount must be determined from the actual PMI Products supplied during that period.
47. Paragraph 6 of Schedule 2 provides that, in the text and tables of the NCB Protection Information, the terms 'no claims bonus' (and the acronym 'NCB'), as well as other terms which include 'NCB' (for instance 'NCB years') can be replaced by other similar terms, such as 'no claims discount' (and the acronym 'NCD') when the PMI Provider uses these other terms in its marketing and policy documents for that PMI Product to describe its NCB Discount and NCB Protection policy. Within this context, the PMI Provider may decide to use or not acronyms (provided that acronyms are clearly defined) in the written NCB Protection Statement.

Provision of information

48. PMI Insurers who distribute PMI Products through PMI Brokers will need to provide, in a timely and appropriate manner, these PMI Brokers with the Average NCB Discount and Step-Back Formula to allow them to provide the NCB Protection Statement, the NCB Protection Information and NCB Protection Offer pursuant to Articles 3.1 and 3.3. In practice, this will mean PMI Insurers must provide either the average NCB Discount across all sales of PMI Products (ie across all sales channels), or the average NCB Discount across a smaller subset of PMI Products (in accordance with paragraph 4 of Schedule 2 and paragraphs 45 to 46 above).
49. In certain circumstances, collaboration between a PMI Insurer and the PMI Brokers and PCWs distributing its PMI Products will be needed for the purposes of making (or providing access to) an NCB Protection Offer which complies with the Order. It is a matter for parties to facilitate this process if they wish to make (or provide access to) an NCB Protection Offer whilst having due regard to and complying with applicable EU and UK competition laws (in particular, Articles 101 and 102 of the Treaty on the Functioning of the EU and Chapters I and II of the Competition Act 1998).

Part 3 – Prohibitions on Wide MFN Clauses and Equivalent Behaviour

Prohibition on Wide MFN Clauses

50. The aim of Article 4.1 is to prohibit PCWs and PMI Providers from entering or performing an agreement⁵ where the PMI Provider agrees not to offer a PMI Product at a lower price⁶ on any other sales channel. These restrictions were defined as MFN clauses in the Report. Article 4.2 provides that the prohibition in Article 4.1 does not apply to agreements which restrict a PMI Provider from offering a PMI Product at a lower price on the PMI Provider's Own Website only (defined in the Report as narrow MFN clauses). An agreement that contains an MFN clause that is not a narrow MFN clause is one that contains a Wide MFN Clause.
51. The exception set out in Article 4.2 only applies to the PMI Provider's Own Website⁷. As a consequence, the Order prohibits any agreement containing a contractual restriction on the PMI Provider's ability to set lower prices, compared with the prices advertised on the counterparty's website, on other distribution channels, including (without being limited to):
- (a) telesales;
 - (b) sales in a branch;
 - (c) sales through a broker or, in the case of PMI Providers who are brokers, sales through any other broker;
 - (d) sales through any other PCW; and
 - (e) sales through an independent social media platform (such as Facebook, Google+, LinkedIn and Twitter) to the extent that the social media platform provides a personalised quote to customers, including when providing a direct link or direct access to the PMI Provider's Own Website for completion of the purchase.⁸

⁵ Agreement has the same meaning as in section 129 of the Enterprise Act 2002 and means 'any agreement or arrangement, in whatever way and whatever form it is made, and whether it is, or is intended to be, legally enforceable or not'.

⁶ For the purpose of Part 3 of the Order, the comparison of prices of a PMI Product includes the provision of other advantages such as cash-back or other financial or non-financial in-kind benefits, which is intended to make the PMI Product offer more attractive.

⁷ A website where a PMI Provider offers or supplies its PMI products directly to a consumer, ie a quote is accessible without the intervention of an intermediary such as a PCW linking to a personalised quote.

⁸ In contrast, the exception in Article 4.2 of the Order does apply where the social media platform does not provide a personalised quote to customers (eg where a customer arrives on the PMI Provider's Own Website without a personalised quote, having followed a link from a social media platform which invites (and/or provides incentives to) customers to obtain a personalised quote by going to a PMI Provider's Own Website).

52. Parties to existing agreements which contain a Wide MFN Clause prohibited under Article 4.1 must terminate or in practice amend such agreements in order to remove the Wide MFN Clause before 19 April 2015.

Prohibition on Equivalent Behaviour

53. The Report recognises that the prohibition on Wide MFN Clauses, by itself, might not comprehensively and effectively address the adverse effect on competition identified in the Report if PCWs could circumvent it by entering into contractual terms or engaging in unilateral behaviour which has the object of replicating the anti-competitive effects of Wide MFN Clauses. This could be the case, for example, where a PCW uses any market power in relation to PMI Providers derived from the number of customers that use only one PCW to compare the prices of PMI Products (described in the Report as 'single-homers'). The Report notes this possibility where a PCW or a group of interconnected bodies corporate comprising multiple PCWs has, in the previous calendar year, provided PMI Providers in aggregate with 300,000 PMI Product sales or more (Designated PCWs).⁹ The aim of Article 5.1 is therefore to prohibit such behaviour that has the object of replicating the anti-competitive effects of Wide MFN Clauses (Equivalent Behaviour).
54. By way of further illustration, PCWs engaging in Equivalent Behaviour could effectively replicate the effects of Wide MFN Clauses by applying pressure to the PMI Provider to adhere to the principles of a Wide MFN Clause. This pressure could consist in engaging, or threatening to engage, in unilateral behaviour which could have the object of leading, directly or indirectly, to a reduction in PMI Product sales for a specific PMI Provider on a different sales channel or to the foreclosure of these other sales channels.
55. The Report identified a non-exhaustive variety of ways a PCW might engage in unilateral behaviour that could have the object of replicating the anti-competitive effects of Wide MFN Clauses, for example, by:
- (a) delisting, or threatening to delist, a PMI Provider;
 - (b) offering less favourable commission terms;
 - (c) offering less favourable contractual terms;

⁹ Article 6.2 provides that all PCWs must calculate by 1 February of each year the number of PMI Product sales provided by them to PMI Providers in aggregate in the previous calendar year. In practice, this will allow one month to calculate the number of PMI Product sales provided by them in the previous calendar year. For the purpose of the period before 1 February 2016, PCWs who, in the previous calendar year, have provided 300,000 PMI Product sales or more to PMI Providers in aggregate should notify the CMA on 19 April 2015.

- (d) imposing unreasonable burdens on a PMI Provider when implementing IT changes (such as through delays); and
 - (e) reduction in timeliness, cost, or quality of market intelligence.
- 56. Delisting is any action taken to remove or conceal the position of a PMI Provider from a PCW. This would happen, for example, if search results for a PMI Provider were treated differently from other PMI Providers, or if a 'filter' was applied to the results of price comparisons of PMI Products without explanation provided to prospective purchasers, creating a comparison which is not purely based on price alone.
- 57. Such unilateral behaviour could have the object of replicating the anti-competitive effects of Wide MFN Clauses, whether it affects one or more PMI Products sold by the PMI Provider, or other non-PMI products sold by the PMI Provider through that PCW (eg delisting a PMI Provider's home insurance products). The Report also notes that certain unilateral behaviour by a PCW that falls within the above list set out in paragraph 55 above, or any other form of unilateral behaviour that could constitute an Equivalent Behaviour, may however have legitimate justification, other than to have the object of replicating the anti-competitive effects of Wide MFN Clauses. For instance, a PCW might decide to delist a PMI Provider for legitimate business or administrative reasons such as:
 - (a) poor performance issues by a PMI Provider;
 - (b) poor performance issues by a PCW (eg inability to invest in a suitable IT platform); or
 - (c) bona fide dispute over another contractual term; or
 - (d) genuine efficiency arguments.
- 58. In order to assess compliance with Article 5.1, it will be necessary to assess on a case-by-case basis whether the applicable behaviour by the PCW has the object of replicating the anti-competitive effects of Wide MFN Clauses. Factual evidence that may support such a finding would include, but not be limited to:
 - (a) whether the PMI Provider is being priced/ranked differently on other PCWs;
 - (b) whether the PCW has raised the issue of differential pricing in discussions with the PMI Provider, or vice-versa;

- (c) whether the PCW's behaviour is only (or mainly) being applied to PMI Providers who are offering lower prices on other channels (ie poor IT lead times is a specific issue to these PMI Providers, rather than an issue to all PMI Providers in general); and
 - (d) the absence of a legitimate justification for such behaviour.
- 59. The CMA may publish guidance on Equivalent Behaviour. It may also give directions pursuant to Article 8 of the Order. Within this context, it will consider requests for guidance and/or directions from PCWs and from PMI Providers who believe they are affected by Equivalent Behaviour.
- 60. The prohibition on Equivalent Behaviour shall come into force on 19 April 2015 as regards Designated PCWs.

Part 4 – Monitoring and compliance

- 61. Article 6 requires PMI Providers to submit annual compliance statements, which must include:
 - (a) a statement that the PMI Provider has complied with the terms of the Order; and
 - (b) the tables of Average NCB Discounts calculated pursuant to paragraph 4 of Schedule 2, that the PMI Provider will use in NCB Protection Offers made in the 12-month period starting with 1 February in the year the Annual PMI Compliance Statement is made.
- 62. Subject to Article 6.2, the compliance statements are to be produced and supplied in the form prescribed in Schedule 3 to the CMA annually by 1 February. The compliance statement must present tables of Average NCB Discounts for each PMI Insurer and subset in the format and with the content prescribed in paragraph 1(b) of Schedule 2 and further described in paragraphs 35 and 36 above.
- 63. For example, the Annual PMI Compliance Statement submitted on 1 February 2017 will show for each PMI Insurer or subset of PMI Products that the PMI Provider supplies, for each relevant number of NCB Years, the mean NCB Discount actually awarded by the PMI Insurer on those PMI Products in the calendar year 2016. This is the same as the information provided to consumers in the NCB Protection Information pursuant to paragraph 1(b) of Schedule 2.
- 64. Article 6.2 makes alternative provision for the first compliance statement, which is to be provided on 1 August 2016 and which must include, for each

PMI Insurer's PMI Products or subset of PMI Products, the table(s) of Average NCB Discount(s), calculated pursuant to paragraph 5 of Schedule 2, that the PMI Provider will use in NCB Protection Offers made from 1 August 2016 to 31 January 2017. The effect of this Article is to require PMI Providers to provide to the CMA on 1 August 2016 a copy of the Average NCB Discount(s) they will subsequently present to consumers when making NCB Protection Offers until 31 January 2017 and, where relevant, declare that they have complied with the terms of the Order in preparing such Average NCB Discounts.

65. Article 7 requires Designated PCWs to submit to the CMA seven quarterly and two annual compliance statements, which must include:
- (a) a statement that the Designated PCW has not engaged in Equivalent Behaviour; and
 - (b) a list of each delisting (as described in paragraph 56 above) which occurred in the report period. Delisting includes a delisting made at the request of the PMI Provider. For the avoidance of doubt, while the Annual and Quarterly PCW Compliance Statements prescribe certain information to be provided on delisting which has occurred, the prohibition on Equivalent Behaviour is not limited to delisting and includes any behaviour, whether contractual or unilateral, which has the object of replicating the anti-competitive effects of Wide MFN Clauses.
66. A Designated PCW means a PCW, or a group of interconnected bodies corporate comprising multiple PCWs, which in the previous calendar year has provided PMI Providers in aggregate with 300,000 PMI Product sales or more. Article 7.6 requires PCWs to calculate by 1 February in each year, the number of PMI Product sales and to notify the CMA if the PCW qualifies or (compared with the previous calendar year) no longer qualifies as a Designated PCW. This number is calculated taking account of sales of PMI Products as defined in the Order. Sales of products which are not a PMI Product are not included in the calculation. The sale of a PMI Product including an add-on product such as NCB Protection, or breakdown cover, are to be counted as one sale of a PMI Product.
67. Compliance statements must be submitted to the CMA by Designated PCWs, in the form specified in the template statement set out in Schedule 4, as follows:

	Date of submission to the CMA	Reporting period
First Quarterly Compliance Statement	15 July 2015	19 April – 30 June 2015
Second Quarterly Compliance Statement	15 October 2015	1 July – 30 September 2015
Third Quarterly Compliance Statement	15 January 2016	1 October – 31 December 2015
Fourth Quarterly Compliance Statement	15 April 2016	1 January – 31 March 2016
Fifth Quarterly Compliance Statement	15 July 2016	1 April – 30 June 2016
Sixth Quarterly Compliance Statement	17 October 2016	1 July – 30 September 2016
Seventh Quarterly Compliance Statement	16 January 2017	1 October – 31 December 2016
First Annual Compliance Statement	1 February 2018	1 January – 31 December 2017
Second Annual Compliance Statement	1 February 2019	1 January – 31 December 2018

68. The compliance statements referred to in Article 6 and 7 should be sent by email to pmi.order@cma.gov.uk.

Part 5 – Directions by the CMA as to compliance

69. Article 8 provides that the CMA may give directions as to compliance with the Order.

Part 6 – Supply of information to the CMA

70. Article 9 provides for any person to whom this Order applies to provide information required by the CMA to allow it to monitor and review compliance with and operation of the Order.