

# **Directions to Nationwide Building Society (Nationwide) issued under the Payment Protection Insurance Market Investigation Order 2011**

## **Introduction**

1. Article 4 of the [Payment Protection Insurance Market Investigation Order 2011](#) (the Order) requires payment protection insurance (PPI) Providers to send Annual Reviews<sup>1</sup> to customers. The purpose of Annual Reviews is to provide customers with accurate information about their PPI policies and prompt them to consider the suitability of their policies.
2. The Competition and Markets Authority (CMA) is issuing Directions to Nationwide concerning two breaches under Article 4 of the Order. The first breach, notified to the CMA in April 2018, related to the failure to provide Annual Reviews. The second breach, reported in March 2019, related to incorrect information being provided to customers in some Annual Reviews.

## **Background**

3. On 5 February 2007 the Office of Fair Trading (OFT), in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred the supply of all PPI, except store card PPI, to non-business customers in the UK to the Competition Commission (CC) for investigation and report (the Market Investigation).
4. The CC investigated the matters referred to it in accordance with section 131 of the Act and concluded, in accordance with section 134(1), that there were features of the market, either alone or in combination, which prevented, restricted or distorted competition within the relevant market, and in accordance with section 134(2) that an adverse effect on competition existed. The CC published its findings in a report under section 136 of the Act entitled [Payment Protection Insurance market](#)

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<sup>1</sup> As defined in Article 2 of the PPI Order - Annual Review means a document required by Article 4 and completed in accordance with the instructions and in the format set out in Schedule 3 that summarizes information relating to a PPI policy for the preceding 12 calendar months.

*investigation: remittal of the point-of-sale prohibition remedy by the Competition Appeal Tribunal* on 14 October 2010 (the Report).

5. On 6 April 2011 the CC made the Order, in performance of its duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the report.
6. Article 4 of the Order requires PPI providers to send Annual Reviews to PPI customers. The purpose of Annual Reviews is to provide customers with information about their PPI policies and prompt them to consider the suitability of their policies.
7. The relevant part of the Order is Article 4 (which commenced on 6 April 2012). Among other things, Article 4.1 states:

“ . . . a PPI Provider or Administrator must, subject to Article 4.7, send an Annual Review to a Policyholder . . . .”
8. Pursuant to Article 2.1 of the Order, the Annual Review must be completed in the format set out in Schedule 3 to the Order.
9. Article 4.7 states:

“The obligations in Article 4.1 and Article 4.4 do not apply, if in the 12 months preceding the date when the Annual Review would have been sent either:

  - (a) the PPI Policyholder has:
    - (i) not paid nor been required to pay any PPI Premium;
    - (ii) cancelled the PPI policy; or
    - (iii) permitted the PPI policy to lapse; or
  - (b) the PPI Provider has:
    - (i) cancelled the PPI policy in accordance with contractual rights;
    - (ii) received notice of the death of the Policyholder; or
    - (iii) received notice that the Policyholder has left the current address and no notice of the Policyholder’s new address has been received by the PPI Provider.”

10. On 1 April 2014, the relevant functions of the OFT and the CC were transferred to the CMA under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.

## **The breaches**

### ***Breach one***

11. Nationwide reported in its 2018 annual compliance report that, due to a system coding error, some credit card PPI customers had missed being sent an Annual Review between July 2017 and December 2017. The CMA requested that Nationwide carry out further investigation. Nationwide carried out further investigation of the issue and identified that from 6 April 2012 to 31 December 2017 a total of 15,472 accounts missed one Annual Review during that period (and, in 30 instances, more than one Annual Review was missed). The remaining Annual Reviews were issued as required over this period.
12. On 3 September 2018 Nationwide explained that it had sent apology letters, which included an Annual Review, to customers who had not received one between July 2017 and December 2017. On 26 September 2018, CMA requested Nationwide to consider remediation for those customers affected between 6 April 2012 and July 2017. Following discussion with the CMA in November 2018, Nationwide proposed to redress customers who (i) cancelled within 12 months of the missed Annual Review (ii) cancelled 90 days after receiving their next Annual Review following the missed Annual Review (iii) exclude from (i) and (ii) customers who cancelled as a result of an upheld or refuted PPI mis-selling complaint. This proposal was ultimately agreed with the CMA, save that the CMA did not agree that Nationwide should exclude customers who cancelled as a result of refuted PPI mis-selling complaints. Following further discussion with the CMA, Nationwide subsequently agreed to include this sub-group with the redress. The CMA is content with Nationwide's revised proposal, which is consistent with the approach taken in remediating other breaches.
13. The CMA sent a letter, dated 19 December 2018, to inform Nationwide the CMA was considering issuing Directions. The letter requested representations from Nationwide. On 9 January 2019, Nationwide responded that

- the breach was identified and reported to the CMA and the breach arose during implementation and not post-implementation.
  - a total of 15,442 customers missed one of their Annual Reviews since 2012. Nationwide identified 1,143 customers were eligible for redress.
  - 30 customers missed two or three of their Annual Reviews since 2012.
  - The breach was undetected until 2018 because of an error in the coding, meaning the system was not operating as designed. The coding error was promptly corrected on identification. In addition to this, no complaints or adverse customer feedback was received.
  - Nationwide provided to the CMA its remediation proposal in November 2018 and it had written to all customers that missed an Annual Review in the most recent reporting round.
  - this is Nationwide's first and (at the time) only known breach.
  - Nationwide considered that the remediation and preventative steps represented a fair and proportionate response to the incident. Nationwide has now remediated all customers affected by this breach. This activity commenced in March 2019 and concluded in June 2019 with no customer complaints received.
  - Nationwide provided information regarding an additional control, which was implemented in February 2019, to identify the number of customers who are due to receive an Annual Review letter in that month by cross checking the actual Annual Review letter volumes that are produced for mailing for that month to enable prompt identification and investigation of any discrepancies in the future and the control will then be subject to a 3-month review to ensure the process is achieving its intended purpose.
  - Nationwide considered that because of the small number of accounts involved and the prompt action taken by Nationwide (having engaged with CMA) Directions are neither necessary nor appropriate.
14. In response to CMA's request on what controls are or will be implemented to prevent future similar breaches, Nationwide told the CMA that it would consider possible controls in conjunction with its third party supplier. Nationwide provided confirmation in its representations to

the CMA on 9 January 2019 that it will implement a new control to check the Annual Reviews process by February 2019.

### **Breach two**

15. Subsequent to the information and representations the CMA received from Nationwide in relation to the first breach, on 1 March 2019, Nationwide notified the CMA of a second breach following its assurance review of Nationwide's Lifestyle Protector insurance (LPI). This is a short term income protection product. Nationwide conducted its assurance review with its third party supplier on 29 and 30 January 2019. This assurance review was commissioned by Nationwide pro-actively as a result of identification of breach one. Nationwide concluded its investigations and shared its findings with internal Senior Managers on 13 February 2019.
16. The CMA requested further information from Nationwide on the breach and Nationwide provided responses on 1 and 2 April 2019.
17. Nationwide told the CMA that:
  - the breach related to understating the annual cost of PPI on Annual Reviews. Nationwide confirmed as at 30 September 2019 that the total number of customers impacted by this breach is 6530 consisting 2983 closed policies, 3349 live policies and 198 new live policies.
  - the root cause was due to a system coding error when the Annual Review requirements for the PPI product were built by a third party supplier.
  - the breach had occurred since 2012.
  - the annual cost had been understated between £281.03 and £1.18. However, the monthly cost stated was correctly shown on the Annual Review. In addition, the LPI Annual Renewal documentation issued shortly before the Annual Review each year, showed the customer the correct total annual cost paid in the previous year i.e. total premiums paid over 12 months.
  - Nationwide confirmed that a systems fix had been implemented on 17 April 2019.
  - In April 2019, Nationwide wrote to 3,349 active policyholders with a letter of apology and a corrected Annual Review.

18. Nationwide will be providing a refund of one month's premiums for each year where the costs were understated in the Annual Reviews to 6,530 customers with live and closed policies.
19. The CMA considers failure to provide customers with Annual Reviews is a serious breach of the Order. Failure to provide the correct information to customers in Annual Reviews is also a serious breach of the Order as understating the annual cost of a PPI policy can mislead customers into thinking that the PPI policy costs them less than they are actually being charged. Nationwide highlighted that the figures for the monthly cost of PPI is correct. However, the CMA considers that customers might use the Annual Cost of PPI to make comparisons of like-for-like PPI short-term income protection policies.
20. The CMA engaged with Nationwide on details of the reported breaches and to obtain explanations for the breaches between the period 9 August 2018 and 9 October 2019. The CMA sent a letter, dated 19 December 2018 to inform Nationwide that the CMA is considering issuing Directions. The letter requested representations from Nationwide. The CMA has taken into consideration the information provided in relation to the first breach by Nationwide on 9 and 17 August 2018, 3 September 2018, 10 October 2018, 13 November 2018 in response to CMA's questions and Nationwide's representations of 9 January 2019. Relating to the second breach the CMA has taken into account Nationwide's communications between 1 March 2019 and 9 October 2019.
21. On the basis of this evidence, and the fact that the CMA requires a range of compliance actions to be implemented by Nationwide, the CMA takes the view that only enforcement through Directions will ensure that the necessary actions will be carried out effectively. The CMA has decided to issue Directions to Nationwide (the Directions).

## **CMA decision**

22. In taking decisions about what actions to take in response to breaches of its remedies, the CMA takes a number of factors into account, including the severity of the breaches; the actions taken by the business to address the breaches; the previous conduct of the business; and the need for future action by the CMA.
23. When considering the severity of breaches, the CMA considers issues which include their duration; the number of customers affected; the harm caused to those customers. In relation to breach one, the CMA notes that 15,442 customers did not receive one Annual Review, 28 customers

did not receive two Annual Reviews and two customers did not receive three Annual Reviews between 2012 and 2017. Potentially, these customers may not be aware that they have PPI, although the affected members will have received other Annual Reviews in subsequent years and other documentation such as credit card statements which confirms that they hold PPI. The CMA highlights that Nationwide failed to identify and report the breach for six years. The CMA considers that it could have been identified at a much earlier stage had Nationwide been carrying out more thorough and appropriate compliance checks. In terms of breach two, a total of 6,530 customers, since 2012, received Annual Reviews containing incorrect information which understated the annual cost of PPI.

24. When considering the actions taken by the business to address the breaches, the CMA considers issues which include the extent to which the provider has engaged positively with the CMA about the breach and about addressing it. In relation to the first breach, the CMA considers that until the CMA had specifically asked, Nationwide did not reveal the full duration of the breach. The CMA also notes that Nationwide's initial remediation proposal did not include those customers affected between 6 April 2012 and July 2017. Following discussion with the CMA Nationwide expanded the remediation population. Further, Nationwide did not propose any additional controls to prevent future breaches until 9 January 2019.
25. When considering previous conduct the CMA considers issues which include whether the business has breached the remedy previously; and whether it is subject to a heightened compliance regime. The CMA is not aware of any previous breaches of the PPI Order, but notes that there have been at least two significant breaches of the Order since it came into force.
26. When considering the need for future action, the CMA considers issues which include whether there is a need for formal action to address the risk of future breaches. The CMA considers that formal action is necessary, on the basis that processes and controls should be in place for ensuring PPI customers receive their Annual Reviews in accordance with the Order, and that those Annual Reviews should not include misleading information. Nationwide failed to have appropriate processes in place to ensure all customers received an Annual Review, and that all customers received Annual Reviews containing accurate information.
27. Following consideration of these issues, the CMA has decided to issue Directions to Nationwide.

## **Directions issued under the Payment Protection Insurance Market Investigation Order 2011**

The CMA gives these Directions (the Directions) to Nationwide Building Society with company number 355B; FCA and PRA registration number 106078 and registered address at Nationwide House, Pipers Way, Swindon, Wiltshire SN38 1NW (Nationwide) under Article 16 of the Payment Protection Insurance Market Investigation Order 2011 (the Order).

### **1. Commencement and Duration**

- 1.1. The Directions come into force on 18 October 2019.
- 1.2. The Directions continue to remain in force until such time as they are varied or revoked by the CMA under the Order. The variation or revocation of these Directions does not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

### **2. Interpretation**

- 2.1. In the Directions terms have the same meaning as in the Order, unless stated otherwise.
- 2.2. 'Potential breach' for the purposes of these Directions, means any incident identified which is likely to impact on compliance with the Order.
- 2.3. Assurance Audit – an annual process by which the Independent Body or internal audit function checks compliance with the Order and must include the scope in Directions 3.2.
- 2.4. Action Plan - Nationwide's document containing all actions to be conducted with timeframes to address the breaches by Nationwide.
- 2.5. Independent Body - a body capable of carrying out an audit of processes, procedures and outcomes, not part of the corporate group/company, and without conflicts of interest.
- 2.6. "Material" for the purposes of paragraph 4.3 relates to significant and/or systemic changes made to compliance systems or controls rather than minor technical or operational related changes.



### 3. Directions

- 3.1. The CMA gives the following Directions to Nationwide.
- 3.2. Nationwide is directed to appoint an Independent Body to carry out Assurance Audits of the procedures, processes and outcomes which constitute compliance with the Order, and submit to the CMA a report produced by that Independent Body of those procedures, processes and outcomes. The due date for the initial independent Assurance Audit report will be 6 April 2020. Subsequent Assurance Audit reports must also be submitted to the CMA annually thereafter. The scope of the Assurance Audit to include:
  - a. the policies, practices and procedures (including those related to training) which Nationwide has in place to secure compliance with the Order
  - b. other evidence suggesting the presence or absence of actual or suspected non-compliance with the Order
- 3.3. Nationwide must submit to the CMA a description of the scope of the Assurance Audit to be carried out by the Independent Body (and which will form part of the contract with the Independent Body) in accordance with the timing set out in its Action Plan.
- 3.4. Nationwide must confirm the appointment of the Independent Body to the CMA in accordance with the timing set out in its Action Plan.
- 3.5. Subsequent Assurance Audits must be carried out by an Independent Body until Nationwide has completed all relevant actions to address all the recommendations from the initial independent Assurance Audit carried out in April 2020.
- 3.6. Nationwide must submit the report by the Independent Body to the CMA within 30 calendar days of the report being completed. At the same time, Nationwide will provide to the CMA a statement on actions that Nationwide intends to carry out related to recommendations in this report, and the timings of any such actions. This statement must be signed by a Director responsible for PPI products and by Nationwide's Director of Retail Risk.
- 3.7. Nationwide must provide written confirmation to the CMA on a single occasion once all relevant actions to address the recommendations identified by the Independent Body from the initial independent Assurance Audit carried

out in April 2020 have been satisfactorily completed. This confirmation should be provided to the CMA within 14 days of their completion.

- 3.8. For each subsequent independent Assurance Audit, and where Nationwide is continuing to use an Independent Body to provide this, Nationwide does not have to use the same Independent Body each year.
- 3.9. In receipt of written confirmation from the CMA that relevant actions, as per Direction 3.7 to address all the recommendations from the initial independent Assurance Audit carried out in April 2020 have been satisfactorily completed, Nationwide may appoint its internal audit function (as long as the internal audit function is independent of the systems used by Nationwide to comply with the Order) to carry out subsequent Assurance Audits. The scope of any Assurance Audits carried out by the internal audit function must be identical to those carried out by the Independent Body and overseen by a Director of that independent internal audit function.
- 3.10. Nationwide must provide the CMA with a report of each Assurance Audit carried out by its internal audit function within 30 days of the reviews' completion. This must be accompanied by a statement explaining the changes it plans to make to its procedures and processes.
- 3.11. Any proposed amendment by Nationwide to the scope of the Assurance Audit, must first be agreed with the CMA in writing.
- 3.12. Nationwide is directed to provide the CMA with an Action Plan (a non-confidential version will be published with these Directions). The Action Plan will contain a plan (including milestones where relevant) on how Nationwide will:
  - implement and maintain processes and checking procedures to prevent similar future breaches relating to sending Annual Reviews and incorrect information provided in Annual Reviews for all relevant PPI products
  - complete customer remediation relating to the current breaches, including sending out apology letters
  - engage and share the draft action plan with all its relevant third parties
  - engage and appoint an Independent Body to undertake the Assurance Audit
  - deliver the actions to be carried out as part of the Assurance Audit by the Independent Body

- update the CMA on progress made in completing the actions set out in the Action Plan

3.13. Any proposed amendments by Nationwide to its Action Plan must be notified in writing and approved by the CMA and the CMA will publish a non-confidential version of the amended Action Plan.

#### **4. Monitoring and Compliance**

4.1 A non-confidential summary of how these actions are to be completed, with timescales for completion, is contained in Nationwide's Action Plan at Annex A.

4.2 Nationwide is directed to notify the CMA of any breaches or potential breaches within 14 calendar days of identifying a breach or potential breach. Nationwide is directed to take all necessary steps to ensure its internal systems are capable of meeting this requirement.

4.3 Should Nationwide propose to make any material changes to its compliance systems or controls relating to compliance of the Order, proposed amendments:

- need to be approved by the CMA
- must be notified to the CMA

Adam Land

Senior Director

Signed by authority of the CMA Board

18 October 2019