

Directions to Lloyds Banking Group plc issued under the Payment Protection Insurance Market Investigation Order 2011

Introduction

1. The CMA is issuing Directions to Lloyds Banking Group (LBG) concerning breaches of the Payment Protection Insurance Market Investigation Order 2011 (the Order) that occurred between 2012 and 2018 and were notified to the CMA in 2018.
2. The CMA wrote to LBG on 24 January 2017 concerning six substantive breaches of the Order that occurred in 2016 with the aim of preventing further breaches from arising.
3. Given the continued failure of LBG to adhere to the Order, the CMA is now issuing Directions to LBG concerning this issue as set out below.

Background

4. 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 payment protection insurance (PPI), except store card PPI, to non-business customers in the UK to the Competition Commission (CC) for investigation and report (the Market Investigation).
5. 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 investigation: remittal of the point-of-sale prohibition remedy by the Competition Appeal Tribunal on 14 October 2010 (the report).
6. 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.

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 Competition and Markets Authority (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.

Previous breaches

11. LBG has breached the Order on six occasions previously. These breaches were notified to the CMA in 2016 and are set out in a letter published by the CMA in January 2017. All six were similar breaches of the Order to these more recent breaches notified to the CMA in 2018.

- In 2015, due to a coding error, 4,700 customers received Annual Reviews with incorrect figures for the fields ‘Estimated total remaining charge for loan’ and ‘The total remaining amount you must pay back’.

- LBG offered all customers an increase in PPI cover when they increased their mortgage borrowing. Some customers preferred to freeze their level of PPI cover. An IT platform migration did not provide the functionality necessary to enable premiums to be frozen. As a result, 207 customers were overcharged premiums from March 2013.
 - 875 LBG customers had an active policy and should have received an Annual Review prior to 2015/16, but had not.
 - The Annual Reviews of 7,700 PPI customers were potentially affected because the 'gone away' indicator on accounts was not always up to date.
 - LBG failed to send Annual Reviews to 53 LBG mortgage customers in 2012/2013 and 2013/2014.
 - Due to an IT issue, incorrect data was sent in Annual Reviews to five customers.
12. The CMA accepted LBG's proposals in 2016 on actions it would take to ensure further similar breaches would not occur in the future. More information on these previous breaches of the Order is set out in the CMA's letter to LBG published 24 January 2017 on the CMA's website.

Breaches reported in 2018

13. On 28 June 2018 LBG informed the CMA of two further breaches of the PPI Order:
- **Credit Card PPI Accounts in Pay-Down:** LBG failed to send Annual Reviews to approximately 14,060 customers with open or closed PPI policies. These included 4,560 customers with a live PPI policy, 7,500 closed PPI policies and an estimated 2,000 customers relating to pre-Bank of Scotland migration to LBG systems in 2014. LBG confirmed that 39 NewDay customers were also impacted, and some additional TSB customers may also be affected. LBG informed the CMA that it first identified these issues in February 2018. These failures related to the period between 2012 and 2018.
 - **Credit Card PPI, TSB Data Migration:** On 23 April 2018, TSB credit card accounts were migrated from LBG to TSB systems as part of TSB ceasing to have a service agreement with LBG. These customers retained their PPI cover with LBG and, as such, LBG has responsibility for compliance with the Order, including the provision of Annual Reviews. LBG identified an error in its calculation method for the cost of PPI premiums paid over the past 12 months. LBG's error has resulted in the calculations in value of

PPI premiums being understated by LBG on the Annual Reviews and the average outstanding balance that LBG supplied to customers being incorrect. This means that LBG sent information to customers which showed that their PPI premiums were less than was actually charged. 2,884 incorrect Annual Reviews were issued by LBG. However, affected consumers were charged the correct amount of PPI premiums by LBG and information supplied by LBG by other means such as credit card statements was correct.

14. In view of the above, the CMA sought information from LBG to understand the steps LBG proposed to take to address these breaches, and the CMA considered the necessary steps that LBG could take to provide it with confidence that LBG will be able to comply with the Order on an ongoing basis. This includes:
 - ensuring that LBG has the appropriate policies and procedures in place to prevent similar breaches from happening again, in particular given the failure of the controls put in place in 2016 to prevent further breaches; and
 - ensuring that LBG has in place appropriate policies and procedures to ensure that, in the event of further breaches, the CMA is informed promptly.
15. In addition, LBG sent the CMA its proposals for sending letters of apology and offering appropriate compensation to its affected customers.
16. LBG set out timeframes for current and planned actions, including remedial activities, in LBG's Action Plan. See Annexe A for a non-confidential version of LBG's Action Plan.
17. Having considered the number and extent of LBG's current and previous breaches of the Order (described at paragraphs 11 and 13 above), and LBG's current proposals for complying with the Order, the CMA has decided to issue Directions to LBG as summarised below. For further details on the Directions please see section 3 below.
18. The CMA has decided to issue Directions to LBG, with requirements for:
 - submission of a more detailed annual compliance statement in addition to its PPI Annual Compliance Report;
 - notification of any breaches or potential breaches within 14 calendar days of identifying a breach or potential breach;
 - submission to the CMA of an annual assurance report produced by an independent body of the systems used by LBG to comply with the Annual

Review provisions of the Order, which includes an assessment of whether they are appropriate;

- carrying out monthly monitoring checks to ensure it issues its PPI Annual Reviews to customers with PPI policies;
 - ensuring its PPI systems are robust to migrations of customers and data; to report annually to the CMA on this robustness, in relation to both planned and future migrations; and
 - confirmation of the completion of all actions to remedy the breaches and remedial activities set out in LBG's Action Plan at the relevant target implementation dates.
19. On 19 September 2018 the CMA provided LBG with draft Directions specifying and describing the steps to be taken by LBG for the purposes of securing future compliance with the Order.
20. The CMA has considered the representations received on 28 September 2018 from LBG on the draft Directions, and now issues these Directions.

Directions issued under the Payment Protection Insurance Market Investigation Order 2011

The CMA gives these Directions (the Directions) to Lloyds Banking Group plc (LBG) with company number SC95000 and registered address at The Mound, Edinburgh EH1 1YZ 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 4 October 2018.
- 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.

3. Directions

- 3.1 The CMA gives the following Directions to LBG:
- 3.2 LBG is directed to submit a more detailed annual compliance statement to the CMA in addition to its PPI Annual Compliance Report. This annual compliance statement will assess and report on the level of compliance with the Annual Review provisions of the Order, and be in the following format:
 - LBG will submit each annual compliance statement in a separate document and provide these to the CMA at the same time as its PPI Annual Compliance Report;
 - LBG will ensure that each annual compliance statement is signed by the PPI Compliance Officer and a Director responsible for PPI Products; and
 - The compliance statement for these Directions should be submitted regardless of the circumstance where LBG should fall below the reporting threshold for submitting a PPI Compliance Report.

- 3.3 LBG is directed to report any breaches or potential breaches of the Order to the CMA within 14 calendar days of identifying a breach or potential breach. LBG is directed to take all necessary steps to ensure its internal systems are capable of meeting this requirement.
- 3.4 LBG is directed to submit to the CMA an annual assurance report produced by an independent body of the systems used by LBG to comply with the Annual Review provisions of the Order which would include an assessment of whether they are appropriate. LBG will take the following steps:
- LBG will appoint an independent body to carry out a review in September of each year on an annual basis;
 - LBG will confirm the appointment to the CMA by September of each year on an annual basis;
 - LBG will submit to the CMA a description of the scope of the annual audit (which should include all LBG's systems relating to complying with the Annual Review provisions of the Order) which will be conducted by the independent body by September of each year on an annual basis; and
 - LBG will submit the annual audit by the independent body to the CMA within 30 days of the annual audit being completed.
- 3.5 LBG is directed to carry out monitoring checks to ensure it issues its PPI Annual Reviews to customers with PPI policies. LBG will take the following steps:
- LBG will require the company producing its independent assurance report (at 3.4 above) to provide LBG with a template list of checks to be conducted on a monthly basis; and
 - carry out checks on all procedures identified by the company producing its independent assurance report on a monthly basis.
- 3.6 LBG is directed to ensure its PPI systems are robust to all migrations of customers and data; to report annually to the CMA on this robustness, in relation to each future migration and to take the following steps:
- LBG will send to the CMA any current procedures in place for all planned migrations of systems relating to PPI which could impact on compliance with the PPI Order within 30 days from the date when these Directions are made; and
 - LBG will implement necessary and appropriate procedures to ensure that any further migrations of systems do not lead to breaches and submit this

to the CMA 30 days in advance of the migration of any systems relating to PPI which could impact on compliance with the PPI Order.

- 3.7 LBG is directed to confirm the completion of all actions to remedy the breaches and remedial activities set out in LBG's Action Plan at the relevant target implementation dates. The confirmation is to be provided to the CMA within one week of completion for each of the actions contained in LBG's 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 LBG's Action Plan, at Annexe A.
- 4.2 Should LBG propose to make amendments to LBG's Action Plan, all such proposed amendments need to be submitted to and approved by the CMA and the CMA will publish a non-confidential version of the amended compliance plan with Directions.

Adam Land
Senior Director
Signed by authority of the CMA Board
4 October 2018