

## Directions to Cardif Pinnacle 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 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 Cardif Pinnacle (CP) concerning four breaches under Article 4 of the Order. These breaches, notified to the CMA in December 2019, related to CP issuing inaccurate Annual Reviews which either overstated or understated the Annual Cost of PPI and/or the average monthly cost of PPI.

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

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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 summarises information relating to a PPI policy for the preceding 12 calendar months.

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.

### **Current breaches**

11. On 20 December 2019, CP notified the CMA that it became aware of issues with its policy management systems. These issues created anomalies in the Annual Reviews which were produced. In each of the anomalies identified, Annual Reviews would either overstate or understate the Annual Cost of PPI and/or the Average Monthly cost of PPI. The CMA determined that these issues represented four breaches of the Order.
  - i. *Breach One:* Customers received Annual Reviews where the PPI premium values were understated. Due to a system coding error, an Annual Review was generated before the premium was posted on the policy management system. This would result in a corresponding overstatement in the following year. The incorrect Annual Reviews were first sent in 2012;
  - ii. *Breach Two:* Customers received Annual Reviews where the PPI premium values were overstated. The policy management systems were coded to calculate Annual Reviews from the anniversary date and so were configured to collect data which spanned 366 days. If the Direct Debit date fell on day 366, the Annual Review would be overstated by one month. These incorrect Annual Reviews were first sent in 2012;
  - iii. *Breach Three:* Customers received Annual Reviews where the PPI premium values were overstated. In this scenario, a Direct Debit was processed manually and recorded on the policy management system before the scheduled date of collection. As a result, when the Annual Review was generated it would be overstated by one month by including the early manual Direct Debit collection. This would lead to a corresponding understatement in the following year; and
  - iv. *Breach Four:* Customers received Annual Reviews where PPI premium values were overstated. In March 2019, the time of the Direct Debit

collection changed from 15:00 to 06:00. As a result, when the Annual Reviews were generated, it would include the Direct Debit posted at the earlier time of 6am, thus resulting in an overstatement by one month.

12. A total of 14,833 inaccurate Annual Reviews were sent to customers and many customers were affected by more than one of the breaches. The total number of customers affected is 7,400.
13. Article 4.10 of the Order requires PPI Providers and Administrators to send Annual Reviews using the Annual Reviews template as set out in Schedule 3a of the Order. In this template, the Annual Cost of PPI and the Average Monthly Cost of PPI must cover the “past year” i.e. 12 months. By issuing Annual Reviews which either overstate or understate these values, CP has breached Article 4.10 of the Order. The CMA does not consider that any of the exceptions listed in Article 4 apply here (see above paragraph 9).
14. The CMA considers that these are significant breaches of the Order. In particular, the CMA notes that some customers received incorrect Annual Reviews for a period of up to eight years before the error was identified.
15. The CMA wrote to CP on 9 March 2020 to inform that it was minded to issue Directions. The letter invited representations from CP.
16. On 27 March 2020, CP responded to the CMA’s letter summarising the voluntary actions it planned to take to remediate affected customers; bring the breach to an end; and to prevent a recurrence. These comprised:
  - Sending apology letters to customers affected which includes reminders to customers to review their protection insurance and ensure that the protection insurance remains appropriate; and
  - Correcting the underlying faults which caused the four breaches.

### **Previous breaches**

17. The CMA is not aware of any previous breaches by CP as this is CP’s first notification of breaches to the CMA.

## **CMA decision**

18. In deciding what actions to take in response to a breach of its remedies, the CMA takes a number of factors into account, including the severity of the breach; the actions taken by the business to address the breach; the previous conduct of the business; and the need for future action by the CMA.
19. When considering the severity of the breach, the CMA considers issues which include its duration, the number of customers affected and the harm caused to those customers. The CMA considers that the breaches are of significant duration, at approximately eight years. The CMA also considers that the number of customers affected is significant, at 7,400. The fact that CP was not able to identify the breaches sooner suggests that its control processes are insufficiently robust to ensure ongoing compliance with the Order. In addition, CP administers PPI policies on behalf of a number of PPI providers. With the breaches identified, the CMA considers that CP has not ensured that its processes and procedures are robust enough to fulfil the services it provides in a manner compliant with the Order.
20. When considering the actions taken by the business to address the breach, the CMA considers issues which include the extent to which the provider has engaged positively with the CMA about the breaches and the action taken to address the breaches identified. CP has been proactive in engaging with the CMA and has provided a thorough breach report. CP also proposed solutions to correct the issues identified with its policy management systems.
21. 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 notes that this is CP's first breach. The CMA also considers that CP has been working positively to correct the issues identified to date.
22. 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 has taken account of the actions taken and proposed by CP following its breaches of the Order. However, the fact that the breaches went undetected for a number of years indicates that CP's internal compliance processes are not robust enough to ensure compliance with the Order. The CMA considers that there is a need for it to take formal action and impose further measures on CP to ensure future compliance.

23. In coming to this decision, the CMA has taken into consideration the information provided by CP on 20 December 2019, 7 February 2020, 14 February 2020, 20 February 2020, 26 February 2020 and 22 April 2020 in response to the CMA's questions and CP's representations dated 27 March 2020 and 21 May 2020. The CMA has also taken into account the fact that it requires a range of compliance actions to be implemented by CP. The CMA takes the view that only enforcement action through directions will ensure that the necessary actions will be carried out effectively, and consequently the CMA has decided to issue directions to CP (the Directions).

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

The CMA gives these Directions (the Directions) to Pinnacle Insurance PLC (CP) with company number 1007798 and registered address at Pinnacle House, A1 Barnet Way, Borehamwood, Hertfordshire WD6 2XX 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 8 July 2020.
- 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 Audits' – an annual process by which the Independent Body or independent internal assurance function checks compliance with the Order and must include the scope in Direction 3.3.
- 2.4 'Action Plan' – CP's document containing all actions to be conducted with timeframes to address the breaches by CP.
- 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 CP.
- 3.2 CP 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 2021. Subsequent Assurance Audit reports must also be submitted to the CMA annually thereafter. The scope of the Assurance Audit must include:
  - (a) the policies, practices and procedures (including those related to training) which CP has in place to secure compliance with the Order; and
  - (b) other evidence suggesting the presence or absence of actual or suspected non-compliance with the Order.
- 3.3 CP 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 CP 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 CP has completed all relevant actions to address all the recommendations from the initial independent Assurance Audit carried out in April 2021.
- 3.6 CP must submit the report by the Independent Body to the CMA within 30 calendar days of the report being completed. At the same time, CP will provide to the CMA a statement of actions that CP intends to carry out related to recommendations in this report, and the timings of any such actions. This statement must be signed by the General Counsel of CP.
- 3.7 CP 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 2021 have been satisfactorily completed. This confirmation must be provided to the CMA within 14 days of their completion.

- 3.8 For each subsequent independent Assurance Audit, and where CP is continuing to use an Independent Body to provide this, CP 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 2021 have been satisfactorily completed, CP may appoint its internal audit function (as long as the internal audit function is independent of the systems used by CP 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 CP 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 CP to the scope of the Assurance Audit, must first be agreed with the CMA in writing.
- 3.12 CP is directed to provide the CMA with an Action Plan (a non-confidential version of the Action Plan will be published with these Directions). The Action Plan will contain a plan (including milestones where relevant) on how CP will:
- (a) implement and maintain processes and checking procedures to prevent similar future breaches relating to incorrect information provided in Annual Reviews for all relevant PPI products;
  - (b) complete customer remediation relating to the current breaches, i.e. sending out apology letters;
  - (c) engage and share the draft action plan with all its relevant third parties;
  - (d) engage and appoint an Independent Body to undertake the Assurance Audit;
  - (e) deliver the actions to be carried out as part of the Assurance Audit by the Independent Body; and

(f) update the CMA on progress made in completing the actions set out in the Action Plan.

3.13 Any proposed amendments by CP 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 CP's Action Plan, at Annex A.

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

4.3 Should CP propose to make any material changes to its compliance systems or controls relating to compliance with the Order other than those which are in response to the recommendations and actions arising from its Assurance Audits, all such proposed amendments must be submitted to and approved by the CMA in writing advance of implementation by CP.

Adam Land  
Senior Director  
Signed by authority of the CMA Board  
8 July 2020