

SME Banking behavioural undertakings 2002

CMA report on Banks' compliance audits 2020

29 June 2021

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1. Executive Summary

- 1.1 This Report describes how well eight banks¹ (the eight banks) have complied with obligations restricting the bundling of certain banking products offered to Small and Medium-size Enterprises (SMEs)². These obligations and further definitions are described in Annex 1 and Annex 2.
- 1.2 In 2002, the eight banks committed to legal obligations in the SME Banking Undertakings (Behavioural) 2002 (the Undertakings), including not to require, agree or threaten to require that customers open or maintain a business current account (BCA) as a condition of receiving, servicing or maintaining a loan; a process known as ‘bundling’.
- 1.3 In 2014, the eight banks signed an agreement (the 2014 Agreement) to conduct annual audit reviews³ of their compliance with Undertakings including where applicable: their policies, practices and procedures (including those related to training); staff awareness; and other evidence suggesting the presence or absence of actual or suspected non-compliance. The eight banks carry out internal audits and provide audit reports each year to the CMA describing their compliance with the Undertakings and the obligations in the 2014 Agreement. The obligations in the enhanced compliance regime are designed to ensure that the eight banks are transparent with the CMA over breaches and issues, and to improve the level of compliance given previous breaches that had been identified.
- 1.4 This report also sets out the CMA’s findings from its analysis of the eight banks’ audit reports covering the period from 1 July 2019 to 30 June 2020. Where appropriate the CMA has highlighted good practice where one or more of the eight banks have made improvements or enhanced their procedures and practices to monitor and promote compliance with the Undertakings and with the obligations in the 2014 Agreement.⁴

¹ AIB Group (UK) plc (known as First Trust Bank until November 2019 and from that date as AIB NI), Bank of Ireland, Barclays Bank plc (Barclays); Clydesdale Bank plc (Clydesdale) which incorporates Yorkshire Bank and is currently undergoing rebranding to Virgin Money UK; HSBC’s ring fenced bank HSBC UK Bank plc and HSBC’s non-ring fenced bank HSBC Bank plc are collectively known in this report as HSBC (HSBC), Lloyds TSB Bank plc (part of Lloyds Banking Group and known as LBG in this report), Northern Bank Limited (known as Danske Bank) and NatWest Group (formerly the Royal Bank of Scotland Group (RBS)) which includes Ulster Bank Limited (Ulster Bank) in Northern Ireland (together referred to as ‘the eight banks’). RBS officially changed its name to NatWest Group in 2020.

Nine banks originally agreed to the behavioural undertakings, two of these banks, HBOS Plc and Lloyds TSB Bank plc, subsequently merged to become Lloyds Banking Group.

² SME Banking Undertakings (Behavioural) 2002 <https://www.gov.uk/government/publications/small-and-medium-sized-enterprise-sme-banking-undertakings>

³ See Annex 1 of this Report – CMA’s 2014 Agreement. Also see Annex 2 Glossary for definitions.

⁴ Due to the Coronavirus (COVID-19) pandemic in 2020, the CMA agreed for the banks to submit audit reports in the second part of 2020 rather than the usual July deadline. The audit reporting period remains unchanged. For 2021 audits, the usual deadline for audit report submissions will resume.

1.5 Since the Undertakings have been in force, the CMA has taken enforcement actions against some of the eight banks for breaches, most of which were material breaches of the bundling prohibition.⁵

Bank	Details	Number of small businesses affected
HSBC	Legal Directions issued in 2014.	Some HSBC staff informed a number of SMEs that there was a requirement to open a BCA in order to obtain a loan.
First Trust (AIB NI)	Legal Directions issued in 2014.	6
Barclays	Legal Directions issued in 2019.	816
AIB NI	Public letter in 2020.	Failure to comply with Directions.
Lloyds Banking Group	Public letter in 2020.	30,000
Clydesdale Bank	Public letter in 2021.	55
Danske Bank	Public letter in 2021.	305

1.6 During the reporting period covered by this report or shortly after, the CMA identified breaches by four of the eight banks:

- (a) LBG;
- (b) Clydesdale;
- (c) Danske Bank; and
- (d) AIB NI.

1.7 The CMA found that LBG, Clydesdale Bank and Danske Bank breached the Undertakings by requiring small businesses to open BCAs with them in order

⁵ Clause 17 of the SME Banking Undertakings (Behavioural) 2002.

to apply for loans provided under the Government-backed [Bounce Back Loans Scheme \(BBLs\)](#).

- 1.8 The BBLs offered small businesses financial support during the Coronavirus (COVID-19) pandemic and was open for small businesses to apply for loans up to 31 March 2021. Since May 2020 when the BBLs was launched, the CMA investigated the eight banks' approaches to providing the loans and engaged further with those banks that were offering loans in breach of the Undertakings to ensure the breaches were rectified. These breaches resulted in potential or actual financial harm to small businesses and to the competitive process. The CMA published letters to [LBG](#), [Clydesdale Bank](#) and [Danske Bank](#) on the [GOV.UK website](#) and recorded entries on the CMA's [Register of Breaches](#)⁶.
- 1.9 Between December 2019 and August 2020, AIB NI reported it had failed to comply with the [Directions](#) issued under the Undertakings. AIB NI did not include wording in its Business Lending Policy not to require SME customers to open or maintain a BCA in order to open or maintain a business loan or deposit account. AIB NI will ensure that a similar breach will not happen again through undertaking a review of its credit policies to ensure all relevant regulatory obligations are properly captured. The CMA published a [letter](#) on the [GOV.UK website](#).
- 1.10 Further potential breaches have been identified by three banks and are currently being investigated by the CMA.
- 1.11 The CMA appreciates that the BBLs was created swiftly and during the early stages of the global Coronavirus (COVID-19) pandemic, and it has benefitted large numbers of businesses, allowing them rapid access to finance at a time of need. However, the CMA also notes that the BBLs was designed with clear knowledge and understanding of the presence of the Undertakings. Consequently, while the CMA has been clear that its own action should not prevent lending from taking place, the BBLs did not override the necessity for the Banks to comply with the Undertakings. A number of breaches of the Undertakings during this period will have dampened competition in SME banking markets contrary to the expectations and requirements of the Undertakings.
- 1.12 Furthermore, it is a source of significant concern to the CMA that 19 years after these obligations were put in place, and despite the CMA having created

⁶ The CMA's Register of Breaches will publish a register of all significant breaches notified to us since 1 April 2020 of market remedies (made or accepted under sections 159 and 161 of the Enterprise Act 2002) and merger remedies (made or accepted under sections 82 and 84 of the Enterprise Act 2002). See [Notice of a public register of breaches of the CMA's markets and mergers remedies - GOV.UK \(www.gov.uk\)](#)

an enhanced compliance regime including requirements for an internal audit and reporting the results of this including statements of compliance, there are still significant numbers of breaches of these obligations taking place. These continuing breaches demonstrate that the banks responsible are not taking sufficiently seriously their obligations to the CMA, and to their customers.

- 1.13 The continued breaches of these Undertakings demonstrate a need for the CMA to be able to impose more effective sanctions against banks that fail to comply with these obligations, as the enforcement action taken to date does not appear to have generated a sufficient imperative in these banks to ensure they comply with the Undertakings on an ongoing basis. The CMA has been discussing with Government the possibility of it obtaining fining powers for those organisations which breach its Orders and Undertakings in the future.
- 1.14 The CMA expects the eight banks to invest in and deliver full compliance with the Undertakings in the future. The CMA expects these banks to consider in detail how to improve their procedures, practices, compliance checking and staff training, to be able to demonstrate in a fully informed manner, that they are compliant with these Undertakings.
- 1.15 The CMA is available to provide guidance in relation to matters regarding compliance for these and other Undertakings and Orders affecting retail banks. The CMA encourages banks to contact the CMA as soon as any breaches or potential issues arise, even where the full details have not become clear. This is so that the CMA can understand the breaches and consider appropriate action with the organisation concerned. There are further details in the CMA's published guidance [‘Merger and market remedies: Guidance on reporting, investigation and enforcement of potential breaches’](#).
- 1.16 For queries relating to the SME Banking Undertakings and compliance reporting please contact the CMA's Remedies Monitoring and Enforcement Team: RemediesMonitoringTeam@cma.gov.uk

2. Compliance issues identified

- 2.1 As part of the annual reporting regime introduced in the 2014 Agreement to ensure compliance with the Undertakings, banks subject to the Undertakings carry out an annual audit of their practices and procedures. These are reported to the CMA by 31 July each year⁷.
- 2.2 The CMA has assessed the extent to which the eight banks have complied with their obligations under the Undertakings and under the 2014 Agreement. The CMA has also assessed compliance with Directions issued under these Undertakings:
- to [HSBC](#) in 2014
 - to [AIB NI](#) (then called First Trust) in 2014, and
 - to [Barclays](#) in 2019.
- 2.3 For each of the eight banks, the CMA has assessed performance by reference to the following categories:
- **policies, practices and procedures** (including those related to training) which the bank has in place **to secure compliance with the Undertakings**
 - **policies, practices and procedures relating to internal communications on compliance**
 - **policies, practices and procedures relating to external communications** e.g. customer guidance
 - **awareness of the bank's staff** who are responsible for the marketing and sale of business loans and business deposit accounts (the Relevant Staff) with the requirements of the Undertakings
 - **other relevant evidence** suggesting the presence or absence of actual or suspected non-compliance with the Undertakings.

Breach of Directions by AIB NI

- 2.4 AIB NI failed to meet the requirements of Direction 6 to incorporate (and properly maintain) the requirement of Clause 17 of the Undertakings into its

⁷ Due to the Coronavirus (COVID-19) pandemic in 2020, the CMA agreed for the banks to submit audit reports in the second part of 2020 rather than the usual July deadline.

Business Lending Policy. In June 2020, AIB NI identified that a reference to the requirements around Bundling had been inadvertently removed from its Groupwide Business Lending Policy as part of a policy review in December 2019. Once identified, the matter was reported to the CMA. AIB NI confirmed that the required wording was re-inserted into the policy in August 2020. (See paragraph 3.3 below). The CMA wrote to AIB NI about this on 5 October 2020 and published the [letter](#).

Breaches by LBG, Clydesdale Bank and Danske Bank in relation to providing Bounce Back Loans

2.5 The Undertakings prevent bundling of loans and BCAs for small businesses and prevent large banks from restricting competition. The purpose is to preserve choice for small businesses about the banking services they use. The CMA found three banks to be in breach of the Undertakings when providing loans under the scheme. The CMA notes however the speed with which the BBLs was established in response to the Coronavirus (COVID-19) pandemic, and the emphasis at that time on getting urgent funding to small businesses.

LBG

2.6 LBG breached the Undertakings by requiring around 30,000 of its SME customers holding a personal current account to open a BCA with it in order to progress their application for a loan under the BBLs. LBG started offering the loans under the BBLs on 8 May 2020 and, following extensive engagement with the CMA, changed its processes to become compliant in September 2020. It also:

- advised SME customers applying for a loan under the BBLs that they are not required to open or maintain a BCA in order to apply for a Bounce Back Loan;
- offered SME customers the choice upfront to apply for a fee-free Loan Servicing account or a BCA;
- wrote to existing BBLs customers with a BCA to offer the chance to switch to a fee-free loan servicing account; and
- committed to provide two months' notice to those affected customers holding BCAs of account charges being imposed, in addition to 12 months' free banking.

Clydesdale Bank

- 2.7 Clydesdale breached the Undertakings by requiring 55 of its SME customers to open a BCA with it in order to progress their application for a loan under the BBLs. Clydesdale started offering the loans under the BBLs on 4 May 2020.
- 2.8 During November and December 2020, Clydesdale took the following actions to address its breach of the Undertakings by:
- writing to those affected SME customers with a BCA to offer a choice to switch to a fee-free loan servicing account;
 - offering SME customers who apply for loans under the BBLs the choice between opening a fee-free loan servicing account or a BCA;
 - informing SME customers that they are not required to maintain a BCA in order to retain a Bounce Back Loan; and
 - committing to provide one month's advance notice to customers holding BCA of the charges being imposed.

Danske Bank

- 2.9 Danske Bank breached the Undertakings by requiring 305 SMEs to open a BCA with it before Danske Bank would consider an application for a loan under the BBLs. Danske Bank started offering loans under the BBLs on 4 May 2020. The CMA had engaged with Danske Bank shortly after the BBLs was introduced and, at that time, Danske Bank informed the CMA that it believed its approach was compliant with the Undertakings. However, following further investigation by the CMA, Danske Bank highlighted that it had required some of its SME customers (which were operating their business finances through a personal current account with Danske Bank) to open a BCA before Danske Bank would consider a re-submitted Bounce Back Loan application. The CMA was informed that, in Danske Bank's view, this was the most robust way to promptly meet the demand for support from these SMEs while simultaneously meeting its 'know your business' legal obligations and the fraud checking requirements of the BBLs.
- 2.10 Danske Bank's actions resulted in 305 SMEs opening BCA with it which they may not have wanted or needed in order to obtain finance during a critical time.
- 2.11 During February and March 2021, Danske Bank took the following actions to address its breach of the Undertakings by:

- writing to the affected customers to apologise for requiring them to open a BCA as part of the Bounce Back Loan application process and to inform these customers that they would be refunded for the BCA fees and charges incurred as a result;
- refunding all current account fees and charges incurred by the impacted customers from the date of opening their Danske Bank BCA (plus 8% interest as compensation);
- offering each of these customers the option to switch from a BCA to a fee-free loan servicing account in order to service their Bounce Back Loan going forward;
- offering a 60 days fee free period from the date of the apology letter sent to impacted customers. Danske Bank will notify these customers seven days before charges are reinstated again on the BCAs;
- introducing a choice of a fee-free loan servicing account option to new loan applicants. This action brought the breach to an end as customers had a choice between a Danske Bank BCA and fee-free loan servicing account when applying for a Bounce Back Loan; and
- updating its website with key customer messages offered by the CMA.

3. Best practice for ensuring compliance

Best practice

3.1 The CMA expects to see high standards put in place and maintained across the eight banks to ensure full compliance with the Undertakings, the 2014 Agreement and Directions where appropriate. While the areas of best practice outlined in previous reports⁸ continue to be relevant, this section outlines the current areas of best practice that are relevant for the eight banks and which could improve the consistency of compliance. This chapter highlights best practice and possible improvements for banks to consider in the following areas:

- (a) Banks' policies, practices and procedures in relation to compliance with the obligations not to bundle BCAs with loans and deposit accounts;
- (b) Banks' policies, practices and procedures relating to internal communications on compliance;
- (c) Banks' policies, practices and procedures relating to external communications e.g. customer guidance;
- (d) Banks' staff awareness and training; and
- (e) Other evidence of compliance.

⁸ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-report-on-compliance>

Policies, practices and procedures in relation to compliance

3.2 Table 1 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance. This is indicated by ‘Y’ Yes, fully compliant, or ‘N’ No, not fully compliant.

Table 1: Policies, practices and procedures (‘Y’ indicates Yes and ‘N’ indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays	Clydesdale Bank	HSBC	LBG	Danske Bank	NatWest Group
Procedures to promote compliance?	N	Y	Y	Y	Y	Y	Y	Y
Procedures to monitor compliance?	Y	Y	Y	Y	Y	Y	Y	Y
Procedures reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
First line assurance models ⁹ in place?	Y	Y	Y	Y	Y	Y	Y	Y
Second line assurance models in place?	Y	N	Y	N	Y	Y	Y	Y

Notes:

- (1) AIB NI did not comply with Direction 6 of the Directions given to First Trust Bank in 2014. AIB NI complied with the other relevant Directions. See below for details.
- (2) The CMA is currently investigating whether HSBC has complied with the relevant parts of the Directions given in 2014.

3.3 AIB NI did not fully comply with the requirements of its Directions. AIB NI is required through Direction 6 to incorporate (and properly maintain) the requirement of Clause 17 of the Undertakings into its Business Lending Policy. However, the Business Lending Policy was amended in December 2019 and as a result the reference to bundling was removed following a gap

⁹ Monitoring and checking compliance as described by the Chartered Institute of Internal Auditors - www.iaa.org.uk

First line assurance includes functions that own and manage risk for example, management controls and internal control measures. Second line assurance include functions that oversee or specialise in risk management and compliance.

analysis review of policies and external regulation. As such, AIB NI failed to meet the requirements of this Direction until 4 August 2020 when the reference to bundling was restored. The CMA notes that AIB NI's procedures relating to the Undertakings were not amended and as such continued to reflect the requirements of the Undertakings. AIB NI stated that as its staff work to these procedures this error did not lead to a breach of Clause 17 of the Undertakings.

- 3.4 Bank of Ireland and Clydesdale did not report having second line assurance models in place for compliance with the Undertakings. In the previous reporting period, three out of the eight banks did not adopt second line assurance. These were Bank of Ireland, Barclays and Clydesdale. However, an improvement in this reporting period is that all banks now have first line assurance models compared to the previous reporting period where six out of the eight banks had first line assurance models in place.
- 3.5 HSBC's non-ring fenced bank previously did not have full first line controls in place, but implemented suitable first line assurance controls in June 2020. HSBC's ring-fenced bank is conducting an on-going review into certain back book loan agreements. HSBC's non-ring fenced bank has assessed whether there is read-across to its lending activity, and confirmed there is none.

Policies, practices and procedures relating to internal communications on compliance

3.6 Table 2 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures relating to internal communications to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance. This is indicated by ‘Y’ Yes, fully compliant, or ‘N’ No, not fully compliant.

Table 2: Policies, practices and procedures relating to internal communications on compliance (‘Y’ indicates Yes and ‘N’ indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	LBG	Danske Bank	NatWest Group
Staff reminded about bundling?	Y	Y	Y	Y	Y	Y	Y	Y
Annual reminders on bundling reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
‘Best practices’ and ‘professional standards’ taken into account in reviews?	Y	Y	Y	Y	Y	Y	Y	Y
Did all Relevant Staff receive the Annual Reminder at the correct time?	Y	Y	Y	Y	Y	Y	Y	Y

Notes:

- (1) AIB NI did not comply with Direction 6 of the Directions given to First Trust Bank in 2014. AIB NI complied with the other relevant Directions. See below for details.
- (2) HSBC complied with the relevant parts of its Directions given to it in 2014.

Policies, practices and procedures relating to external communications e.g. customer guidance

3.8 Table 3 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures relating to external communications to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance. This is indicated by ‘Y’ Yes, fully compliant, or ‘N’ No, not fully compliant.

Table 3: Policies, practices and procedures relating to external communications e.g. customer guidance (‘Y’ indicates Yes and ‘N’ indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	LBG	Danske Bank	NatWest Group
External communication reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Best practice or professional standards taken into account when conducting this review?	Y	N	Y	Y	Y	Y	Y	Y

3.9 Bank of Ireland noted in its audit report that while the bank’s governance team had considered the CMA’s best practice areas, it did not have documented rationale to support this and details on why they have not been implemented. The CMA’s view is that banks should take into account best practice areas and professional standards for monitoring compliance and conducting these audit reviews in order to enhance and maintain compliance.

3.10 In response to the CMA’s work with the banks on compliance relating to the provision of [Bounce Back Loans](#), the CMA wrote to the banks in November 2020 and requested that key messages should be provided to customers on the banks’ websites or any written and verbal communications at the outset of a loan application or during processes involving customer decisions. The key customer messages were as follows:

- You are not required to open or maintain a Business Current Account with [the bank] in order to obtain or manage a business loan or a business deposit account.
- You are able to switch your Business Current Account to another provider while retaining your business loan with [the bank].

- You are able to use another provider to manage your business banking while retaining your business loan with [the bank].
- You can apply for a Bounce Back Loan by using a fee-free loan feeder account [or alternative]. A fee-free loan feeder account is not a Business Current Account.

Staff Awareness and Training

3.11 Table 4 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of staff awareness and training to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance. This is indicated by ‘Y’ Yes, fully compliant, or ‘N’ No, not fully compliant.

Table 4: Staff awareness and training (‘Y’ indicates Yes and ‘N’ indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	LBG	Danske Bank	NatWest Group
All Relevant Staff received training?	Y	Y	Y	Y	Y	Y	Y	Y
Did training include an assessment element?	N	N	Y	N	Y	Y	Y	Y
Staff training reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Staff interviews carried out to assess staff awareness?	Y	Y	Y	Y	Y	Y	Y	Y

Notes:

- (1) AIB NI AIB NI complied with the relevant parts of its Directions given to First Trust Bank in 2014.
- (2) HSBC complied with the relevant parts of its Directions given to it in 2014.

3.12 AIB NI, Bank of Ireland and Clydesdale’s training did not include an assessment of each Relevant Staff member’s understanding of the obligations. The CMA considers that the eight banks should test the understanding and awareness of Relevant Staff of their responsibilities as part of their training programmes.

3.13 Clydesdale reported that it did not require staff to undertake an assessment. Instead it stipulates that staff must attest to understanding the rules in relation to business product bundling. Clydesdale has confirmed to the CMA that it will consider introducing a knowledge check element in order to strengthen the control.

3.14 HSBC’s ring fenced bank reported that 111 Relevant Staff were not included in the population of colleagues originally assigned the training in June and July 2020. The 111 Relevant Staff were subsequently assigned the training in

October and November 2020 with a requirement to complete by 26 November 2020.

- 3.15 Barclays' staff interviews to test awareness of the bundling Undertakings yielded disappointing results. Between 30% and 85% (depending on the different business units they were in) of staff achieved the pass rate of 80%. Barclays pointed out that those poor scores should be understood in the context that many staff members who failed on specific questions a) knew to check their understanding with legal colleagues, and b) failed questions because their answers were too conservative, i.e. they failed to identify exclusions from the Undertakings. Nevertheless, Barclays has introduced additional communications for its staff to improve future understanding of the Undertakings.

Other evidence

3.16 Table 5 shows the CMA’s assessment on whether each individual bank has provided other evidence to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance. This is indicated by ‘Y’ Yes, fully compliant, or ‘N’ No, not fully compliant.

Table 5: Other evidence (‘Y’ indicates Yes, ‘N’ indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	LBG	Danske Bank	NatWest Group
New to bank SME loans and business deposits and facility letters reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Customer complaints reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Bank lending appeals process reviewed?	Y	Y	Y	N	Y	Y	Y	Y
Individual complaint code for bundling?	Y	N	N	Y	Y	N	Y	Y
Internal complaint escalation process?	Y	Y	Y	Y	Y	Y	Y	Y
Internal complaints reviewed?	Y	Y	Y	N	Y	Y	Y	Y
New products reviewed?	Y	Y	Y	Y	Y	Y	Y	Y

Note:

- (1) AIB NI complied with the relevant parts of its Directions given to First Trust Bank in 2014.
- (2) Barclays complied with the Directions given to it in 2019.

3.17 The CMA notes that LBG, Clydesdale and Danske Bank stated that they review new products for compliance with the Undertakings but the CMA has still found the banks to be in breach of the Undertakings in relation to Bounce Back Loans. The CMA expects reviews of products within the scope of the Undertakings to be fully compliant in future.

- 3.18 HSBC implemented a control to monitor its complaints code. Before 31 July 2020, HSBC had an individual complaints code for bundling but did not monitor for these complaints in order to escalate registered complaints to senior stakeholders.
- 3.19 The CMA expects all banks to check that there are appropriate mechanisms in place for monitoring and escalating complaints registered under the complaints code relating to bundling.
- 3.20 LBG conducted a word search on all SME and Business Banking customer complaints received by the bank for the period 1st July 2019 to 30th June 2020. 96 complaints were found that indicated non-compliance with the Undertakings. All 96 complaints related to the Bounce Back Loans issue referred to in paragraph 2.6 of this report. The CMA notes the importance of careful checking and collating of complaints to identify concerns.
- 3.21 Clydesdale had previously introduced a complaint code specifically for product bundling. This was removed in a refresh of the complaints handling system in 2018 as there were no instances of use. However, Clydesdale is currently re-assessing the need for the introduction of a dedicated complaints code. The CMA considers this to be particularly important when bearing in mind that the CMA found that Clydesdale required 55 SMEs holding a personal current account to open a BCA with it in order to progress their application for a loan under the BBLs.
- 3.22 As noted above, the CMA issued Directions to Barclays in June 2019. Barclays reported that it complied with each of the Directions. In particular, it appointed an independent auditor which provided a report recommending some improvements to Barclays' procedures and processes. As a result, Barclays provided the CMA with a Statement of Actions that it intended to fulfil in compliance with these Directions. Barclays has since reported to the CMA that those actions have been completed.

Annex 1: The obligations on the eight banks

In 2002, following a Competition Commission investigation into banking services for SMEs, nine banks (two of which have since merged) agreed that, except in specific circumstances, they would no longer require an SME customer to open or maintain a business current account (BCA) to get a business loan or deposit account. This practice is commonly known as bundling and is prohibited by the Undertakings.

The Bundling Restrictions are set out in Clauses 17 to 19 of the Undertakings. These prohibit the eight banks from compelling an SME customer to open or maintain a BCA as a condition of granting, maintaining or servicing a loan or deposit account. Banks may, however, offer incentives (e.g. lower charges or interest rates) to SMEs to open a BCA alongside their loan or deposit account, and they may offer integrated products (provided that the integrated products are also offered at different times to the opening of the BCA or loan deposit account).¹⁰

On 11 March 2014, the Office of Fair Trading (OFT) agreed a package of measures (known as the 2014 Agreement) with the eight banks to:

- improve awareness of the Undertakings among Relevant Staff
- assist the CMA¹¹ in assessing overall levels of compliance with the Undertakings on an ongoing basis

As part of the 2014 Agreement, the eight banks agreed to undertake a detailed annual audit of their systems and procedures for ensuring compliance with the Undertakings.

Following the 2014 Agreement, the OFT and then the CMA worked with the eight banks to produce a set of high-level principles to guide the focus and manner of their internal auditors' inspections.

The CMA reviewed the eight banks' 2014 Audit reports and reported on its findings in its report on compliance of 22 October 2014.¹²

¹⁰ The Undertakings prohibit the tying of a BCA and a loan or deposit account, but do not prohibit the provision of integrated products (i.e. the sale of several products as one combined product).

¹¹ 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.

¹² <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-report-on-compliance>

On 21 October 2014, the CMA issued Directions¹³ to two banks to improve compliance with the Undertakings following breaches.

On 4 July 2019, the CMA issued Directions¹⁴ to Barclays for two breaches of Clause 17 of the Undertakings.

¹³ See CMA.GOV.UK for Directions to HSBC and AIB NI (then named First Trust): <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

¹⁴ See CMA.GOV.UK for Directions to Barclays: <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-barclays>

The 2014 Agreement

Agreement with respect to the limitation of bundling

1. That THE BANK¹⁵ will, with respect to clauses 17 to 19 of the behavioural undertakings given by the banks to the Secretary of State for Trade and Industry and Chancellor of the Exchequer on 31 October 2002 ('the Bundling Undertakings'):
 - (a) On an annual basis, conduct a review of [THE BANK'S] compliance with the Bundling Undertakings, specifically including the following issues:
 - (i) The policies, practices and procedures (including those related to training) which THE BANK has in place to secure compliance with the Bundling Undertakings.
 - (ii) The awareness of THE BANK'S staff who are responsible for the marketing and sale of business loans and business deposit accounts ('the Relevant Staff') with the obligations created by the Bundling Undertakings.¹⁶
 - (iii) Other evidence suggesting the presence or absence of actual or suspected non-compliance with the Bundling Undertakings (including customer complaint data or data available from internal escalation processes for internal concerns).

Such a review must be conducted, outside the area of the bank which is directly responsible for the provision of banking services to SMEs, by the internal audit function of THE BANK, in accordance with the Code of Professional Conduct¹⁷ of the Chartered Institute of Internal Auditors.¹⁸

- (b) Provide a copy of such a review to the OFT/CMA with an annual statement of THE BANK'S compliance with the Bundling Undertakings which addresses the issues referred to in 1a. The first such statement will be provided by [THE BANK] to the OFT within 4 months of its announcement by the OFT

¹⁵ To add the identity of the relevant bank.

¹⁶ In undertaking such a review, an appropriate sample of staff should be assessed. Such a sample should be representative of staff at the various brands within THE BANK'S Group (where applicable), geographical locations and the range of sales/marketing channels available (e.g. in branch, online, by telephone).

¹⁷ <http://www.iaa.org.uk/members/member-benefits/code-of-professional-conduct/>

¹⁸ In the event that the internal audit function of THE BANK is unable to conduct that review, the review must be conducted by an external auditor, independent from THE BANK.

2. That THE BANK, on an annual basis, provides to each of its Relevant Staff,
a specific and direct written reminder (which covers no issues, other than the subject matter of the Bundling Undertakings) of:
 - (a) THE BANK'S obligations under the Bundling Undertakings.
 - (b) That THE BANK considers that any breach of those obligations is a serious matter, and that appropriate action will be taken in the event that a member of its staff fails to comply with them.
The first such reminder will be provided by [THE BANK] to the Relevant Staff within 1 month of its agreement of this proposal and its announcement by the OFT. A copy of such a reminder will be provided to the OFT/CMA within 10 working days following its provision to the Relevant Staff.
3. Terms used in this document are consistent with the definitions included in the Undertakings.

Annex 2: Glossary

Unless otherwise indicated, terms have the same meaning as the CMA's 2014 Agreement in Annex 1 of this Report.

The following words and expressions shall bear the following meanings in this Report:

2014 Agreement – signed by the eight banks. The 2014 Agreement is available in Annex 1 of this Report.

Audit report – a requirement in the 2014 Agreement for the eight banks to conduct annual audit reviews and submit audit reports to the CMA.

Annual Reminders – referred to in section 2 of the 2014 Agreement. On an annual basis, the eight banks are required to provide to each of its Relevant Staff, a specific and direct written reminder (which covers no issues other than the subject matter of the Undertakings).

banks, The eight - AIB Group (UK) plc (known as AIB NI in this report, and previously known as First Trust); Bank of Ireland; Barclays Bank plc (Barclays); Clydesdale Bank plc (Clydesdale); HSBC UK Bank plc and HSBC Bank plc (together, HSBC); Lloyds Banking Group (LBG); Northern Bank Limited (known as Danske Bank) and NatWest Group (formerly the Royal Bank of Scotland Group (RBS)) which includes Ulster Bank Limited (Ulster Bank) in Northern Ireland (together referred to in this Report as 'the eight banks'). Nine banks originally agreed to the behavioural undertakings, two of these banks, HBOS Plc and Lloyds TSB Bank plc, subsequently merged to become Lloyds Banking Group.

Barclays Directions – CMA issued Directions to Barclays in 2019¹⁹

BCAs – Business Current Accounts

BBLs - Bounce Back Loans Scheme

CMA – Competition and Markets Authority. 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.

First Trust Directions – CMA issued Directions to First Trust in 2014.²⁰ First Trust is now known as AIB NI.

HSBC Directions – CMA issued Directions to HSBC in 2014²¹

¹⁹ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-barclays>

²⁰ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

²¹ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

OFT – Office of Fair Trading

Relevant Staff – as defined in the 2014 Agreement. The Bank's staff who are responsible for the marketing and sale of business loans and business deposit accounts.

Report – CMA's Report on Compliance 2019

SMEs - Small and Medium-size Enterprises

Undertakings - SME Banking Undertakings (Behavioural) 2002. These Undertakings were given to the Secretary of State for Trade and Industry and the Chancellor of the Exchequer under the monopoly provisions of the Fair Trading Act 1973. They were signed by nine banks in 2002 and require them to:

- ensure that small and medium-sized enterprises (SMEs) can take out a loan or open a deposit account without also needing to open a business current account
- publish details of their tariffs
- meet time targets for account switching services

Bundling restrictions are set out in Clauses 17 to 20 of the Undertakings. In 2016, the CMA conducted a review and made a decision to release some obligations under the Undertakings. However, the bundling restrictions were retained.²²

²² <https://www.gov.uk/cma-cases/sme-banking-undertakings-review>