

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

DRAFT ORDER – CONSULTATION

The Private Motor Insurance Market Investigation Order 2015

Background

1. On 28 September 2012, the Office of Fair Trading, in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred the supply or acquisition of private motor insurance (PMI) and related goods and services in the UK to the Competition Commission (CC) for investigation and report (the market investigation).
2. The CC investigated the matters referred to it pursuant to sections 131 and 133 of the Act and, on 1 April 2014, the remaining functions of the CC in relation to the market investigation 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 (the Order).
3. The CMA concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply or acquisition of PMI and related goods and services in the UK which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Private motor insurance market investigation: Final report* published on 24 September 2014 (the Report).
4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

5. In the Report, the CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the AECs that it found arising from the following features:
 - (a) information asymmetries between private motor insurers and consumers in relation to the sale of no-claims bonus protection insurance; and
 - (b) wide most-favoured-nation clauses in contracts between providers of PMI and price comparison websites.
6. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10 of the Act, the CMA hereby gives notice of its intention to make an Order on the terms attached to this Notice (the Draft Order) and invites representations on the Draft Order from any interested person in writing by 5.00pm on 6 February 2015.
7. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order is expected to operate.

The Order

Reference and power

The CMA makes this Order in performance of its duty under section 138 and in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4) and paragraphs 2 to 6, 10, 17 to 19, 21 and 22 of Schedule 8 to 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 of the CMA entitled *Private motor insurance market investigation: Final report* and published on 24 September 2014.

Part 1

1. General – title, commencement and scope

1.1 This Order may be cited as ‘The Private Motor Insurance Market Investigation Order 2015’. This Order shall come into force on [1 March] 2015 except:

(a) Article 3, which shall come into force on [1 September] 2015; and

(b) Articles 4 and 5, which shall come into force on [1 April] 2015.

1.2 This Order applies to the supply or acquisition of PMI and related goods and services in the UK.

1.3 Provisions of this Order apply to PMI Providers and PCWs. This Order shall continue in force until such time as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

2. Interpretation

2.1 In this Order:

Act means the Enterprise Act 2002.

Alternative Information means the information to be provided by a PMI Provider in the circumstances contemplated by Article 3.5, which must comprise the NCB Protection Statement or NCB Protection Information (as the case may be) amended to

the minimum extent necessary to avoid a breach of any regulatory rule or enactment.

Annual PCW Compliance Statement

means a statement containing the information set out in Article 7.3 to be submitted by a Designated PCW to the CMA pursuant to Article 7.2 in the form prescribed in Schedule 4.

Annual PMI Compliance Statement

means a statement containing the information set out in Article 6.3 to be submitted by a PMI Provider to the CMA pursuant to Article 6.1 in the form prescribed in Schedule 3.

Average NCB Discount

means the average (mean) NCB Discount calculated in accordance with paragraph 4 of Schedule 2.

Claim

means any event that is relevant to the Step-back Formula.

CMA

means the Competition and Markets Authority.

Designated PCW

means a PCW, or a group of interconnected bodies corporate comprising multiple PCWs, that in the previous calendar year has provided PMI Providers in aggregate with 300,000 PMI Product sales or more. A PCW, and a group of interconnected bodies corporate comprising multiple PCWs, ceases to be a Designated PCW when the number of PMI Product sales provided to PMI Providers in aggregate in the previous calendar year falls below 300,000 PMI Product sales.

Equivalent Behaviour

means any behaviour implemented by a Designated PCW which falls within the definition of Article 5.1.

FCA

means the Financial Conduct Authority.

Implied Price of NCB Protection

means a price to be calculated by all PMI Providers when making an NCB Protection Offer, and that demonstrates the difference in the retail price between the PMI Product which is the subject of the NCB Protection Offer (including, as applicable, any add-on products selected) with, and without, NCB Protection.

NCB Discount

means 'no claims bonus discount', and is a discount that is incorporated by a PMI Insurer into the price of a PMI

Product, that is determined by the PMI Insurer and that reflects the NCB Years.

NCB Protection means an additional option to a PMI Product sold by a PMI Provider which, in the event of a Claim (or possibly more than one Claim), will within certain limits protect the purchaser's NCB Years.

NCB Protection Information means the information a PMI Provider is required to give, or make available, when making an NCB Protection Offer and is prescribed in Schedule 2.

NCB Protection Offer means an offer or invitation to purchase NCB Protection, made orally or in writing by a PMI Provider.

NCB Protection Statement means the information a PMI Provider or a PCW is required to give, or make available, when making or providing access to an NCB Protection Offer and is prescribed in Schedule 1.

NCB Years means the number of years during which a person purchasing a PMI Product is deemed, for the purposes of the calculation of the NCB Discount, not to have made a Claim.

Own Website means a website where a PMI Provider offers and supplies its PMI Products directly to consumers.

PCW means a price comparison website, and the owner, operator or host of such a website, that provides comparisons between, and access to, PMI Products.

PMI Broker means a person who is an insurance intermediary who supplies, arranges or administers PMI Products.

PMI Insurer means an insurer who is authorised, under section 31 of the Financial Services and Markets Act 2000, to effect and carry out PMI Products and who supplies PMI Products in the United Kingdom.

PMI Product means a private motor insurance contract that covers risks relating to the use of a privately-owned motor car (excluding motorcycles), in the UK and which satisfies the requirements of section 145 of the Road Traffic Act 1988.

PMI Provider	means a PMI Broker, a PMI Insurer, and a group of interconnected bodies corporate comprising multiple PMI Brokers, PMI Insurers, or both.
Quarterly PCW Compliance Statement	means a statement containing the information set out in Article 7.3 to be submitted by Designated PCWs to the CMA pursuant to Article 7.1 in the form prescribed in Schedule 4.
Step-back Formula	means a formula applied by a PMI Insurer for determining whether the number of NCB Years that will be offered on renewal is reduced as the result of one or more Claims made within a period of time specified by the PMI Insurer, calculated separately: <ul style="list-style-type: none"> (a) with NCB Protection; and (b) with no NCB Protection.
Wide MFN Clause	means a restriction that falls within the prohibition set out in Article 4.1 but that does not fall within the exception to that prohibition set out in Article 4.2.

2.2 In this Order any reference to:

- (a) '**month**' means calendar month;
- (b) '**oral**' or '**orally**' relates to the transmission of information or the completion of a process made orally including in person or by telephone;
- (c) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (d) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (e) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

2.3 The headings used in this Order are for convenience and have no legal effect.

2.4 References to any statute or statutory provisions shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.

- 2.5 The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.

Part 2

Information Requirements

3. Obligation to provide information about NCB Protection

- 3.1 When a PMI Provider makes an NCB Protection Offer, the PMI Provider must, at the time of making the NCB Protection Offer, ensure that the NCB Protection Statement and the NCB Protection Information in Schedules 1a and 2 are provided clearly and prominently.
- 3.2 When a PCW provides access to an NCB Protection Offer, the PCW must at the time of providing access to the NCB Protection Offer, ensure that the NCB Protection Statement in Schedule 1b is provided clearly and prominently.
- 3.3 Where a PMI Provider has given the NCB Protection Information orally to a purchaser of NCB Protection, it must, following acceptance of the NCB Protection Offer by the purchaser, provide the purchaser with the NCB Protection Information in writing with the policy documents.
- 3.4 In this Article 'prominently' means providing the requisite information: (i) in a manner that ensures, so far as reasonably practicable, that when the prospective purchaser assesses the NCB Protection Offer as a whole, it is reasonable to expect that the prospective purchaser's attention will be drawn to the information, or (ii) no less prominently than other information provided contemporaneously in relation to the PMI Product. Moreover, in:
- (a) Article 3.1, when the NCB Protection Statement and the NCB Protection Information is given orally, 'prominently' means the information must be given the same emphasis as PMI Products and add-on products being described and offered in the rest of the conversation; and
- (b) Article 3.2, 'prominently' means that:
- (i) a prominent link to the information must be provided by the PCW; and
- (ii) the information provided through that link must be clear and prominent.
- 3.5 If a PMI Provider is prohibited, by any regulatory rule or enactment, from giving the NCB Protection Statement or the NCB Protection Information it must:

- (a) provide the Alternative Information;
 - (b) notify the CMA of the Alternative Information it is providing;
 - (c) identify the regulatory rule or enactment which prohibits giving the NCB Protection Statement or the NCB Protection Information; and
 - (d) set out the reasons for providing the Alternative Information, and
- may apply for a direction from the CMA (pursuant to Article 8) on the contents of the particular Alternative Information it must give.

Part 3

Prohibition on Wide MFN Clauses and Equivalent Behaviour

4. Prohibition on Wide MFN Clauses

- 4.1 A PCW and PMI Provider must not enter into, or perform, an agreement containing a restriction on a PMI Provider from offering or inviting the purchase of a PMI Product through any other sales channel at a lower price than the price made available for that PMI Product through the PCW.
- 4.2 The prohibition in Article 4.1 does not apply to an agreement containing a restriction on a PMI Provider from offering or inviting the purchase of a PMI Product on the PMI Provider's Own Website at a lower price than the price made available through the PCW for that PMI Product.

5. Prohibition on Equivalent Behaviour

- 5.1 A Designated PCW must not engage in any course of action (including entering into contractual terms or engaging in unilateral conduct) which has the object of replicating any of the anti-competitive effects of a Wide MFN Clause (Equivalent Behaviour).

Part 4

6. Monitoring and compliance – PMI Providers

- 6.1 A PMI Provider must on an annual basis submit an Annual PMI Compliance Statement to the CMA, in the form prescribed in Schedule 3, and containing:
 - (a) a statement that the PMI Provider has complied with the terms of the Order; and

- (b) copies of the tables of Average NCB Discounts, prescribed in paragraph 1(b) of Schedule 2.
- 6.2 The first Annual PMI Compliance Statement is to be provided to the CMA by 1 September 2015.
- 6.3 Each subsequent Annual Compliance Statement is to be provided to the CMA by 1 February in each year.
- 6.4 A PMI Provider must ensure that any Annual Compliance Statement is signed by the Chief Executive Officer, the Managing Director or any Director responsible for PMI Products.

7. Monitoring and compliance – PCWs

- 7.1 A Designated PCW must submit a Quarterly PCW Compliance Statement to the CMA in relation to the relevant report period:
 - on [15 July 2015, 15 October 2015, 15 January 2016, 15 April 2016, 15 July 2016, 17 October 2016 and 16 January 2017] (each a ‘Quarterly PCW Compliance Statement’).
- 7.2 A Designated PCW must submit an Annual PCW Compliance Statement to the CMA by [1 February 2018 and 1 February 2019] in relation to the relevant report period (each an ‘Annual PCW Compliance Statement’).
- 7.3 Subject to Article 7.4, a Quarterly PCW Compliance Statement and an Annual PCW Compliance Statement must:
 - (a) state that the Designated PCW has not engaged in Equivalent Behaviour during the report period;
 - (b) list each delisting in the report period and specify:
 - (i) the period of the delisting;
 - (ii) the identity of the PMI Provider delisted and affected products;
 - (iii) the nature of the delisting; and
 - (iv) the reason for the delisting.
- 7.4 Any Annual PCW Compliance Statement and Quarterly PCW Compliance Statement must be submitted in the form and with the content specified in the template statement set out in Schedule 4.

- 7.5 A Designated PCW must ensure that any Annual PCW Compliance Statement and any Quarterly PCW Compliance Statement is signed by the Chief Executive Officer or the Managing Director of the Designated PCW or, if the Designated PCW does not have a Chief Executive Officer nor a Managing Director, by two directors of the Designated PCW.
- 7.6 PCWs must calculate by 1 February of each year the number of PMI Product sales provided by them individually to PMI Providers in aggregate in the previous calendar year and must immediately notify the CMA when they reach, exceed, or as compared to the calendar year immediately prior to the previous calendar year, no longer exceed 300,000 PMI Product sales.
- 7.7 In this Article:
- (a) 'period of delisting' means the date the delisting took place and, if the delisting has ended, the duration of the delisting;
 - (b) 'delisting' means any action taken to remove, or conceal the position of, a PMI Product from a PCW, 'delist' and 'delisting' are to be construed accordingly;
 - (c) 'nature of delisting' means specifying the main actions taken to 'delist' a PMI Product;
 - (d) 'reason for delisting' includes, if given, the main reason(s) provided to the PMI Provider;
 - (e) 'report period' is:
 - (i) for the first Quarterly PCW Compliance Statement, the period from [1 April 2015 to 30 June 2015];
 - (ii) for subsequent Quarterly PCW Compliance Statements, the three months period following the previous report period; and
 - (iii) for Annual PCW Compliance Statements, the previous calendar year.

Part 5

8. Directions by the CMA as to compliance

8.1 The CMA may give directions falling within Article 8.2 to:

- (a) a person specified in the directions; or

- (b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.
- 8.2 Directions fall within this paragraph if they are directions:
- (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- 8.3 In Article 8.2 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a PCW or PMI Provider carries out, or secures compliance with, this Order.
- 8.4 The CMA may vary or revoke any directions so given.

Part 6

9. Supply of information to the CMA

- 9.1 Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
- 9.2 Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.
- 9.3 Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
- 9.4 Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

Schedule 1a – NCB Protection Statement to be provided by PMI Providers

1. The NCB Protection Statement which must be provided under Article 3.1 at the time of a written NCB Protection Offer is the following text, in writing:
 - (a) 'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'; and
 - (b) 'No claims bonus protection allows you to make one or more claims before your number of no claims bonus years falls. Please see the step-back procedures for details.'
2. The NCB Protection Statement which must be provided under Article 3.1 at the time of an oral NCB Protection Offer is the following text, orally:

'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'
3. The details of the 'step-back procedures' referred to in paragraph 1(b) of this Schedule must include a clear description of the Step-back Formula for that PMI Product and must be provided:
 - (a) when the NCB Protection Offer is made on a website or by email, by providing a link, displayed prominently, leading to the description of the 'Step-back Formula'; or
 - (b) when the NCB Protection Offer is made by postal service, by providing a clear and prominent reference to the Step-back Formula, and enclosing with the NCB Protection Offer a description of the Step-back Formula.
4. In the NCB Protection Statement set out in paragraphs 1 and 2 of this Schedule, the terms 'no claims bonus', 'no claims bonus protection' and 'no claims bonus years' can be replaced with 'no claims discount', 'no claim discount protection' and 'no claims discount years', respectively or similar expressions, as applicable, in order accurately to reflect how the PMI Provider describes the NCB Discount and NCB Protection in the marketing and policy documentation for that PMI Product.

Schedule 1b – NCB Protection Statement to be provided by PCWs

1. The NCB Protection Statement which must be provided under Article 3.2 is the following text:
 - (a) 'No claims bonus protection varies between insurers but in general it allows you to make one or more claims before your number of no claims bonus years falls (further information will be provided when you select a policy and proceed with the purchase of the policy on the insurer's website).'
 - (b) 'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'
2. In the NCB Protection Statement set out in paragraph 1 of this Schedule, the terms 'no claims bonus', 'no claims bonus protection' and 'no claims bonus years' can be replaced with 'no claims discount', 'no claims discount protection' and 'no claims discount years', respectively or similar expressions, as applicable, in order to accurately reflect how the PCW describes the NCB Discount and NCB Protection on its website.

Schedule 2 – NCB Protection Information to be provided by PMI Providers

1. The NCB Protection Information which must be provided under Article 3.1 at the time of a written NCB Protection Offer is:

(a) the following text, in writing:

[You are considering whether to purchase] NCB protection. This [would increase] your premium by [amount]. You have a current NCB of [number] years. The tables below show: (i) the average NCB discount awarded to [our] motor insurance policyholders last year according to their number of NCB years; and (ii) what would happen to your NCB years if you were to make one or more claims in the next 12 months with and without this protection.'

For the purposes of this paragraph, the word [amount] is to be replaced with the Implied Price of NCB Protection; the word [number] is to be replaced by the number of NCB Years that the PMI Provider is including in the NCB Protection Offer; the word [our] may be replaced with the name of the PMI Insurer; and, the words [You are considering whether to purchase] may be replaced with [This quote includes] and the words [would increase] replaced with [increases].

(b) A table showing:

- (i) in one column all the different NCB Years for which an NCB Discount applies to the PMI Product; and
- (ii) in an associated column the Average NCB Discount associated with each number of NCB Years for which an NCB Discount applies to the PMI Product.

(c) A second table showing, for the number of NCB Years in the NCB Protection Offer, in one column without NCB Protection and in another column with NCB Protection, the Step-back Formula in NCB Years that would be applied at next renewal in the event of a Claim or multiple Claims.

2. The NCB Protection Information which must be provided under Article 3.1 at the time of an oral NCB Protection Offer is the following:

(a) the Implied Price of NCB Protection;

- (b) the number of NCB Years offered in the NCB Protection Offer;
 - (c) the Average NCB Discount for that number of NCB Years; and
 - (d) the number of Claims that a customer can make within the Step-back Formula for the PMI Product before the number of NCB Years would be affected, depending on whether the customer purchases NCB Protection or not.
- 3. The NCB Protection Information which must be provided under Article 3.3, after an oral NCB Protection Offer has been accepted, is the following:
 - (a) The text set out in paragraph 1(a) of this Schedule with the following amendments:
 - (i) the words [You are considering whether to purchase] are to be replaced by [You have purchased] and the words [would increase] by [has increased];
 - (ii) the word [amount] is to be replaced with the Implied Price of NCB Protection; and
 - (iii) the word [number] is to be replaced by the number of NCB Years that are included in the NCB Protection Offer.
 - (b) the tables described in paragraphs 1(b) and 1(c) of this Schedule.
- 4. The Average NCB Discount to be provided with the NCB Protection Information prescribed by Schedule 2 is, subject to paragraph 5, to be calculated as the mean NCB Discount for that number of NCB Years applied by the PMI Insurer in the calendar year that concluded more than one month prior to the NCB Protection Offer, either:
 - (a) across all PMI Products supplied (directly or indirectly) by the PMI Insurer who is effecting the PMI Product to which the NCB Protection Offer relates; or
 - (b) across a smaller sub-set of PMI Products which includes the PMI Product to which the NCB Protection Offer relates, and which more accurately reflects the Average NCB Discount for the PMI Product to which the NCB Protection Offer relates.
- 5. Where the PMI Insurer to which the PMI Product relates supplied PMI Products for less than six months of the applicable calendar year, the Average NCB Discount is to be calculated as a reasonable estimate of the mean NCB

Discount to be applied to that PMI Product, for that number of NCB Years, in a calendar year.

6. In the NCB Protection Information set out in paragraphs 1 to 3 of this Schedule, the terms 'NCB', 'no claims bonus' and others terms including 'NCB' can be replaced with 'NCD' or 'no claims discount', respectively or similar expressions, as applicable, in order to accurately reflect how the PMI Provider describes the NCB Discount and NCB Protection in the marketing and policy documentation for that PMI Product.

Schedule 3 – Template PMI Compliance Statement

Annual PMI Compliance Statement for [insert name of PMI Provider(s)]

[I/We], [insert name(s)], confirm on behalf of [insert name of PMI Provider(s)] that during the report period [insert calendar year prior to this Annual PMI Compliance Statement], [insert name(s) of PMI Provider(s)] [has][have] complied with The Private Motor Insurance Order 2015 (the Order).

The Average NCB Discount[s] [PMI Provider(s)] [is or are] displaying to consumers, from [1 February] [insert year of this Annual PMI Compliance Statement], in its NCB Protection Information [is or are] listed in Annex 1.

FOR AND ON BEHALF OF [NAME OF PMI PROVIDER(S)]

Signature:

Name:

Title:

Annex 1: Average NCB Discount[s]

PMI Insurer: [Insert name, or if appropriate relevant sub-set]

Table of Average NCB Discount

[Insert the table[s] of Average NCB Discount prescribed by paragraph 1(b) of Schedule 2 to the Order and required to be provided to prospective purchasers of a PMI Product from 1 February in the year of the Annual PMI Compliance Statement]

[Repeat as appropriate for each PMI Insurer and sub-set of PMI Products if appropriate]

Schedule 4 – Template PCW Compliance Statement

[Annual/Quarterly] PCW Compliance Statement for [insert name of Designated PCW(s)]

[I/We], [insert name(s)], confirm on behalf of [insert name of Designated PCW(s)] that during the report period [insert relevant report period] (the Report Period), [insert name(s) of Designated PCW(s)] [has][have] complied with The Private Motor Insurance Order 2015 (the Order) and [has][have] not engaged in Equivalent Behaviour.

Each delisting by [insert name(s) of Designated PCW(s)] during the Report Period to remove or conceal the position of a PMI Product on its website are listed in Annex 1.

Words used in this statement have the meanings given by the Order, unless otherwise stated.

FOR AND ON BEHALF OF [NAME OF DESIGNATED PCW(S)]

Signature:

Name:

Title:

Annex 1

Table 1 – Delisting by [insert name of PCW]

Period of the delisting	Identity of the PMI Provider delisted	Nature of the delisting	Reason for the delisting
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[insert delisting during the report period]

[Repeat as appropriate for each PCW]