

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Summary of responses to the consultations on the Draft Order, Draft Explanatory Note, and Modified Draft Order

Introduction

1. On 7 January 2015 the Competition and Markets Authority (CMA) consulted on a draft order (the Draft Order) and a draft explanatory note (the Explanatory Note) for the implementation of the remedies set out in the private motor insurance final report (the Report).¹ The consultation closed on 6 February 2015. During the consultation period the CMA held a meeting with the Association of British Insurers (ABI) and the British Insurance Brokers' Association (BIBA) to discuss the drafts and the main issues arising from them.² Following consideration by the CMA inquiry group of responses to the consultations and the issues raised in the meeting, on 27 February 2015 the CMA issued a modified draft order (the Modified Draft Order) for consultation. This further consultation closed on 9 March 2015.
2. In the course of these two consultations, the CMA received 30 submissions relating to the Draft Order and the Explanatory Note (including submissions by the ABI and BIBA on behalf of insurers and brokers, respectively), and ten submissions relating to the Modified Draft Order. Non-confidential versions of the responses received are available on the CMA's webpages.³ This paper sets out the main changes which have been made to the Draft Order as a result of those submissions and also gives reasons why certain suggested changes were not made. Minor changes (such as correction of typographical and spelling errors, clarifications included in the Explanatory Note, and other consequential changes) are not discussed in this paper. References to specific Articles in this paper refer to the final version of the order published on the same date as this paper (the Order), rather than to any earlier drafts. Capitalised terms in this paper have the same meaning as defined in the Order, unless otherwise specified below.

¹ [Private motor insurance market investigation: Final report.](#)

² See the [Transcript of remedies meeting with the ABI and BIBA.](#)

³ [Private motor insurance market investigation case page.](#)

3. The main comments received in response to the consultations were grouped around six main issues:
 - (a) the time period for implementation of the obligation to provide information to customers about NCB Protection pursuant to Article 3;
 - (b) the timing for the annual update of the Average NCB Discount;
 - (c) the scope of the Order;
 - (d) the potential for customer confusion from the NCB Protection Statement and NCB Protection Information specified in Schedule 1a and Schedule 2;
 - (e) the compliance statement and monitoring arrangements specified in Articles 6 (Monitoring and compliance – PMI Providers) and 7 (Monitoring and compliance – PCWs); and
 - (f) the wording of the prohibition on Equivalent Behaviour specified in Article 5.

The time period for implementation of the obligation to provide information to customers about NCB Protection⁴

4. The Report provided for the Order, in so far as it related to the obligation on PMI Providers to provide information to customers about NCB Protection, to be implemented within six months from the date the Order.⁵ Consistent with that decision, the Draft Order, in Article 1.1(a), set out that Article 3 would come into force on 1 September 2015.
5. As noted in the CMA's notice dated 27 February 2015, in light of the evidence submitted by respondents to the consultation on the Draft Order, the CMA published the Modified Draft Order, proposing that Article 3 shall come into force on 1 August 2016. In doing so, the CMA took into account the following relevant factors as amounting to a 'special reason' for making this change, and so modifying the Draft Order:
 - (a) evidence submitted in response to the consultation by insurers, brokers and software houses, in particular, has shown that preparation of the administrative and IT changes which must be implemented by insurers and brokers in order to comply with Article 3 could not be initiated before the final Order has been published;

⁴ Article 1.1 (a).

⁵ See paragraphs 11.60 to 11.62.

- (b) evidence submitted in response to the consultation by brokers and software houses, in particular, has shown that administrative and IT changes which must be implemented in order to comply with Article 3 present additional complexities for brokers;
 - (c) as a result of the reasons set out above under (a) and (b), there is a material risk that a significant number of insurers and brokers would not be in a position on 1 September 2015 to comply with the Order, and therefore would be likely to cease to sell no-claims bonus protection as an additional option to a private motor insurance contract; and
 - (a) modifying the implementation date to 1 August 2016 would allow sufficient time for the issues set out above under (a) and (b) to be addressed (including providing a level playing field between brokers and insurers), whilst mitigating the risk set out above under (c).
6. The CMA notes that the consultation on the Modified Draft Order was on extending the implementation date to 1 August 2016, although some respondents took the opportunity to restate the points they had made in earlier consultation. Respondents welcomed the change in implementation date, although some considered the period for implementation would still be tight, and a few sought a further extension of the implementation period. They emphasised that such an implementation date would be particularly challenging for brokers. One PMI Provider respondent requested further information concerning the CMA's reasoning for choosing 1 August 2016, and one invited the CMA to consult with software providers to determine whether a further extension would be appropriate. The CMA notes, in this context, the evidence from software providers noted in paragraph 5(b) above, and that one software provider respondent to the consultation on the Modified Draft Order specifically welcomed the revised implementation date of 1 August 2016. BIBA, which represents the interests of insurance brokers and intermediaries, strongly supported the revised implementation date of 1 August 2016. In view of the above, and having carefully considered all of the responses to each consultation on the Draft Order and the Modified Draft Order, the CMA has concluded that an additional period of time for implementation of Article 3, beyond the six months from the date of the Order, is appropriate, and has provided in Article 1.1(a) that Article 3 will enter into force on 1 August 2016.
7. A limited number of PMI Providers who responded to the consultation on the Draft Order also noted that PMI Providers would not have collected historic data (ie 2014/15 data) before the Order entered into force and the necessary changes to software had been made, and therefore would not have been able to calculate the Average NCB Discount by the date of commencement of Article 3. In light of these submissions, the CMA has amended the Draft Order

so that, for NCB Protection Offers made within the first six months after 1 August 2016, the information to be provided in order to comply with Article 3 may be based on either actual prior year data (where available), or reasonable estimates of that prior year data.⁶ One PMI Provider respondent to the consultation on the Modified Draft Order noted this change.

Timing for the annual update of the Average NCB Discount⁷

8. The Draft Order, in paragraph 4 of Schedule 2, required PMI Insurers to calculate the Average NCB Discount applied in the previous calendar year by 1 February of each year.
9. Some PMI Providers and software providers who responded to the consultation on the Draft Order argued that one month would be insufficient time for a PMI Insurer to carry out all the steps necessary to calculate the Average NCB Discount and incorporate such information into their IT systems so that they are in a position to communicate such information to consumers as part of NCB Protection Offers. Respondents have argued in favour of paragraph 4 of Schedule 2 being extended to 1 March and others to 1 April.
10. Having taken into account respondents' submissions on the above concern, which were not sufficiently supported by the evidence, the CMA is of the view that the period of one month provided in the Order for PMI Insurers to calculate the Average NCB Discount is sufficient, given the extended period for implementation of Article 3, which will allow PMI Providers to set up the necessary processes for updating the Average NCB Discount as part of the extended implementation period. Moreover, the CMA has taken into account the potential adverse consequences of allowing such an extension of time, which would reduce the relevance of the information provided to consumers and, therefore, make the remedy less effective. The CMA notes that, linked to respondents' request for the timing for the annual update of the Average NCB Discount to be extended, many such respondents also suggested extending the deadline for submission of Annual Compliance Statements under Article 6.3. For the same reasons, and having carefully considered each of the submissions on this point, the CMA has decided not to amend Article 6.3.

⁶ Paragraph 5 of Schedule 2. The information to be provided from 1 February 2017 must be based on actual prior year data (subject to paragraph 5 of Schedule 2 in relation to PMI Insurers who have provided PMI Products for less than six months of the applicable calendar year).

⁷ Schedule 2, paragraph 4.

The scope of the Order

11. A small number of PMI Provider respondents to the consultation on the Draft Order have questioned the precise scope of the Order and, in particular, whether vans, and/or cars used for business purposes, are included within the scope of the Order. In addition, some respondents have suggested that, depending on the response of the CMA on the scope of the Order, this could affect multi-vehicle cover.
12. Article 1.2 of the Order provides that the Order applies to the supply or acquisition of PMI and related goods and services in the UK. A PMI Product is defined as 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 1998. This is consistent with the terms of reference for the market investigation set out in Section 1 of the Report and the market definition set out in Section 4 of the Report.
13. The CMA considers that the above definition does not include vans. The concept of car is sufficiently clear to allow PMI Providers to determine whether an NCB Protection Offer relates to a PMI Product or not.
14. On the question of whether multi-vehicle policies are included within the scope of the Order, the Explanatory Note has been amended (paragraph 13) to confirm that Article 3 of the Order applies in relation to each privately-owned motor car (excluding motorcycles) under the PMI Product. PMI Providers are able to provide consumers with similar information in relation to other vehicles, should they choose to do so.
15. In addition to the above, a number of PMI Provider respondents to the consultation on the Draft Order asked for clarification of whether renewals were within the scope of the Order. The CMA considers that the Report relates to the offer of NCB Protection, and therefore that a renewal offer which includes NCB Protection clearly involves the inclusion of such an offer. Also, the Explanatory Note has been clarified (paragraph 16) to make clear that an NCB Protection Offer occurs at the time the offer is made (eg when a renewal letter is sent), and not a future date when the (renewed) policy would come into effect.
16. A party queried whether the Average NCB Discount should be calculated on the basis of all quotes or all policies in the relevant year. As explained in paragraph 43 of the Explanatory Note, the Average NCB Discount is to be calculated on the basis of PMI Products actually supplied, and not on all quotes made to prospective customers.

Potential for customer confusion from the NCB Protection Statement and NCB Protection Information

17. A number of PMI Provider respondents to the consultation on the Draft Order requested that the CMA depart from the Report and prescribe outcomes rather than the precise wording of statements for the NCB Protection Statement and the NCB Protection Information. Further PMI Provider respondents argued that the proposed wording for the NCB Protection Statement and NCB Protection Information, as set out in Schedules 1a and 2, could cause customer confusion. In some cases, respondents suggested potential alternative wording in their responses. For instance, one issue identified was that the information to be presented in the tables required in paragraph 1(b) of Schedule 2 must be based on the prior year and that this would not necessarily be representative of the current year.
18. At the time of producing the Report, the CMA identified the information that needs to be provided to consumers in order to remedy the adverse effect on competition concerning NCB Protection and, at the time, considered alternative formulations and identified a number of statements that, for the reasons set out in paragraph 11.51 of the Report, could be effective in helping consumers understand better the value of NCB Protection.
19. Having considered the suggested alternatives received from respondents to the consultation on the Draft Order, the CMA does not consider that such suggested alternatives are materially different from the considerations it took into account at the time of producing the Report or, to the extent they do differ materially, does not consider that they would be materially more effective in achieving the objective of the remedy than the form of words identified in the Report so as to give the CMA sufficient grounds to depart from the Report. The CMA has, therefore, decided not to amend Article 3 of, nor Schedules 1a, 1b and 2 to the Order. The CMA notes that the Order provides some flexibility around key words (see paragraph 4 of Schedule 1a and paragraph 2 of Schedule 1b), in relation to the two tables to be provided pursuant to paragraph 1(b) of Schedule 1a. In addition, as stated in paragraph 11.53 of the Report, PMI Providers are free to provide further information beyond the prescribed statements where they consider that to be appropriate (see for instance paragraphs 18 and 34 of the Explanatory Note).
20. A small number of PMI Provider respondents to the consultation on the Draft Order also argued that, in certain circumstances, the NCB Protection Statement and/or NCB Protection Information that the PMI Providers must give would be misleading to consumers and therefore put the relevant PMI Provider in breach of other regulations or regulatory obligations. For instance, some respondents noted that certain PMI Products offer an NCB Protection

which guarantees that the policy premium would not increase in the following year as the result of an accident (irrespective of whether the insured consumer was at fault or not at fault for the accident), and such a product might not be consistent with the prescribed NCB Protection Statement.

21. In paragraph 11.54 of the Report, the CMA acknowledged the possibility that, in certain specific circumstances, the prescribed statements might be inaccurate or misleading and, as a result, where a PMI Provider considers that the required statement is genuinely misleading, Article 3.5 allows Alternative Information to be provided instead. However, the CMA considers that the situations where Article 3.5 will be invoked in practice will be rare.
22. Some PMI Providers suggested that, where a PMI Broker has a panel of PMI Insurers that supply PMI Products, the requirement to provide the Implied Price of NCB Protection or the Average NCB Discount for the PMI Product supplied by an individual PMI Insurer may be unhelpful to consumers. The CMA has considered these submissions carefully but has concluded that the NCB Protection Offer should contain an Average NCB Discount relating to the PMI Product sold through the PMI Broker by an individual PMI Insurer. This places the obligation to calculate the Average NCB Discount on the PMI Insurer who has access to the necessary information to calculate it, and avoids placing an excessive burden on small PMI Brokers which might not have the resources to calculate Average NCB Discounts. Consistent with this approach, all other information to be provided within the context of an NCB Protection Offer should relate to the PMI Product sold by the relevant PMI Insurer (irrespective of whether the PMI Product is sold directly or indirectly through a PMI Broker), and not to a panel of PMI Products. However, as made clear in the Explanatory Note, nothing prevents PMI Providers from providing additional information beyond that prescribed in the Order.
23. Similarly, some PMI Providers requested clarifications regarding how the Order would apply in a situation whereby a PMI Broker has created its own terms and conditions which are underwritten by one or more PMI Insurer. The CMA considers that the terms on which a PMI Insurer contracts with the consumer are the PMI Insurer's terms irrespective of whether it has agreed to offer those terms at the request of a PMI Broker. The Explanatory Note makes clear at paragraphs 48 and 49 that PMI Insurers and PMI Brokers may need to work together to offer NCB Protection in compliance with the Order.
24. A few PMI Providers also stated that a requirement for PMI Providers to calculate the percentage Average NCB Discount for all policies sold under each of their different brands would be impracticable and disproportionate to the information benefit for customers. In response to these concerns, the CMA provided in paragraph 4 of Schedule 2 (see also paragraph 42 of the

Explanatory Note) that, at the PMI Insurer's option, the Average NCB Discount may be calculated either across all PMI Products supplied by the PMI Insurer or across a smaller subset of PMI Products. The revised date for the entry into force of Article 3 will allow sufficient time for PMI Insurers to put in place the appropriate automated systems required to comply with the Order.

25. A PMI Insurer argued that it would be duplicative and confusing for consumers to provide both a link to a description of the Step-back Formula (as per paragraph 3(a) of Schedule 1(a)) and the table referred to in paragraph 1(c) of Schedule 2 within the NCB Protection Offer. We have clarified the purpose of paragraph 3(a) of Schedule 1(a) in paragraph 30 of the Explanatory Note.
26. In addition to the above, the CMA also recognised in the Report⁸ that the CMA and the Financial Conduct Authority (FCA) should review in due course how well the NCB Protection remedy is working in meeting consumers' needs, and to ensure consistency with the FCA's wider regime, in particular, in relation to general insurance add-ons.

The compliance statement and monitoring arrangements

27. A number of PMI Provider respondents to the consultation on the Draft Order requested that the FCA should be the recipient of the compliance statements required under Articles 6 and 7 of the Order, and be responsible for monitoring compliance rather than the CMA. In the view of these respondents, the FCA is better placed than the CMA to assess compliance as it does so in this, and related, markets on other issues.
28. Pursuant to section 162 of the Enterprise Act 2002, the CMA is under an obligation to keep orders under review and has the power to vary or revoke enforcement orders.
29. However, as noted above, the CMA recommended in the Report that the FCA should review the NCB Protection remedy within two years of the Order. The CMA will consider whether it is appropriate to vary or revoke the Order following this review. In light of the extension granted in relation to the entry into force of Article 3, the CMA would expect the FCA to carry out its review in the summer of 2018. In view of the above, the CMA has not amended Articles 6 and 7 of the Order.

⁸ See paragraph 11.65 of the Report.

30. In addition, some PMI Provider respondents disagreed with the provision in Article 7.1 which provided for the obligation for Designated PCWs to submit compliance statements to end by 16 January 2017, on the grounds that the effect of such a sunset clause would be (a) to place the onus on PMI Providers to police compliance, and (b) to discriminate against PMI Providers, who are required to continue to provide compliance statements under the NCB Protection remedy.
31. The CMA is of the view that, in the circumstances of the Order, it is appropriate and proportionate to limit in time the requirement for Designated PCWs to submit compliance statements, and that such arrangements are not discriminatory. A greater level of scrutiny of compliance with Article 3 compared to Article 5 is required, because Article 3 relates to the relationship between PMI Providers and retail consumers. In contrast, Article 5 relates to a relationship between undertakings where one party has the ability and incentive to monitor their counterparty's behaviour and raise any allegation of a breach of the Order in court or before the CMA. For the avoidance of doubt, the CMA notes that the sunset clause is applicable to the provision of the compliance statement only, and not to the obligation to comply with Article 4 and 5 of the Order. In light of this, the CMA has decided not to modify Articles 6 and 7 of the Order.

The wording of the prohibition on Equivalent Behaviour⁹

32. Some PMI Provider respondents have argued that the prohibition on Equivalent Behaviour should be extended to prohibit action which has the 'object or effect' of replicating the anti-competitive effects of a Wide MFN Clause.
33. For the reasons set out in paragraphs 12.49 to 12.59 of the Report, the CMA decided that it would be disproportionate to prohibit any behaviour which has the effect of replicating the effects of a Wide MFN Clause. Indeed, the CMA considers that there might be legitimate reasons for a PCW to engage in a particular behaviour which may incidentally have the anti-competitive effect of a Wide MFN Clause, but be implemented for a legitimate commercial objective. The CMA believes that the prohibition of such, widely drawn, behaviour could undermine PCWs' business models, and their commercial objectives, which would have undesirable effects on the market.
34. In addition, some respondents requested that the CMA extend the list of Equivalent Behaviour in Explanatory Note, on the basis that not doing so risks

⁹ Article 5.1.

PCWs undertaking other behaviour that has not been listed. In particular, one party noted that a PCW could seek to replicate the anti-competitive effects of a Wide MFN Clause through a volume target clause. Such a volume target could have loyalty inducing effects where it provides an advantage to the PCW not based on any economic service objectively justifying it, and which bars other PCWs from access to the PCW market, or strengthens the PCW's bargaining position by distorting competition. The CMA has not seen evidence of the existence of such clauses, but might consider them within the context of Article 5 if it were to receive such evidence.

35. For the reasons set out in paragraph 12.53, the CMA reached the view that the concept of 'equivalent behaviour' should be as sufficiently flexible to make circumvention as hard as possible. In view of the difficulty of anticipating the evolution of market practices following the ban of Wide MFN Clauses set out in Article 4.1, and the appearance of new forms of 'equivalent behaviour', the CMA decided not to prescribe specific behaviour in the Order and to provide a limited, non-exhaustive, list of examples in the Explanatory Note from those identified in the Report. However, should the CMA deem it necessary in the future, it might issue directions in order to clarify how Article 5.1 applies to specific behaviour.
36. In view of this, and having considered each of the submissions, the CMA has decided not to amend the Draft Order on this point.

Appendix 1: Respondents to the consultations on the Draft Order, Draft Explanatory Note and Modified Draft Order

Introduction

1. The CMA received 40 responses to the Draft Order, Draft Explanatory Note and Modified Draft Order from 30 organisations. These were:
 - (a) A software provider [✂]
 - (b) AA (The)
 - (c) ABI (The)
 - (d) Ageas
 - (e) Allianz
 - (f) Allianz (Ireland)
 - (g) An Insurance Broker [✂]
 - (h) Applied Systems
 - (i) Aviva
 - (j) AXA
 - (k) BGL Group
 - (l) BIBA
 - (m) Canopus Group
 - (n) Cheshire Datasystems Ltd
 - (o) CISGIL
 - (p) Coversure
 - (q) Datamatters Ltd
 - (r) DLG
 - (s) Google
 - (t) James & Browne

(u) LV

(v) Markerstudy

(w) MSM

(x) Polaris

(y) RAC

(z) Southern Rock

(aa)Swinton

(bb)Transactor Global Solutions Ltd

(cc)Virgin Money

(dd)Zurich

2. Non-confidential version of these responses are published on the [Private motor insurance market investigation case page](#).