

# **Retail banking market investigation**

## Supplemental notice of possible remedies

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## Introduction

1. On 6 November 2014, the Competition and Markets Authority (CMA) board in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (EA02), made a reference for a market investigation into the supply of retail banking services to personal current account (PCA) customers and to small and medium-sized enterprises (SMEs) in the UK.
2. The CMA, acting through a group of independent members constituted from its panel, is required to decide whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.<sup>1</sup> If the CMA decides that any feature or combination of features prevents, restricts or distorts competition, it will have found an 'adverse effect on competition' (AEC).<sup>2</sup>
3. In its Provisional Findings, a summary of which was published on 22 October 2015, the CMA has provisionally found AECs. The CMA identified those features that give rise to the AECs and the resulting detrimental effects on customers in the Notice of Provisional Findings.
4. Where the CMA finds that there is an AEC, it has a duty to decide whether it should take action itself and/or whether it should recommend others to take action to remedy, mitigate or prevent the AEC or any resulting detrimental effects on customers.<sup>3</sup> If the CMA decides that such action is appropriate it must also decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions the CMA has a duty to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any resulting detrimental effects on customers.<sup>4</sup>
5. Consequently, alongside its Provisional Findings, the CMA also published on 22 October 2015 a Notice of possible remedies (Remedies Notice) which set out and invited comments on possible actions which the CMA might take or recommend others take in order to remedy, mitigate or prevent the AECs or any resulting detrimental effects on customers. The CMA invited parties to comment on the Provisional Findings and the Remedies Notice in writing, including any suggestions for additional or alternative remedies that they wished the CMA to consider by 20 November 2015.

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<sup>1</sup> See EA02, section 134(1).

<sup>2</sup> As defined in EA02, section 134(2).

<sup>3</sup> See EA02, section 134(4).

<sup>4</sup> EA02, section 134(6).

6. The responses received by the CMA included representations that our Remedies Notice did not sufficiently address the AECs and/or any resulting detrimental effects for PCA overdraft users, and made a number of additional remedy suggestions targeted at these customers. To ensure that all interested parties were aware of the details of a range of these suggestions and given an opportunity to make submissions on them we published an 'Invitation to comment on additional remedy suggestions' (the ITC) on 18 December 2015.
7. Since that time the CMA has further considered the representations made to it alongside responses to the ITC that a number of additional measures targeted at PCA overdraft users may be required.
8. Accordingly, the CMA has today published this supplemental notice of possible remedies (Supplemental Remedies Notice) and invites comments on these additional remedies proposals which the CMA might take in order to remedy, mitigate or prevent the provisional AECs or any resulting detrimental effects on customers. The CMA invites parties to comment on this Supplemental Remedies Notice in writing by **Monday 21 March 2016**. This may include suggestions for modifications or alternatives to these proposed supplemental remedies that they wish the CMA to consider.
9. Throughout this Supplemental Remedies Notice we have asked a number of questions that set out the issues we are seeking views on. We invite parties to respond to some or all of these questions. Alternatively, we would welcome general submissions or responses that focus on specific remedies.
10. In parallel with this consultation, we are reviewing and considering all submissions made in response to the Provisional Findings and the Remedies Notice and will publish our updated thinking on remedies in our Provisional Decision on Remedies in May this year, in line with the updated administrative timetable published on our website today.

## **Criteria for consideration of remedies**

11. When deciding whether any remedial action should be taken and, if so, what that action should be, the CMA will consider how comprehensively the possible remedy options – whether individually or as a package – address the AEC and/or its resulting detrimental effects on customers, and whether they are effective and proportionate.<sup>5</sup>

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<sup>5</sup> [Guidelines for market investigations: Their role, procedures, assessment and remedies \(CC3\)](#), paragraph 329.

12. The CMA will assess the extent to which different remedy options are likely to be effective in achieving their aims, including whether they are practicable and the timescale over which a remedy is likely to have effect.<sup>6</sup> The CMA will generally look for remedies that prevent an AEC by extinguishing its causes, or that can otherwise be sustained for as long as the AEC is expected to endure. The CMA will tend to favour remedies that can be expected to show results within a relatively short time.
13. In line with our guidelines, we will consider whether or not to limit the duration of individual remedies by including ‘sunset’ provisions in their design. This may be done, for example, if the relevant competitive dynamics of a market are likely to change materially over the next few years or if the measure in question is intended to have a transitional impact, while other longer-term measures take effect.<sup>7</sup>
14. The CMA will be guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about remedies. The CMA will therefore assess the extent to which different remedy options are proportionate, and in particular it will be guided by whether a remedy option:
  - (a) is effective in achieving its legitimate aim;
  - (b) is no more onerous than needed to achieve its aim;
  - (c) is the least onerous if there is a choice between several effective measures; and
  - (d) does not produce disadvantages which are disproportionate to the aim.<sup>8</sup>
15. The CMA may have regard to the effects of any remedial action on any relevant customer benefits (RCBs) arising from a feature or features of the market concerned.
16. In the event that the CMA reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is available, where the cost of each practicable remedy option is disproportionate to the extent that the remedy option resolves the AEC, or where RCBs

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<sup>6</sup> CC3, paragraphs 334 & 337.

<sup>7</sup> *Market studies and market investigations: supplemental guidance on the CMA’s approach (CMA3)*, paragraphs 4.14–4.25.

<sup>8</sup> CC3, paragraphs 344.

accruing from the market features are large in relation to the AEC and would be lost as a consequence of any appropriate remedy.<sup>9</sup>

## Issues to consider in the development of overdraft remedies

17. In developing a package of remedies targeted at PCA overdraft users, we will seek to address comprehensively the AECs that we set out in our Provisional Findings. We highlight below the features of the AECs that most affect overdraft users. We also set out why there may be particular issues with developing effective remedies in relation to unarranged overdraft users. We explain why we are considering further remedies to address the AECs arising from these features and/or its resulting detrimental effects. We then highlight specific issues that we have taken into account in the remedies we are considering.
18. In our Provisional Findings, we found that the competitive pressures on overdraft charges are low. We emphasised a number of features of the PCA market in both Northern Ireland and the rest of the UK that led to the provisional finding of an AEC in both markets that were particularly pronounced for overdrafts users:
  - **Low levels of customer engagement with few customers searching for better offers or switching PCAs:** for overdraft users specifically, we noted limited awareness of and engagement with their overdraft usage, and a lower tendency to switch than other PCA customers. This is despite the fact that overdraft users would potentially gain the most from switching.
  - **Barriers to accessing and assessing information on PCA charges and service quality:** we highlighted the particularly complex overdraft charging structures. We provisionally found that these made it difficult for customers to compare different banks' products and services.
  - **Perceived and actual barriers to switching PCAs:** we provisionally found that overdraft users faced additional switching barriers due to the uncertainty surrounding the acceptance and timing of overdraft approval.
19. Addressing these issues effectively may be more difficult for unarranged overdrafts:
  - First, it may be more challenging to increase the low customer engagement about unarranged overdrafts. Helping customers to search for better offers on unarranged overdrafts may be more difficult than for other

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<sup>9</sup> CC3, paragraphs 354.

charges, particularly given the complexity of these charges and the uncertainty around availability. This is exacerbated when customers do not make an active decision on whether to have an unarranged overdraft facility and/or underestimate their likelihood of using one.

- Second, some unarranged overdraft users – eg those with lower credit ratings and for whom access to sufficient credit is important – may face higher search and switching barriers. This is because of the uncertainty they can face over how much PCA providers will lend to them.
20. As a consequence of these factors, PCA providers' incentives to compete on unarranged overdraft charges may be particularly limited. Because of the specific concerns with unarranged overdrafts, some of our additional measures focus more on unarranged overdrafts. Nonetheless, the whole package of remedies address the AECs in relation to both arranged and unarranged overdrafts.
21. In light of the low competitive pressure on overdrafts, in particular on unarranged charges, we are considering measures to increase the constraints on PCA providers' overdraft offerings. We are seeking to do this by enhancing our switching measures (set out in our Remedies Notice) and by developing additional remedies that increase customers' awareness of and engagement with their overdraft usage. We are also considering measures to limit the cumulative effect of unarranged overdraft charges.
22. In addition to addressing the AECs by increasing the constraints on PCA providers' overdraft offers, increasing engagement can directly reduce customers' overdraft charges if, for example, this greater engagement reduces unintentional overdraft usage (as discussed further below). This is another way that overdraft usage remedies can address the AECs.
23. In developing our thinking about what would constitute an effective remedies package for overdraft users, we have considered different types of overdraft usage, in particular:
- **Unintentional usage:** this is where customers would have avoided using an overdraft facility (arranged or unarranged) had they known that they were at risk of using it and the charges involved. The gap between perceived and actual overdraft usage, as set out in our Provisional Findings,<sup>10</sup> suggests that such unintentional usage is likely to be significant.

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<sup>10</sup> [Provisional Findings](#), paragraph 53.



- **Intentional usage:** these are instances where customers are aware that they are using an overdraft facility. Customers' low engagement and the search and switching barriers that we outlined in our Provisional Findings<sup>11</sup> means that providers' incentives to compete on such charges are low, and as a result charges are likely to be higher than would otherwise be the case, particularly for unarranged overdrafts.
24. By considering both types of usage, we are seeking to ensure that we comprehensively address the AECs and the resulting detrimental effects experienced by overdraft users.
  25. Given overdraft users' lower tendency to switch, we will consider how the remedies can impact those that switch and do not switch. Remedies that increase customers' engagement and reduce their search and switching costs should increase PCA providers' competitive constraints across all their accounts. Such remedies can therefore benefit both switchers and non-switchers. In addition, remedies that facilitate more engaged overdraft usage can increase the constraints on PCA providers without necessarily relying on switching. These remedies do this by making demand for overdrafts more responsive to pricing.
  26. In developing our overdraft remedies we have also been mindful of measures to protect overdraft users in vulnerable circumstances. We note the remit of the Financial Conduct Authority (FCA) to regulate providers of consumer credit, and the provisions its rules make to safeguard responsible lending and fair treatment of consumers, including those in financial difficulties. We also note the UK and EU initiatives to provide basic bank accounts to all customers not otherwise eligible for a bank account. We welcome such initiatives while noting that there may be less scope for competition, and therefore our inquiry, to help customers that are in vulnerable circumstances, in particular those that have reached an unsustainable level of debt.
  27. The measures we are contemplating in relation to PCA overdrafts have now been expanded to include both enhanced measures aimed at facilitating switching (as set out in our Remedies Notice) and additional measures aimed at facilitating greater awareness and more effective management of overdraft use. The next section provides an update on the switching remedies in our Remedies Notice and the enhancements to them that we are considering in relation to overdrafts. We then outline additional measures targeted at overdraft usage, particularly unarranged overdraft usage.

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<sup>11</sup> [Provisional Findings](#), paragraph 51(c) and 7.35(b).

## Update on how the switching package helps overdraft users and how it could be enhanced further

28. In our Remedies Notice we proposed a number of different measures that could encourage and help PCA customers including overdraft users to switch. These measures were aimed at addressing the AECs that we have provisionally found, including those aspects relevant to overdraft users. In light of our further work, we are considering whether we could enhance these switching measures to make them more effective in delivering improved outcomes for overdraft users.
29. The first remedy in our Remedies Notice was a remedy that would prompt customers to review their PCAs at times when they may have a greater propensity to consider a change (Remedy 1 in the Remedies Notice).
30. We are considering how this remedy could be expanded to include targeted switching prompts for overdraft users in particular. These prompts might:
  - prompt customers to consider other offerings provided by their current provider that may be better value (ie 'internal switching'); and/or
  - prompt customers to change their perceptions of being 'locked in' to a particular PCA supplier.
31. Prompts for overdraft users to consider better-value or more suitable products provided by their current PCA provider would have the potential to deliver benefits to customers who perceive themselves to be locked into a particular supplier, or have strong non-price related reasons for using a particular supplier.
32. Prompts for overdraft users to change certain customers' perceptions of being 'locked in' have the potential to raise awareness that overdraft users may be able to switch PCA providers without having to pay off their overdraft.<sup>12</sup>
33. We are also considering whether periodic/annual summaries could be used in conjunction with specific targeted prompts, and, if so, how these summaries

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<sup>12</sup> In our Provisional Findings we noted that some heavy users of arranged overdrafts felt that PCA choice would be constrained by the extent of their overdraft usage. We identified that some overdraft users may choose not to switch because they would either be ineligible for an overdraft facility or would not receive their desired arranged overdraft limit from another PCA provider. Yet we also identified that some overdraft users, who may have been able to switch and receive their desired arranged overdraft limit from an alternative PCA provider, may choose not to switch simply because they have the false perception that they would need to pay off their current overdraft to do so. Raising awareness among these users that they are not necessarily 'locked in' to their current account would prompt them to check if they could switch to another PCA provider by using eligibility tools or other services.

could be enhanced, for example, to better inform customers of their overdraft usage and the associated costs.

34. We also proposed a remedy that would facilitate price comparisons between competing PCA providers by making customer-specific transaction data more easily available and usable (Remedy 3). As part of this remedy, open access to transaction data (as the Open Banking Working Group is currently working towards, including real-time access) will help:
  - enable third parties to provide customers with tools and services, such as sweeping services to automatically transfer funds between accounts (which could help customers better manage their overdraft usage including by potentially allowing them to access other forms of credit in real time);
  - enable PCA providers to improve the amount and terms of the arranged overdraft lending they provide to some new overdraft customers; and
  - enable PCA providers to give a more accurate indication of a prospective customer's overdraft eligibility before they have switched accounts (this could help address false perceptions that customers are 'locked in' to their current provider).
35. We also proposed a remedy that would enable consumers to make comparisons between PCA providers on the basis of their service quality (Remedy 5).
36. Among other areas of service quality comparison we are considering publishing indicators that relate to overdrafts. Because the publishing of such indicators is likely to play a role in the successful implementation and compliance with other overdraft remedies we are inviting detailed responses on how we propose to develop this remedy further. We discuss and seek such responses in the section presenting measures to incentivise PCA providers to improve the engagement and outcomes for overdraft users at paragraphs 158 to 163.
37. We also proposed a remedy that would make it easier for prospective PCA customers to find out, before initiating the switching process, whether the overdraft facilities they were seeking were available to them from another PCA provider (Remedy 7).
38. We are considering whether this remedy could be enhanced to ensure that any indication on a customer's overdraft eligibility, including the arranged overdraft limit offered, would be made more widely accessible on comparison websites. For example, a PCA provider might be required to give comparison websites an indication of a customer's overdraft eligibility in response to a

request from a comparison website. As part of this request, comparison websites could transfer relevant customer details to PCA providers in order to help them give an indication of overdraft eligibility.

39. We invite views on these developments in our thinking in relation to these measures.

### **Possible supplemental remedies on which views are sought**

40. In addition to the relevant measures in the switching package outlined above, we next describe additional overdraft remedy options we are considering.

41. These further overdraft remedies fall under the following headings:

- Measures to increase customer awareness of and engagement with their overdraft usage and charges.
- Measures to help customers manage their overdraft usage.
- Measures to limit the cumulative effect of unarranged overdraft charges.
- Measures to incentivise PCA providers to improve the engagement of and outcomes for overdraft users.

42. We describe the remedies under each of the headings above, explaining which features of the AECs and/or resulting detriment they aim to address and how they are intended to work. We invite views on the effectiveness and proportionality of all the measures set out in this Supplemental Remedies Notice and on the best way to specify and implement them.

43. Similarly, we would welcome parties' suggestions of any further remedies that we have not considered along with a description of how and why these could be effective and any supporting evidence.

44. For each of the remedies set out in this Supplemental Remedies Notice, we invite submissions on:

- (a) **how effective the remedy is likely to be in remedying, mitigating or preventing the AEC it is intended to address in each of Great Britain (GB) and Northern Ireland (NI);**
- (b) **the likely cost and implementation time frame for the remedy, and how this may vary by PCA provider and why;**

- (c) whether there are any alternative remedies that would be as effective as the proposed remedy, or more so, in addressing the AECs and that would be less costly and/or intrusive;**
- (d) whether the design of the remedy should be adapted to take account of the requirements of different customer groups, for example depending on the type of overdraft used, the frequency and the level of usage;**
- (e) whether the remedy or a variant would overlap or conflict with any other regulatory intervention existing, planned or in contemplation, including EU directives (for example, the first or second Payment Services Directive (PSD), the Payment Accounts Directive (PAD), Consumer Credit Directive (CCD) or Unfair Commercial Practices Directive) and other UK legislation such as the Data Protection Act 1998 (DPA), Privacy and Electronic Communication Regulations 2003, Consumer Rights Act 2015 and Unfair Terms in Consumer Contracts Regulations 1999;**
- (f) whether there are any other significant legal, regulatory, technical, operational or other barriers to the adoption of the remedy;**
- (g) whether the remedy may give rise to unintended consequences and, if so, what these might be and how they could be prevented or mitigated;**
- (h) whether the CMA should seek to implement the remedy itself via an order or by seeking undertakings, or whether it should make a recommendation that another body, such as the FCA, Payment Systems Regulator (PSR), or HM Treasury (HMT), implement the remedy;**
- (i) how best to monitor compliance with the remedy and who would be best placed to do so;**
- (j) who should be subject to the remedy and, if this is to be only a subset of PCA providers, what criteria should be applied to their selection;**
- (k) the appropriate duration of the remedy and whether a ‘sunset’ clause should be included as part of the remedy design;<sup>13</sup> and**

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<sup>13</sup> [CMA3](#), paragraphs 414–425.

- (l) **any RCBs to which we should have regard as being affected by the proposed remedy.**
45. In addition to seeking views on the effectiveness and proportionality of each of the remedies set out in this Supplemental Remedies Notice, we invite submissions on:
- (a) **the extent, if any, to which the AECs and any resulting detrimental effects are, or could be addressed by enhancements to:**
- (i) **the industry Lending Code<sup>14</sup> or alternative code of conduct; and**
- (ii) **FCA rules, as set out in the Consumer Credit sourcebook or elsewhere.**
46. We also invite submissions on how the proposed remedies interact with the Financial Capability Strategy for the UK<sup>15</sup> and other similar initiatives.
47. We will also consider whether any proposed remedies, if taken forward, would constitute a change of circumstances such that the 2008 Northern Ireland PCA Banking Market Investigation Order (NI Order) needs to be varied or revoked. We therefore also invite submissions on this matter.
48. We note that there may be scope to undertake customer testing as part of these remedies and discuss this further in paragraphs 169 to 170.

## **Measures to increase customer awareness of and engagement with their overdraft usage and charges**

49. In our Provisional Findings we noted that overdraft users have limited awareness of and engagement with their overdraft usage. Below we outline two sets of measures that could address this aspect of the AECs and/or the detriment arising from it. These are:
- prompts and alerts to inform customers of imminent and actual overdraft usage and charges; and
  - measures to encourage PCA customers to make an informed choice on their overdraft options including giving them the option to opt out of an unarranged overdraft facility.

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<sup>14</sup> Lending Standards Board, [The Lending Code](#).

<sup>15</sup> [Financial Capability Strategy for the UK](#), October 2015. This strategy puts in place a framework for improving the financial capability of people in the UK.

50. Low levels of engagement by PCA customers mean that they may not sufficiently consider their possible overdraft needs, or realise they are at risk of incurring contingent charges (eg unpaid item fees, or unarranged overdraft charges), both at the time of opening an account and as they use it. This can be exacerbated by the following factors:
- A customer's overdraft needs may not be known or easy to predict at the time of account opening – such needs may evolve over time as personal and financial circumstances change.
  - Contingent charges can be easier to overlook than upfront charges, as behavioural biases may limit the extent to which customers react to them. For example, customers may wrongly perceive such charges as being a 'one-off' if they are overconfident about avoiding these charges in the future.
51. These factors are particularly relevant in relation to the use of unarranged overdraft facilities as such use is not always planned.

***Overdraft remedy 1 – Prompts and alerts to inform customers of imminent and actual overdraft usage and charges***

52. Increasing customers' awareness of their overdraft usage and charges may encourage greater engagement over their choice of PCA and increase competition over overdraft charges. Increased awareness may also address the AECs by increasing customers' sensitivity to overdraft charges and encouraging them to better manage their overdraft usage.
53. This remedy builds on measures that some PCA providers have already taken to increase customers' engagement with their overdraft usage, in particular alert services<sup>16</sup> and summaries used to inform customers of their imminent or actual overdraft usage and of the charges involved. In doing so, we are seeking to make the good practice in this area more widespread and improve it further.
54. While such services are a welcome development, customers' awareness of their overdraft usage is still low (as set out in our Provisional Findings).<sup>17</sup> There may therefore be scope for significant improvement in the take-up and impact of these services.

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<sup>16</sup> Following the November 2011 BIS/HMT review of consumer credit and personal insolvency: [BIS/HMT Consumer Credit and Personal Insolvency Review: Formal Response on Consumer Credit](#).

<sup>17</sup> See [Provisional Findings](#), paragraph 53.

55. For example:
- there may be scope for PCA providers to take further action to promote their alert services or automatically enrol their customers in them ('auto-enrol') to increase take-up of the alerts;
  - some PCA providers could offer a wider range of alert services and improve the content of the alerts, in particular to highlight the charges involved in using an overdraft;
  - there may be scope for PCA providers to use more effective and engaging ways to explain to customers their overall overdraft usage and charges; and
  - there may be scope to make more effective use of 'calls to action' in these alerts and other communications to encourage customers to reduce their overdraft usage.
56. In light of the above, we are considering whether to require PCA providers to offer some or all of the following services to help customers to take more control over how they use an overdraft:
- Overdraft alert services with, for example, customers automatically enrolled on a minimum set of alerts and with a requirement on PCA providers to offer a wider set of alerts. Specific features of these alerts we intend to explore are:
    - how much emphasis to place on the charges involved, for example whether to include 'high charge' warnings to raise awareness of the high costs of using an unarranged overdraft; and
    - what 'calls to action' to include in these alerts to help customers avoid incurring overdraft charges.
  - Overdraft messages that disclose cumulative overdraft charges shortly after (or possibly during) an episode of overdraft usage. Alternatively, these messages might be provided on a periodic basis (eg monthly).
57. An overdraft alert service could give customers greater control over their use of an overdraft in many circumstances including whether to make debit card payments (whether this is at point of sale or at ATMs). When customers receive this alert, they will know that any more payments have significant risk of incurring overdraft charges.



58. Another way of giving customers more control over using an overdraft for debit card transactions might be to seek customer-authorisation solutions that require customers to authorise the use of an overdraft at the point of sale and at ATMs. Such technological solutions are likely to be costly and potentially ineffective as some transactions are difficult to authorise at the point of sale. They may also be unnecessary if overdraft alert services can give customers greater control over their use of an overdraft. For these reasons, we do not intend to pursue customer authorisation solutions at the point of sale and at ATMs.
59. We explain how our proposed measures for overdraft alert services and messages would work below.

#### *Overdraft alert services*

60. We are considering requiring PCA providers to offer overdraft alert services to their customers, in particular the following:
- Imminent arranged overdraft alert: this would inform customers when they are close to using their arranged overdraft facility (if they have one) and that they are at risk of incurring overdraft charges.
  - Arranged overdraft alert: this would inform customers that they have started using their arranged overdraft facility and outline the charges involved, pointing to further information on charges where necessary.
  - Imminent unarranged overdraft charge alert: this would warn customers when they are close to using their unarranged overdraft (if they have one) and that they are at risk of incurring high unarranged overdraft charges. It would outline the charges involved and point customers to further information on charges where necessary.
  - Unarranged overdraft charge alert: this would warn customers that they have started using their unarranged overdraft and outline the charges involved, pointing to further information on charges where necessary. It could also notify customers each time they incur a paid item fee (if this is part of a PCA's pricing structure).
  - Declined items alert: this would warn customers when a PCA provider had declined an item and levied an unpaid item charge (where this is the case). A variant would be for an alert to warn customers when they are at significant risk of having payments declined (with information on charges where applicable) if they continue to undertake transactions without

funding their accounts. This could help customers avoid unpaid item charges.

61. We are considering whether to require PCA providers to automatically enrol customers in some or all of these type of overdraft alert services and/or promote them more actively.
62. It is likely to be in most customers' interests to receive such alerts. It can help reduce intentional and, in particular, unintentional overdraft usage. In support of this, and as noted in our Provisional Findings, the FCA has found that signing up to text alerts alongside using mobile banking reduced the amount of unarranged overdraft charges incurred by customers by 24%.<sup>18</sup>
63. We note that a few PCA providers have already auto-enrolled their customers on to overdraft alerts and we therefore believe it is feasible for this practice to be more widespread. We recognise that some customers may not wish to receive any or all of these alerts so if customers were to be automatically enrolled, they could be given the ability to opt out of one or more of them.
64. Further design considerations, which we discuss below, relate to the flexibility customers have to adjust the alerts, the medium used, and the content of the alerts.

#### *Customer flexibility to adjust the alerts*

65. For the imminent arranged and unarranged overdraft alerts, customers may value the flexibility of being able to choose when an alert is triggered (eg being able to set how close they get to using an arranged or unarranged overdraft before the alert is triggered). We are therefore considering requiring PCA providers to give customers this flexibility. This may include the option to set multiple warnings at different triggers set by a customer, for example being warned when they are £100, £50 and £20 away from entering into an arranged or unarranged overdraft.

#### *Medium*

66. The medium by which these alerts are delivered could include SMS, email, voice messages and push notifications from a mobile app. We are considering whether or not the requirement should be technology-neutral, provided the alert has scope to reach the customer within a short period of the alert being triggered (eg the same day). This could enable PCA providers to compete on

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<sup>18</sup> See FCA (March 2015) [Occasional Paper No. 10: Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour](#).

the specific technology they use to alert customers. Our current view is that postal communication and online banking notifications generally would not reach customers in time for them to take action to avoid overdraft charges.

### *Content*

67. We will consider what information on arranged and unarranged overdraft charges might be included in such alerts in order to maximise their impact. One possibility is to remind customers of the cumulative cost of their most recent episode of arranged or unarranged overdraft use.
68. Another important consideration is what specific 'calls to action' should form part of their content. Possible calls to action may include the following:
  - Text to encourage customers to manage their account usage to avoid going into an arranged or unarranged overdraft. This might include directing customers to sources of advice on how to manage their money and reduce their overdraft usage and/or text to make customers aware of retry or grace periods offered (discussed further in paragraphs 123 to 125).
  - Prompts to encourage customers to extend their arranged overdraft limits or otherwise consider their credit options.<sup>19</sup>

### *The inclusion of overdrafts in available funds*

69. We note that there is a risk that the effectiveness of overdraft alerts could be undermined if customers do not have sufficient clarity over what funds are available to use without incurring overdraft charges. Some PCA providers include arranged overdrafts in the 'available funds' that they communicate to customers via online banking, mobile banking apps and monthly statements. Such a practice may dilute the message of an imminent overdraft usage alert and could confuse customers over how close they are to using an overdraft facility and incurring costs.
70. We are therefore considering prohibiting PCA providers from including arranged overdrafts within the definition of 'available funds' or otherwise stipulating the way in which the availability of funds is communicated and are also interested in alternative proposals that address this issue.

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<sup>19</sup> For these calls to action, we will consider whether all customers should receive this prompt at a specific trigger or whether PCA providers should have discretion on which customers to send the prompt to (eg only those that are eligible for an arranged limit increase in terms of creditworthiness and affordability).

### *Message services that disclose cumulative overdraft charges*

71. The aim of this remedy would be to highlight to customers the cumulative costs of using an overdraft so that they become more engaged in managing their overdraft usage. In seeking an effective way to communicate these costs, we are considering requiring PCA providers to send messages to their customers that succinctly describe the total charges incurred shortly after, or during, an episode of overdraft usage.
72. Customers may be more receptive to engaging with information on their overdraft charges shortly after, during and before an episode of overdraft usage. It may also prompt customers to consider their PCA usage more broadly. We will also consider as part of our switching prompt remedy (as noted above in paragraph 33) what we can do to enhance annual summaries to raise awareness of charges and increase engagement.
73. One option for this remedy would be the extension to the rest of the UK of the current NI Order that requires PCA providers to notify a customer before overdraft charges are deducted. More generally, we will consider what timing, medium and content of overdraft charge messages could deliver the greatest impact as we have for the overdraft alerts. We will also consider whether to focus this remedy on unarranged overdraft charges, or to require disclosure of both arranged and unarranged overdraft charges.

### *Issues for comment*

74. We invite comments on the following issues in addition to those set out in paragraph 44:
  - (a) **What are your views about auto-enrolling customers into a minimum set of overdraft alert services?**
    - (i) **Which alert services should be included in this minimum set?**
    - (ii) **What flexibility should PCA providers be required to offer their customers to tailor the overdraft alerts that they receive?**
    - (iii) **If customers are not auto-enrolled, how could these services be best promoted to encourage take-up?**
  - (b) **What other types of alert or messages should we consider as part of this remedy?**

- (c) **To what extent should the medium used to send overdraft alerts and messages<sup>20</sup> be specified as part of this remedy? Which media would be most effective and why?**
- (d) **What content should be included in the overdraft alerts and messages? For example, what ‘calls to action’ and information on overdraft use and charges should be included?**
- (e) **What flexibility, if any, should PCA providers be given over which customers receive different ‘calls to action’ (eg to increase arranged overdraft limits)?**
- (f) **What obligations, if any, should be imposed on PCA providers to collect relevant customer contact information, either at account opening or more generally, to ensure wide coverage of the overdraft alerts and messages?**
- (g) **How can potential customer confusion about the inclusion of arranged overdrafts in PCA providers’ definition of available funds best be addressed?**
- (h) **How should we define an episode of overdraft usage that triggers a message on the cumulative overdraft charges incurred?**
  - (i) **What period and/or amount of overdraft usage should we apply?**
  - (ii) **Should the triggers be limited to episodes of unarranged overdraft usage?**
  - (iii) **How quickly should overdraft messages on cumulative charges be sent to customers after an episode of unarranged overdraft use?**
- (i) **What, if any, are the regulatory barriers (given the potential overlap with or application of, for example, the PSD, CCD and data protection law) to the implementation of this remedy?**

***Overdraft remedy 2 – Measures to encourage PCA customers to make an informed choice on their overdraft options***

75. We are considering a remedy to increase customer engagement with their overdraft options by requiring PCA providers to offer customers a clear

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<sup>20</sup> In these questions we use the term ‘messages’ to refer to messages on cumulative unarranged overdraft charges after or during an episode of unarranged overdraft usage.

opportunity to opt out of having an unarranged overdraft facility. This would apply to all PCAs for which an unarranged overdraft facility is available. This proposal builds on measures a number of PCA providers already have in place to offer opt-outs on unarranged overdrafts on at least some of their PCAs.<sup>21</sup> This remedy would increase customer engagement and awareness regarding overdraft options by:

- requiring or encouraging customers to consider their options with respect to having access to an unarranged overdraft facility; and
- further empowering customers to control their unarranged overdraft usage. This would also help address any detrimental effects due to high pricing as a result of low customer engagement.

76. Under this remedy, PCA providers would be required to provide tools to help customers consider their need for an unarranged overdraft facility:

- at account opening – by positioning this as an ‘active choice’ where there is no default position; ie customers will have to actively confirm whether they do or do not wish to have an unarranged overdraft facility during the account-opening process; and
- for existing customers – by selective/periodic prompts to encourage them to consider their overdraft needs and to make them aware of the possibility of opting out of an unarranged overdraft facility as well as the consequences of doing so. Our current thinking is that the default position, should a customer not respond, would be for the existing overdraft facility on the current account to persist. However, PCA providers would be required to ensure that all customers were given clear opportunities, on a regular basis, to consider their options in this regard.

77. For both new and existing customers, the process should ensure that customers have the necessary information to make an informed choice. This could, for example, include information on:

- the main overdraft features and charges associated with an unarranged overdraft facility;
- the potential scale of such charges, including any limits on the cumulative monthly maximum charge that could be applied (see Overdraft remedy 4 below);

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<sup>21</sup> These measures were, in part, an outcome of the discussions that the Office of Fair Trading had with PCA providers following its market study on [Personal current accounts in the UK](#), which it launched in April 2007.

- the differences between arranged and unarranged overdraft facilities (including the different types of charges that may apply to each), customers' eligibility for each and any applicable arranged overdraft limit;
- the risks of opting out of an unarranged overdraft facility (eg the potential consequences of payments being declined); and
- how to opt back in to an unarranged overdraft facility after having opted out of such a facility.

78. In developing this remedy we will consider the following design parameters:

- The level and nature of customer involvement required.
- How the option is communicated to customers.
- The interaction of this remedy with PCA product features such as any charges or loss in rewards associated with the opt-out, and whether the opt-out is applied to a PCA provider as a whole or for each of its PCAs, and/or by transaction type.

*The level and nature of customer involvement required*

79. Several approaches are possible when presenting customers with a choice, including:

- setting no default position and therefore requiring customers to make an active choice about whether or not to have an unarranged overdraft facility; or
- setting a default position but still encouraging customers to make an informed choice. The default position could be having an unarranged overdraft facility so that customers would have to 'opt out' of this facility. Or the default position could be not having an unarranged overdraft facility so that customers would have to 'opt in' to an unarranged overdraft facility.

80. For new customers, an active choice is currently our favoured approach as it avoids the need to set a default position if customers do not make a choice. This avoids the potential harm that could arise from setting an inappropriate default. Nevertheless, it could still be important to help customers make an informed choice at this stage.

81. For existing customers, an opt-out may be a better approach than active choice. An active choice may be more difficult to require without undue

inconvenience to the customer (eg if it involved stopping them from using their account until they had made a choice).

82. For existing customers an opt-out may also be preferable to an opt-in approach because the potential harm to most customers of selecting their non-preferred option may be greater under an opt-in approach. Under an opt-in approach, a customer may unexpectedly withdraw from an unarranged overdraft resulting in declined payments. This may have adverse consequences including inconvenience, incurring additional third party costs or credit score damage. Our current thinking therefore favours **an opt-out approach** for existing customers where the current default for unarranged overdraft availability on their existing account would continue unless they respond otherwise.
83. We are considering measures to mitigate against lack of engagement leading to low response rates, by imposing obligations on PCA providers to inform their existing customers of their ability to choose whether or not to have an unarranged overdraft facility, and to encourage them to respond to confirm their preference.

#### *Effective communication*

84. The communication and positioning of a customer's options, particularly existing customers' option to opt out of an unarranged overdraft facility, will be important to the success of this remedy. This communication may vary by type of customer (new and existing) and by channel:
- For new customers: the process is likely to be more straightforward as PCA providers could be required to ensure the account-opening process incorporates active choice for unarranged overdraft availability.
  - For existing customers: criteria could be set for the frequency of communications, accompanied by some selective targets. For example, PCA providers may be expected to inform all their existing customers of the possibility to opt out within three months of this remedy coming into force, and should aim to have had a response from a certain target percentage within six months. This could be supplemented by periodic or repeated prompts.
85. On content, approaches could range from prescribing specific template text to letting PCA providers establish a minimum set of principles and/or key messages for the communications for both new and existing customers.



86. We would welcome views as to how to effectively reach out to customers and ensure appropriate and meaningful communications of opt-out options.

*Features of the opt-out option*

87. Customers are likely to engage more effectively with an opportunity to opt out of having an unarranged overdraft facility if there are no unnecessarily disadvantageous features that may discourage take-up. Features that may influence customer reaction include:
- any differences in fees and/or rewards associated with the opt-out option;
  - any limitations to the account that come with the opt-out (eg a debit card that does not offer contactless payments); and
  - whether the opt-out option is applied to a PCA provider as a whole or for each of its PCAs, and/or whether the opt-out option is applied in a more granular way by type of transaction.

*Monthly fees and rewards*

88. Existing opt-out options vary in relation to the monthly fees levied and/or access to rewards.
89. The potential to charge a monthly fee (or withdraw rewards) as part of an opt-out option is a commercial choice that could, depending on the level at which it is set, still represent a saving to customers (for example, if they would otherwise incur significant paid item and unarranged balance fees). The flexibility to determine the cost recovery and charging structure on any given PCA may be important for a PCA provider in managing the overall strategy and performance of its PCA portfolio. As such, constraining this could potentially risk unintended consequences.
90. However, a monthly fee (or withdrawal of rewards) may also discourage take-up by those customers that otherwise would prefer to opt out of an unarranged overdraft facility. This risks undermining the potential impact of this remedy – particularly if customers are overconfident about avoiding overdraft charges and therefore do not perceive the potential benefit of paying a monthly fee (or no longer receiving rewards).
91. We welcome submissions on whether, to be effective, it may be necessary to prohibit opt-out options from incurring a higher monthly charge (or reducing rewards offered) compared to the corresponding equivalent account without the opt-out; and whether some constraints should also apply to other types of

charges (such as unpaid item charges) to avoid the risk of PCA providers circumventing this requirement by adding or raising other fees.

*Ability to opt out for each PCA and by transaction type*

92. We are considering requiring PCA providers to offer customers the option to opt out of an unarranged overdraft facility for each of their PCAs (where an unarranged overdraft facility is available). An advantage of an opt-out option on each PCA is that it may be easier for a customer to add or remove an unarranged overdraft facility. Whereas, if a PCA provider only offers an opt-out on one of its PCAs, a customer may need to switch PCAs in order to opt out of an unarranged overdraft facility, albeit remaining with the same PCA provider.
93. Customers may also consider some types of transactions (for example, one-off debit card payments) to be more discretionary than others (for example, direct debit payments ensuring uninterrupted supply of utilities). Such customers may therefore be more willing to consider opting out of an unarranged overdraft facility if they have flexibility to do so only for certain types of transactions, or some protection against missing important payments.
94. A further issue may arise as regards the extent to which customers are, in practice, able to opt out of an unarranged overdraft facility for certain types of transactions – particularly in relation to debit card transactions.
95. Not all debit card transactions are authorised at the point of sale ('online authorised'). Such transactions are referred to as 'offline authorised' – ie presented to the account for authorisation at a subsequent time. Dependent on their obligations under certain payment schemes, the type of transaction and the policies of the merchant, it may not be possible for a PCA provider to decline payment for such transactions even if the account does not have sufficient funds at the time the payment is presented for authorisation.
96. There are debit cards available (eg Visa Electron) with restricted offline authorisation functionality that would minimise the risk of entering unarranged overdraft. However, this comes at the expense of convenience and flexibility for the customer. For example, such cards may not work with contactless payments or be usable with all merchants depending on their authorisation capabilities or preferences.
97. We would welcome views on the following:
  - (a) How, when a customer has opted out of an unarranged overdraft facility, debit card use should be handled. For example, a customer who has opted out of an unarranged overdraft facility could automatically be

provided with a restricted use debit card unless they actively request otherwise and confirm their understanding that an unrestricted use debit card puts them at risk of unarranged overdraft use and charges in certain circumstances, or vice versa.

- (b) Whether, for this remedy to be effective, an opt-out should be offered by transaction type, or whether alternative measures, such as those that give customers the opportunity to avoid regular payments being declined (see the subsection on Overdraft remedy 3), are sufficient to reassure customers regarding the likelihood of significant harm from opting out of an unarranged overdraft facility.

*Issues for comment*

98. We invite comments on the following issues in addition to those set out in paragraph 44:

- (a) **What are your views on our proposals of requiring active choice over unarranged overdraft facilities for new customers and opt-outs for existing customers?**
- (b) **Beyond prompts, are there other ways to effectively encourage existing customers to exercise a choice about whether or not to have an unarranged overdraft facility?**
- (c) **What approach should be taken in relation to the fees and rewards associated with an unarranged overdraft opt-out option? Should this vary by type of fee/reward, and if so, how?**
- (d) **What approach should be taken in relation to handling debit card and cheque use for customers who have opted out of an unarranged overdraft? For the remedy to be effective, is it necessary to offer any other variants of the remedy by transaction type?**
- (e) **What approach should be taken in relation to the communication of the opt-out option, for new customers and for existing customers?**
  - (i) **What information should such communications contain and to what extent should the content of such communications be prescribed?**
  - (ii) **Should targets apply for communications to existing customers (eg in relation to the timing and reach of communications) and if so what should these targets be?**

- (iii) **To what extent, if any, do existing legal and regulatory requirements already safeguard the provision of appropriate information to enable an informed opt-out decision, so that it would not be necessary for the CMA to make an Order for this specific purpose?**

## **Measures to help customers manage their overdraft usage**

99. The measures above encourage greater customer engagement with overdraft usage and greater understanding of charges incurred. In addition to this, we are also proposing measures to help customers act on this information, to help them manage their overdraft usage. Such measures, complemented by the other measures above, can address the AECs by increasing customers' ability to make a more informed decision on their overdraft usage.
100. The measures we propose to help customers manage their overdraft usage focus on enhancing the periods that PCA providers give customers to take action to avoid or mitigate the charges and consequences of unarranged overdraft use. We refer to these periods as 'suspension periods'.
101. Suspension periods, alongside overdraft alerts and other measures have previously been promoted by various initiatives.<sup>22</sup> PCA providers have responded, to varying degrees, with a number of voluntary initiatives, including:
- offering customers overdraft alerts (as discussed in relation to Overdraft remedy 1);
  - offering buffer zones (where PCA providers set thresholds below which unarranged overdraft use does not incur a charge);
  - waiving charges for certain incidences of unarranged overdraft use (such as the first incidence); and
  - offering 'suspension periods'.
102. While the above represent welcome and positive steps towards better outcomes for overdraft users and demonstrate the feasibility of action in this area, the extent to which PCA providers have introduced such measures varies substantially. We believe that the increasing levels of digital banking in the UK, alongside the increasingly sophisticated digital capability of PCA providers, offer an opportunity for such measures to have a significant positive

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<sup>22</sup> For example, the November 2011 BIS/HMT review of consumer credit and personal insolvency: [BIS/HMT Consumer Credit and Personal Insolvency Review: Formal Response on Consumer Credit](#).

effect at this time. Our remedies as proposed in this section therefore seek to build on existing good practice to require a minimum standard across the PCA market.

103. Our proposals in this section focus on suspension periods over other measures such as mandating the provision of buffer zones and waivers. While buffer zones and waivers are positive measures that help customers, they are also important sources of competitive differentiation that mandatory requirements would risk distorting. While this consideration also applies to intervention on the provision of suspension periods, we consider that the risk of distortion is lower here as such measures empower the customer to manage their overdraft usage and avoid any unnecessary charges (and hence complement our remedies that encouraging engagement) while allowing the underlying product offering and associated charging structure to remain differentiated.
104. In addition, it appears that suspension periods have more potential to address the detriment arising from uncompetitive unarranged overdraft charges: customers can potentially fully avoid their charges if they engage and take appropriate action during this period, whereas buffer zones or waivers can only reduce charges for a small amount of unarranged overdraft usage or in certain instances.
105. Suspension periods are most likely to benefit customers who are able to take action in the short term to improve their PCA balance. Such customers may, for example, have alternative sources of funds. They are therefore able to address the detriment associated with unintentional/short-term use of unarranged overdrafts. The success of suspension periods may also depend on customers' willingness and ability to use mobile or internet banking to quickly access their account; or to agree to receive alerts about their account position. These measures are therefore complementary to the steps PCA providers have been taking to invest in and promote digital banking, and the overdraft usage prompts (see subsection on Overdraft remedy 1).

### ***Overdraft remedy 3 – suspension periods for unarranged overdrafts***

106. In this subsection we introduce the different types of suspension periods and then explain how the remedy would work for each type.

## *Different types of suspension periods*

107. A 'suspension period' describes a short period of time during which charging and/or pay/no-pay decisions<sup>23</sup> are suspended. This enables the customer, once made aware of a risk of unarranged overdraft use, to take action (during this period) to avoid or mitigate the resulting charges or possible adverse consequences such as declined payments. At the end of the suspension period, customers will become liable for any charges associated with their overdraft balance, or arising from any pay/no pay decisions that remain necessary, at that time.
108. Suspension periods can take different forms, but for convenience in the remainder of this subsection we propose to define two possible types of suspension periods as follows:
- (a) 'retry periods', which for the purposes of this discussion are periods during which customers may take action to avoid regular payments being declined and incurring unpaid item charges in this event; and
  - (b) 'grace periods', which for the purposes of this discussion will refer to periods during which customers may take action to avoid paid item charges and daily or interest charges.
109. The types of transactions included in a retry period or a grace period can vary, especially as PCA providers do not always have discretion to decline payments (see, for example, the discussion at paragraphs 94 to 96).
110. Currently these terms may be used somewhat interchangeably by industry, so that what some PCA providers refer to as a grace period may be a retry period according to the definition above.<sup>24</sup> Furthermore, existing grace and/or retry periods may apply to arranged as well as unarranged overdrafts.
111. At present, PCA providers<sup>25</sup> covering almost all of the PCA market are, under a voluntary agreement with the FCA, signed up to a 'retry' system<sup>26</sup> for direct debits, standing orders and future bill payments (ie regular payments) where,

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<sup>23</sup> This is when a PCA provider makes a decision on whether or not to process a transaction.

<sup>24</sup> We note that under the definition above, if a transaction is paid following a retry period, this also effectively overlaps with the concept of a grace period in any case.

<sup>25</sup> Allied Irish Bank, Barclays, Bank of Ireland, The Co-operative Bank, Coventry Building Society, Clydesdale Bank (Yorkshire Bank), Cumberland Building Society, Danske Bank, Handelsbanken, HSBC Group (including HSBC, First Direct, and M&S Bank), Lloyds Banking Group (including Lloyds, Halifax, TSB, Bank of Scotland), Nationwide Building Society, RBS Group (including RBS, NatWest, Ulster, Coutts, Adam and Company and Isle of Man Bank), Santander UK, Tesco Bank, and Virgin Money.

<sup>26</sup> FCA press release (7 June 2013): [FCA secures commitment from high street banks to use a 'retry system' when processing payments to stop unnecessary penalty charges.](#)

if a customer does not have sufficient funds for the payment, the payment will be held in the system and retried later in the day before being declined.<sup>27</sup>

112. Customers are alerted to this situation (to varying extents depending on the communications policies of the PCA provider and customers' stated communications preferences) and given the opportunity to transfer funds into their account to avoid the payment being declined. This system therefore reduces the risk of unpaid item fees.
113. The voluntary agreement sets a 2pm deadline for the receipt of funds and the payment will be retried after this deadline. This 2pm deadline allows for PCA providers and other third parties to effectively manage their own internal clearing and settlement processes enabling timely payments to third parties so that customers are protected from defaulting on third party agreements). PCA providers can also compete by providing a later cut-off time (which some providers do).
114. Some PCA providers also offer 'grace periods' (as defined in paragraph 108(b)) for some transactions that are paid despite lack of funds (ie grace periods relating to a paid item (after a retry) and other debit balance-related fees). The extent to which customers are alerted to the opportunity to use the grace period also varies by provider and customers' stated communication preferences.
115. The retry system currently has a good level of participation and covers nearly all payments that PCA providers have the discretion to retry. As such, our focus in this remedy is on grace periods. We would, however, welcome views on the retry system and whether there is scope to extend or enhance the retry period or value in mandating it.

#### *How the remedy would work*

116. This remedy would require PCA providers to offer a minimum grace period or pre-defined cut-off time when customers can take action to avoid charges as result of going into an unarranged overdraft. PCA providers who wish to offer their customers greater flexibility than this minimum standard would be free to go beyond it.
117. PCA providers would also be required to issue alerts (see Overdraft remedy 1) alongside the grace period to make customers aware that they are at risk of

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<sup>27</sup> If a decision was made to send the payment, despite there being insufficient funds, and charge a paid item fee, the customer also has until the cut-off time to pay in sufficient funds to avoid the paid item fee.

unarranged overdraft charges and to give them a timely opportunity to take action.

118. Design parameters for this remedy include:

- the minimum period or predefined cut-off time;
- the types of transaction included;
- requirements to alert customers when they are in a position to benefit from a grace period, and how these alerts should be communicated; and
- which PCA providers should participate in the remedy.

119. We set out below a number of potential design considerations and welcome submissions on these.

*Length of the grace period*

120. Under this remedy, we propose to set a minimum cut-off time or period for a mandatory grace period. Various factors will need to be taken into consideration when assessing the appropriate minimum to mandate. For example:

- Potential technical and/or operational constraints relating to the extent to which PCA providers are able to vary how they process unarranged overdraft charges. PCA providers may do so at different times of the day. Their ability to flex this to a common minimum standard may depend on their IT capabilities and policies, among other factors.
- The potential behavioural impact of grace periods of different lengths. For example, the longer the minimum grace period:
  - the greater the potential benefits to customers, but the lower the perceived urgency of action (which may counteract the former) and the greater the risk of encouraging the short-term use of unarranged overdrafts (which may leave customers in more debt and with higher charges); and
  - the greater the potential for distortion to PCA providers' supply and pricing decisions due to the potential revenue impact of this remedy.

121. These factors may pull in different directions such that a longer grace period may not necessarily be better for customers.



### *Transactions to be included*

122. Under this remedy, the mandatory grace period could apply to all transaction types and all unarranged overdraft charges, but we would welcome views on whether this is appropriate or whether there are exceptions that should be taken into account.

### *Communication*

123. Clear and timely communication of the availability of grace and retry periods, when customers are in a position to benefit from them, will be important to the success of this remedy. We are therefore proposing to require PCA providers to put in place measures to alert customers to the availability of grace and retry periods when they are in a position to benefit from them, ie have incurred unarranged overdraft charges that could be avoided or reduced if they take action during the grace or retry period. This would build on the overdraft alert remedy that we set out above (Overdraft remedy 1).
124. As part of building in grace and retry period alerts into Overdraft remedy 1, we will consider the same design options as those set out at paragraphs 61 to 68. This will include the timing, medium and content of these alerts. In particular, we will consider the extent to which alerts can be sent on a timely basis.
125. We will also consider whether there are wider aspects of communications about grace and retry periods that should be mandated. For example, as previously noted, the terms 'grace' and 'retry' period currently appear to be used somewhat interchangeably by PCA providers. Communicating the availability of grace periods separate to retry periods, and how they vary by PCA provider, may be simplified by mandating the introduction of common terminology for these two terms.

### *Issues for comment*

126. We invite comments on the following issues in addition to those set out in paragraph 44:
- (a) **Do respondents agree with the focus on grace periods, and as part of this whether there is scope to extend or enhance the retry period or value in mandating it?**
  - (b) **What is the appropriate minimum period or predefined cut-off time that should be set for a grace period?**
    - (i) **Should this apply after a PCA providers' last retry (for transactions covered by a retry system)?**

- (ii) **What major constraints and issues, if any, should be taken into account when setting this (eg if the grace period was over 24 hours) and how may these vary, if at all, by PCA provider?**
- (c) **Would common terminology around grace/retry periods would be helpful to customers?**
- (d) **To what extent is it feasible to alert customers on a timely basis to situations where the grace period is relevant and how such alerts may best be designed and implemented (see, for example, paragraph 124 for potential design considerations)?**
- (e) **How effective and/or proportionate would it be to allow some PCA providers to do the following instead of offering grace periods?**
  - (i) **Provide and/or extend a buffer zone on their PCAs (and if so, how to estimate an appropriate buffer zone).**
  - (ii) **Specify and/or extend the circumstances in which some limited use of an unarranged overdraft facility could be waived.**

## **Measures to limit the cumulative effect of unarranged charges**

127. Remedying the overdraft issues that we highlighted in our Provisional Findings raise a particular challenge for unarranged overdraft users, as noted in paragraph 19. These challenges are even greater for heavier unarranged overdraft users, who can incur significant charges over time associated with using this facility. Given the features of the markets that we have provisionally found to lead to AECs in the supply of PCAs the level of such charges is likely to be a source of significant customer detriment.
128. To help increase the prominence to PCA customers of the cumulative effect of unarranged overdraft charges and to directly address the detriment related to these charges, we are considering requiring PCA providers to specify and publicise the maximum total charge that a customer could incur in any given month from using an unarranged overdraft. This could include all charges specifically incurred for using an unarranged overdraft facility, including interest,<sup>28</sup> daily charges, paid and unpaid item fees and all other unarranged fees. We refer to this as a monthly maximum charge (MMC) for using an unarranged overdraft.

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<sup>28</sup> Although as discussed further below, we will consider whether to exclude any interest that is the same rate as that charged for an arranged overdraft.

#### **Overdraft remedy 4 – a monthly maximum charge for using an unarranged overdraft**

129. An MMC would limit the total charges that PCA providers could levy for the use of an unarranged overdraft facility during a particular month. Unless the MMC is set at a low level, it is likely to target heavier unarranged overdraft users, leaving other remedies to drive greater competition and improved outcomes for lighter unarranged overdraft users.
130. Our rationale for proposing this additional measure that specifically targets heavy unarranged overdraft users is on the basis that these customers typically have a lower propensity to switch, are relatively disengaged and face high search and switching barriers.
131. As noted in our Provisional Findings, despite having higher potential gains from switching,<sup>29</sup> heavier overdraft users are no more likely to search and are less likely to switch.<sup>30</sup> This suggests that they are relatively disengaged and that they are likely to face high barriers to searching and switching.
132. Heavier unarranged overdraft users whose credit scores are becoming increasingly impaired may face higher search costs due to difficulties in finding PCA providers that are willing to offer them sufficient credit. There is still scope for competition to benefit such customers in cases where they have not reached a level of unsustainable debt. However, such customers may face greater uncertainty over how much PCA providers will lend to them. They may also have fewer options either for switching PCAs, or switching to other forms of credit. The uncertainty they face and their restricted options may result in higher barriers to searching and switching.
133. These relatively high search and switching barriers combined with lack of engagement may mean that our remedies aimed at promoting switching may not be sufficient to address the significant detriment of heavier unarranged overdraft users. The new overdraft usage remedies set out above may also benefit heavier unarranged overdraft users less than other customers if they have less scope to reduce their overdraft usage in the short term compared with other customers.
134. We consider two variants of this remedy:
- The first variant would require PCA providers to specify an MMC that applies to unarranged overdrafts for the PCAs that they offer, but does not directly constrain the level of MMC that providers may set (uncapped

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<sup>29</sup> [Provisional Findings](#), paragraph 51(c).

<sup>30</sup> [Provisional Findings](#), paragraph 7.124.

MMCs). This operates principally as a transparency measure that engages customers.

- The second variant would also include a regulated upper limit on the MMCs that PCA providers are allowed to levy (capped MMCs). This could directly constrain market outcomes (depending on the level of the regulated upper limit) but also allows competition on unarranged overdraft charges (including potentially the level of the MMC if some PCA providers set this below the regulated upper limit).

135. While we are seeking views on both variants of this remedy, our preference at this stage is for a requirement to specify and publicise uncapped MMCs and we explain our reasons for this below. We also explain why we are considering MMCs rather than other remedies that regulate the structure and level of unarranged overdraft charges.

### *How the remedy would work*

#### *Uncapped monthly maximum charges*

136. A few PCA providers currently include monthly limits as part of their overdraft pricing structure. A requirement for PCA providers to specify an MMC would build on these market initiatives.
137. Under the uncapped variant of this remedy, PCA providers would be required to set and publicise MMCs but each PCA provider would have a choice over the levels of the MMCs that it sets. Under this variant of the remedy, MMCs would address the AECs and resulting customer detriment predominantly by means of increasing engagement through greater transparency of unarranged overdraft charges, by publicising through a single, comparable figure the maximum sum that PCA providers will charge their customers in any given month. This figure, which could be disseminated by PCA providers, intermediaries such as PCWs and consumer groups, would help customers understand the total charges each month that they are at risk of incurring if they use an unarranged overdraft facility. Customers could use MMCs as a factor when deciding whether to have an unarranged overdraft facility (Overdraft remedy 2 above) and in making comparisons between providers, either when originally opening a PCA or having experienced high overdraft charges with an existing provider.
138. A requirement on PCA providers to specify an MMC therefore has potential to put PCA providers under greater competitive and reputational pressure to reduce the cumulative charges they levy on unarranged overdraft users.

139. As such, this remedy could complement other transparency measures – for example, those based on enabling customer-specific comparisons using customers’ transaction data. It could extend the scope for effective comparison of these charges to customers who have not previously incurred high unarranged overdraft fees or who are reluctant to share their transaction data to make price comparisons. In this respect, uncapped MMCs could reinforce the impact on charges of other measures aimed at encouraging search and switching.
140. The impact of a requirement to specify an MMC could be enhanced by complementary measures to raise customers’ awareness of this new common aspect of the charging structure. For example, PCA providers might be required to make MMCs prominent in the marketing of their products. Similarly, disclosure of the MMC could form part of the information provided to customers when deciding whether or not to have an unarranged overdraft facility (as discussed in the section on Overdraft remedy 2). A requirement to specify and disclose an MMC might also be built into other measures we are considering – for example, an increase in the level of a provider’s MMCs could be used as a trigger or prompt to encourage existing customers to review their choice of PCA (Remedy 1 in our Remedies Notice); or a provider’s MMCs could be used as part of an overdraft alert (Overdraft remedy 1 above) to illustrate the potentially high cost of using an unarranged overdraft and the risk of approaching an arranged overdraft limit. The interaction of the MMC with other transparency measures could put pressure on PCA providers to set more competitive MMCs to the benefit of heavy unarranged overdraft users.
141. In summary, we consider that uncapped MMCs have potential to increase the effectiveness of other measures in the package by increasing the engagement of overdraft users, including heavier unarranged overdraft users.
142. Nevertheless, introducing uncapped MMCs may involve some unintended consequences. In particular, they might reduce the amount and type of unarranged lending that PCA providers are prepared to offer. We explore this further in the next section on capped MMCs.

#### *Capped monthly maximum charges*

143. We recognise the challenges, even with uncapped MMCs and other remedies in this Notice, in engaging heavy unarranged overdraft users and addressing the search and switching barriers that they face. We are therefore also considering a variant where the CMA or another body specifies an upper limit on the MMCs that can be set.

144. Introducing a regulated upper limit would address the detriment more directly compared to uncapped MMCs (which address the AECs primarily by increasing engagement). A regulated upper limit therefore has scope to address the detriment experienced by heavy unarranged overdraft users with greater certainty than other remedies depending on the level of the limit set. It could also address the detriment with a lower risk of unintended consequences than other types of price cap. We explain this further in the next section.
145. However, introducing a regulated upper limit on MMCs may pose a greater risk of unintended consequences than uncapped MMCs. In particular:
- A regulated upper limit might be seen as normalising or validating a particular maximum level of unarranged overdraft charges, reducing providers' own accountability for the charges they impose. As such, a regulated upper limit might incentivise some providers to set MMCs at the upper limit as opposed to competing down MMCs. This could be counter-productive to the objective of reducing the detriment experienced by heavier unarranged overdraft users, relative to an uncapped MMC.
  - A regulated upper limit, particularly if set at a low level, might also reduce PCA providers' willingness to offer unarranged overdraft facilities to customers and/or affect the amount and type of unarranged usage offered. For example, PCA providers may be reluctant to lend significant amounts on an unarranged basis, even for infrequent use, if there are tight restrictions on how much they can charge them. This could weaken competition for overdraft users.
146. While the second risk might be present with an uncapped MMC to some degree, they may be greater with a regulated upper limit. This is because with an uncapped MMC, PCA providers would still be able to select an MMC to balance the benefits of being able to communicate a more attractive offer for customers, against potentially being able to advance larger unarranged overdrafts. The balance between these two factors may vary across PCA providers (or potentially between PCA products offered by the same provider), which a lower regulated upper limit would not be able to reflect.
147. We note that there may be some scope to reduce some of these distortion risks, for example, by setting a high upper limit to reduce the scope for reductions in credit availability or by excluding interest charges from an MMC provided that it does not exceed a PCA's arranged overdraft interest rate.<sup>31</sup> And we could reduce the risk of many MMCs being set at the regulated upper

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<sup>31</sup> This approach could also apply to uncapped MMCs.

limit by using measures in our switching package and our overdraft usage measures to encourage PCA providers to offer MMCs below this limit.

*Choice between capped and uncapped monthly maximum charges*

148. Our current preference is towards uncapped MMCs for a number of reasons including the way in which uncapped MMCs can reinforce other switching and usage remedies; the greater flexibility there is with this approach and consequently the lower risk of unintended consequences; the fact that a few PCA providers have started to make this form of commitment demonstrating the workability of this type of measure; and the way in which this approach would increase, rather than reduce, PCA providers' accountability for their own charges.

*Why we are considering monthly maximum charges rather than alternative remedies that more directly constrain overdraft charges*

149. Having considered representations made in response to the Remedies Notice and subsequent calls for information, we are currently pursuing uncapped and capped MMCs rather than alternative measures that more directly constrain overdraft charges. Alternative measures that we have considered include requiring PCA providers to set the same charges for arranged and unarranged overdrafts, subjecting unarranged overdraft charges to the FCA's price cap on high-cost short-term credit, and regulating or prohibiting specific types of charges (eg for paid and unpaid items).
150. We have a preference for MMCs over these types of price control measures for a number of reasons. First, given the overall package of remedies that we are considering, MMCs combined with other switching and usage measures have the potential comprehensively to address the AECs and/or resulting detriment incurred by overdraft users as we have outlined above.
151. Second, MMCs are likely to suffer from fewer of the unintended consequences that could arise from broader price control remedies.
152. Third, unlike MMCs, which target heavier unarranged users, other price control measures suggested to us generally involve imposing lower unarranged overdraft charges across all customers. This could undermine the effectiveness of our switching remedies at increasing competition for lighter overdraft users. Moreover, less closely targeted price control measures are more likely to reduce the credit risk that PCA providers are willing to take on and the amount of unarranged credit that they offer to all customers. This could result in reduced credit availability to light overdraft users who value the

flexibility to make payments which PCA providers currently offer through their unarranged overdrafts.

153. Fourth, the risks of distorting competition under either variant of an MMC remedy, are also lower as providers would have a variety of responses available to them to keep within an uncapped or capped MMC. For example, providers could limit the fees and interest they charge for unarranged overdrafts; they could offer higher arranged limits; and conversely, they could limit the credit available in specific circumstances. The last response might benefit some heavier unarranged overdraft users by reducing their debt burden. An MMC could also increase PCA providers' incentives to help customers reduce their overdraft usage and introduce measures that go beyond those specified in our overdraft usage remedies (Overdraft remedies 1 to 3).

#### *Circumvention risks*

154. Behavioural remedies can be vulnerable to attempts to circumvent the intention behind the remedy. The relative simplicity of MMCs is one factor which reduces the scope of this risk compared with other price controlling measures.
155. However, in developing this remedy, we will be mindful of how this risk might be managed. An important factor in managing circumvention risks will be the specification of the charges that are included in the MMC. If particular types of charges – say unpaid item fees – are excluded from the MMC, then providers will have incentives to rebalance charges towards such charges, thereby undermining the impact of this measure. Our preference is therefore to include all additional charges incurred as a result of the customer going into an unarranged overdraft within the scope of the MMC, though we are inviting views on this issue.<sup>32</sup>
156. Another possible circumvention risk is that PCA providers replace unarranged overdraft facilities with alternative lending facilities that are not unarranged overdrafts but fulfil a similar purpose to them (ie customers can use this alternative facility when they exceed an initial arranged overdraft limit). One way of reducing this type of circumvention risk might be to make the MMC apply to all charges after a customer exceeds their initial arranged limit (excluding limits on any fee-free buffers) or any limit after which there is an

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<sup>32</sup> A possible exception is interest charges that do not exceed a PCA's arranged overdraft interest rate.



increase in arranged charges. We welcome views on this type of circumvention risk and how to address it.<sup>33</sup>

*Issues for comment*

157. We invite comments on the following issues in addition to those set out in paragraph 44:

- (a) We are currently minded to specify this measure in terms of a maximum monthly charge (MMC); however, we invite views on this aspect of remedy design, in particular:**
  - (i) Should the maximum cumulative charge from entering into an unarranged overdraft be specified on a monthly basis or over a different time period (eg quarterly, annually)?**
  - (ii) How should the timescale be specified – for example, should a common definition apply to all providers (eg should an MMC relate to a calendar month)?**
- (b) Should an MMC apply to all of the PCA products offered by a particular provider, or should providers be permitted to apply different MMCs to different PCA products? What would be the advantages and disadvantages of each approach?**
- (c) What charges should be included within the scope of the MMC? To avoid circumvention, we are minded to include all charges associated with an unarranged overdraft, including for example unpaid item charges within the scope of the MMC. However, are there any categories of charges, such as interest where it is set at the same level as for arranged overdrafts, which should be excluded?**
- (d) Should a regulated upper limit be applied to MMCs?**
  - (i) What issues should we consider when deciding whether or not to introduce this regulated limit?**
  - (ii) What factors should be taken into account when setting such a limit?**

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<sup>33</sup> There may also be similar circumvention risks relating to the way that we define arranged and unarranged overdrafts for the purposes of our other remedies (eg whether a grace period should apply to alternative lending facilities that fulfil a similar purpose to an unarranged overdraft facility). We will consider how to address these types of circumvention risks for all our remedies and welcome views on these risks and how to address them.

- (iii) **Who should set a regulated upper limit?**
- (e) **How could we reduce the potential distortions of capped and uncapped MMCs? For instance, as a way reducing potential distortions, should PCA providers be permitted to set MMCs above the regulated limit if customers actively opted in to an unarranged overdraft with a higher MMC? How could this work in practice?**
- (f) **What are the circumvention risks of uncapped and capped MMCs? How can these best be managed?**

## **Measures to incentivise PCA providers to improve the engagement of and outcomes for overdraft users**

158. In the Remedies Notice, we consulted on a remedy that requires PCA providers to disclose indicators of service quality (Remedy 5). Overdrafts are one of the major drivers of complaints for PCA providers and managing customer relationships in relation to overdrafts is an important dimension to service quality. As part of our consideration of measures to address the AECs and/or resulting customer detriment in relation to overdraft users, we propose to develop this remedy so that it includes indicators specifically related to overdrafts. Greater transparency in this regard may help spur competition and improve outcomes by increasing overdraft customers' ability to differentiate between PCA providers.
159. Beyond assisting customers to make an informed choice of PCA provider, improved transparency around overdraft users' experiences and PCA providers' activities and services relating to overdraft use may also have the benefit of offering an additional reputational incentive for PCA providers to improve their products and services for overdraft customers and encourage the engagement of these customers. It also provides a measurable way for the CMA and others to monitor the effectiveness of the remedies being proposed in improving the outcomes for overdraft users. Such measures would therefore help to discipline PCA providers' behaviour and could also potentially support regulatory monitoring of how PCA providers treat their overdraft customers.
160. This remedy seeks to consider whether to require publication of key performance indicators (KPIs) relating to a PCA provider's overdraft business for the additional purpose of incentivising PCA providers to improve their overdraft customers' engagement and outcomes.

161. The types of indicators potentially relevant for these purposes might include the following:
- (a) Information on the quality of overdraft customers' experiences, which may take the form of satisfaction or net promoter scores or could include complaints data (such as the speed of handling them) and other statistics on communications with overdraft customers.
  - (b) Information on the different services that providers offer to overdraft users. This could include information on the range of services available to assist overdraft users,<sup>34</sup> measures of these services' effectiveness at raising customers' awareness of their overdraft usage and charges, and each provider's policies relating to overdraft users (eg treatment of compounding charges<sup>35</sup>).
  - (c) Information on the level of customers' overdraft usage, in particular unarranged overdraft usage, at each provider.
162. Some of these indicators, such as net promoter scores and the range of service available to customers covered under (a) and (b), may be more relevant for a customer in deciding their choice of overdraft. Others, such as customers' awareness of overdraft usage at each provider, may be more relevant as a reputational incentive which is used to ensure that PCA providers comply and effectively implement our remedies.

*Issues for comment*

163. We invite comments on the following issues in addition to those set out in paragraph 44:
- (a) **What KPIs would be most effective in incentivising PCA providers to improve outcomes for overdraft customers?**
    - (i) **Would such KPIs be comparable across PCA providers and if not what are the major factors that would affect their comparability?**
    - (ii) **Should these KPIs be broken down, or would they vary, by customer segment? If so, please describe the relevant segments and how appropriate metrics might vary across these.**
    - (iii) **Should targets be set for any of these KPIs – why or why not?**

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<sup>34</sup> Including alerts, sweep services, suspension periods or other financial management tools.

<sup>35</sup> Where an overdraft charge is incurred solely due to one or more overdraft charges having previously been applied.

- (b) **Who would be best placed to publish these KPIs? How could the KPIs best be communicated to customers?**
- (c) **Who would be best placed to monitor the accuracy of the published information?**

## **The overdraft remedies package as a whole**

- 164. The remedies we have set out here could each individually have a beneficial impact in addressing the AECs we have provisionally found in relation to PCA overdrafts. There is also significant scope for their impact in combination with other measures we have proposed, as a package, to be greater than their effect in isolation.
- 165. In some instances the remedies complement and reinforce each other. A common theme of many of the measures is increasing customers' awareness and engagement in relation to their overdraft usage and charges. For example, the overdraft alerts remedy (Overdraft remedy 1) may complement and reinforce our measures to encourage PCA customers to make an informed choice on their overdraft options (Overdraft remedy 2).
- 166. Increased awareness of overdraft usage and charges may prompt customers who are dissatisfied with the service or charges to consider switching to alternative PCA providers. We therefore see our additional remedies as complementing the switching package in our Remedies Notice.
- 167. A few of the remedies may seek to address the same or similar underlying feature of the AECs or the resulting detriment. For instance, the overdraft alerts and grace/retry period remedies both help address charges arising from unintentional overdraft usage; and a retry period may help engage customers who might not opt out of unarranged overdraft use due to concerns about missing important regular payments. In such cases, we will consider how the design of these remedies may overlap and/or reinforce one another, whether it is necessary to have all of these remedies, and, if not, which of the remedies are sufficient to address the AECs.

### *Issues for comment*

- 168. We invite views on the package of measures overall including the following:
  - (a) **How effective, as a combination, is the package including the remedies in our Remedies Notice? For example, which remedies work well with others and would certain remedies only be effective in combination with other remedies? Alternatively, would the**

**effectiveness of certain remedies be undermined by the adoption of other remedies?**

**(b) Are there other measures that we should consider?**

**(c) Are there any particular remedies currently contemplated as part of the package that should be removed or modified?**

## **Customer testing of possible remedies**

169. The effectiveness of some of the possible remedies set out here may be affected by the manner in which they are implemented; for example specific features of the unarranged overdraft active choice and opt-out remedy are likely to influence the response of customers to them and hence their impact on competition. Customer research could be undertaken to inform judgements about whether to take forward particular remedies as well as how they might be designed.
170. Such research could include qualitative and quantitative research and, though this would be more challenging, lab testing and field testing, potentially including the use of randomised control trials. As noted in our Remedies Notice, we recognise that field trials in particular can be complex to design, organise and implement. They may sometimes suggest variations in the approach to be tested rather than provide a conclusive answer within a single trial, which in turn may call for an iterative approach. In some instances it may not be necessary to undertake further customer testing as we can draw on existing research and evidence to inform whether to adopt a remedy and/or its design. We would welcome parties providing such research and we are interested in views on the best approach to further testing the additional remedies considered in this Notice.

## **Relevant customer benefits**

171. In deciding the question of remedies, the CMA may have regard to the effect of any action on any relevant customer benefits (RCBs) of the feature or features of the market concerned.<sup>36</sup>

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<sup>36</sup> CC3, paragraphs 355–369.

172. RCBs are limited to benefits to relevant customers in the form of:
- (a) lower prices, higher quality or greater choice of goods or services in any market in the UK (whether or not the market to which the feature or features concerned relate); or
  - (b) greater innovation in relation to such goods or services.
173. EA02<sup>37</sup> provides that a benefit is only an RCB if the CMA believes that:
- (a) the benefit has accrued as a result (whether wholly or partly) of the feature(s) concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
  - (b) the benefit was, or is, unlikely to accrue without the feature or features concerned.
174. In considering potential RCBs, the CMA will therefore need to ascertain that the market feature or features with which it has been concerned results, or is likely to result, in lower prices, higher quality, wider choice or greater innovation, and that such benefits are unlikely to arise in the absence of the market feature or features concerned. RCBs may include benefits to customers in the market in which the CMA has found an AEC and to customers in other markets within the UK.
175. If the CMA is satisfied that there are RCBs deriving from a market feature that has resulted in an AEC, the CMA will consider whether to modify the remedy that it might otherwise have imposed or recommended. When deciding whether to modify a remedy, the CMA will consider a number of factors including the size and nature of the expected RCB and how long the benefit may be sustained. The CMA will also consider the different impacts of the features on different customers.
176. It is possible that the benefits are of such significance compared with the effects of the market feature(s) on competition that the CMA will decide that no remedy is called for. This might occur if no remedies can be identified that are able to preserve the RCBs while remedying or mitigating the AEC and/or the resulting customer detriment.

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<sup>37</sup> Section 134(8).

## Next steps

177. The parties to this investigation and any other interested persons are requested to provide any views on this Supplemental Remedies Notice, including any suggestions for additional or alternative remedies that they wish the CMA to consider, **by Monday 21 March 2016** either by email to [retailbanking@cma.gsi.gov.uk](mailto:retailbanking@cma.gsi.gov.uk) or in writing to:

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