

## HSBC Response to CMA supplemental notice of possible remedies

### The overdraft remedies package as a whole

1. We consider that remedies one and three (to the extent they relate to unarranged overdrafts) work most effectively as a single package (and we therefore deal with them consecutively below). In our experience, real time alerts with a warning of an imminent charge in the event action is not taken within a specific period of time are highly effective at improving customer outcomes (see our previous set of responses<sup>1</sup> to the CMA's questions on overdrafts for further detail on this point).
2. We consider that a requirement for providers to prominently display their maximum monthly charges (remedy four) would further assist in the engagement of unarranged overdraft customers, without the risk of any significant unintended consequences. We do not agree with a remedy that imposes a regulated upper limit on the MMCs.
3. We have considerable reservations about the proportionality of remedy two: (i) optimism bias means many customers may "opt out" and then suffer significant customer detriment if essential future payments are not processed; (ii) take-up is likely to be low if the consequence of opting-out is not receiving a contactless debit card; and (iii) the remedy is disproportionate given the likely effectiveness of remedies 1 and 3. If the CMA is minded to pursue this remedy further, we urge it to conduct trials to assess likely take-up. Implementation could be very costly for providers, for very limited customer benefit.

### Overdraft remedy 1 – prompts and alerts to inform customers of imminent and actual overdraft usage and charges

4. We consider that prompts and alerts are the single most effective means by which to improve customer outcomes. They encourage customers to focus more on how they use their overdrafts, which in turn increases rivalry between providers in respect of overdraft policies and pricing. They also have the potential to reduce dramatically the amount of overdraft charges which customers incur, when they are presented as a call to action just before a charge is incurred.
5. The risk of unintended consequences is low. Real time alerts (via mobile text or mobile banking) are relatively straightforward and inexpensive to implement, and can be put in place in a matter of months. Providers will need to take action to ensure that they have mobile telephone numbers for their customers.<sup>2</sup>
6. We do not consider that alerts require any specific tailoring to cater for different customer groups: we consider that a core set of alerts (where a charge is about to be incurred) should be applied on an opt-out basis for all customers, with a further suite of alerts available to customers on an opt-in basis.
7. In terms of implementation, we think it will work best if the CMA makes a recommendation to the FCA to work with providers to develop effective prompts and alerts, the fine detail of which can be developed through an iterative process, potentially through the use of randomised controlled trials to test prompts and alerts which do not have a proven track record. We believe the FCA

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<sup>1</sup> See HSBC submission dated 22 February

<sup>2</sup> At HSBC we ensure we have up-to-date and complete information about our customers – in addition to collecting a customer's mobile number at account opening, we regularly ask customers to confirm their contact information when they interact with us.

would also be best placed to monitor compliance with the remedy. We consider that –as the AECs the CMA has identified relate to the demand side as a whole - all providers should be required to implement and comply with this remedy (there is no objective or evidence-led basis for confining it to only a sub-set of providers), and that no sunset clause is required.

8. In the following paragraphs we address some of the more specific questions posed by the CMA.

- (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 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)?

9. In HSBC’s view, a balance needs to be struck: on the one hand, we consider that customers should receive on an opt-out basis real time information in respect of imminent substantial charges (such as unarranged overdraft fees), especially where those charges may not be anticipated, and customers are likely to want to take action to avoid them if possible. On the other hand, alerts in respect of charges which are less substantial, and/or which are expected (for example overdraft interest), should be available on an opt-in basis. Not all customers will wish to be inundated with alerts in respect of charges where no immediate action is necessary; there would be a real risk of diluting the impact of the most important calls to action if too many messages are sent on an opt out basis. Further, providing alerts in respect of anticipated events on an opt-in basis will enable providers to develop a broader range of options, from which customers can make a selection.

10. We believe that the following three categories should be provided on an opt-out basis by all providers. We set out how HSBC provides equivalent alerts in respect of each category.

- a. **Imminent unarranged overdraft charge.** The CMA states this would “warn customers when they are close to using their unarranged overdraft... and that they are at risk of incurring high charges.” We send customers an alert after they have entered their unarranged overdraft, but before they incur charges (a projected informal alert);<sup>3</sup> we consider that this type of alert (when combined with a grace period) fulfils this function.
- b. **Unarranged overdraft charge alert.** The CMA states this would, “warn customers that they have started using their unarranged overdraft and outline the charges”. We believe

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<sup>3</sup> We refer the CMA to our response to the CMA’s further information request on PCA overdrafts, page 4.

that our “confirmed informal alert”, sent the day after a customer enters an unarranged overdraft, fulfils this purpose.

- c. **Declined items alert.** The CMA states that this would “warn customers when a PCA provider had declined an item and levied an unpaid item charge (where this is the case).” The CMA notes that a variant would be a warning of a significant risk of having payments declined. We currently provide customers with a warning that we have provisionally decided not to process a specific transaction, providing the customer with a period of time to transfer funds. We believe this is more effective than either of the versions envisaged by the CMA, as they relate to a specific transaction, are sent before the item is declined/charge incurred, and involve a call to action.
11. We consider that the above three categories of alert should be provided on an opt-out basis. We consider that the CMA’s other two categories – imminent arranged overdraft and arranged overdraft alert – should be required on an opt-in basis only, as these typically relate to charges which are less substantial, and/or which are expected (for example overdraft interest). The one exception may be where providers apply charges to arranged overdrafts which are not anticipated, and where customers might wish to take action to avoid them – where this is the case, alerts may be necessary on an opt-out basis in respect of arranged overdrafts as well.
12. The CMA is considering whether some customers should be encouraged to consider applying for an increase to their arranged overdraft by some form of “call to action”. We can see that this may be of benefit, however consideration would need to be given to how prompts which might be interpreted as encouraging customers to increase their borrowing (via an overdraft) could be reconciled with providers’ duties to lend responsibly and their associated responsible lending policies.
13. As regards the medium used for alerts – especially opt-out alerts – the most important criterion is that they should be immediate and accessible to the customer (most likely text message or a mobile push notification, although we do not consider that the CMA should be overly prescriptive). It is important that the customer receives alerts as soon as possible, to maximise the time available to react. Alerts likely to fall into the opt-in category, which do not contain an urgent call to action, could potentially be delivered through less immediate channels.
14. In terms of content, for unarranged overdraft alerts provided on an opt-out basis, we refer the CMA to our current unarranged overdraft text alerts, which we consider to be effective as calls to action, with clear guidance on what steps to take to avoid charges. As regards other types of alert, which we consider should fall into the opt-in category and may not require a call to action, we encourage the CMA not to be prescriptive without extensive field trials first being conducted. For example, we would expect alerts which set out charges and interest in respect of an arranged overdraft at the time the customer enters the overdraft, combined with an illustrative example of the costs of that overdraft, to be effective. However, to gauge its impact, testing would be desirable. The CMA might consider setting out some high level guidance in a recommendation to the FCA for opt in alerts, for the FCA to explore further through field testing what types of alert are most effective.
15. We do not consider that content should differ by customer type: content should be customer event driven (e.g. all customers should receive the same message when they enter an unarranged overdraft).

(g) How can potential customer confusion about the inclusion of arranged overdrafts in PCA providers' definition of available funds best be addressed?

16. We consider that customers value the inclusion of their arranged overdraft within the available funds figure, provided it is made clear to customers that this includes their overdraft, and the actual balance on the account is clearly stated as a separate figure. For example, our Fast Balance App displays both the actual balance and the available funds figure.

(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?

17. As indicated above, we believe a balance needs to be struck between the provision of information which all customers will appreciate receiving (in general, information which will trigger immediate action), and information which only some customers will want to receive.

18. Our existing pre-notification advice (PNA) informs customers of the amount of charges incurred on both arranged and unarranged charges. The PNA is generated immediately following the completion of a customer's monthly charging period. The PNA is sent by post to customers at the end of the charging period. Charges are debited from the customer's account 21 days later. We consider that a month is the appropriate period, and that the information should include arranged and unarranged charges. We consider that post is likely to be a more appropriate medium for this type of alert, as no immediate action is required from a customer. We also make PNAs available through internet banking.

(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?

19. The CMA would need to consider data protection issues and text alert character number limitations.

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

20. We believe that grace periods form an integral element of the measures that should be introduced (and HSBC has already introduced) to give customers more control over their unarranged overdraft usage. An alert in relation to an imminent charge, which will be applied at the end of a relatively short grace period, is the most effective means by which to maximise customer engagement.

21. As with remedy one, we consider that same day grace periods are relatively straightforward and inexpensive to implement, and can be put in place in a matter of months.

22. We comment below on some of the CMA's additional specific questions:

- (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, para-graph 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.

- 23. Our current grace period is set at 11:45 pm on the day the customer enters an unarranged overdraft. Any change to the time of the grace period would involve considerable amounts of work: we would need to change processes and procedures, as well as change the way our charging structure would work.
- 24. Our current alerts already specify the length of the grace period in the text of the alert.
- 25. We consider that same day grace periods are more appropriate than a grace period that carries over to the next day, for the following reasons:
  - a. If the grace period is extended, reaction rates and customer engagement may not increase, and may even reduce, as customers lose the sense of urgency and forget to take action (leading to an increase in the incidence of unpaid items, and an increase in charges incurred).
  - b. The existing grace period is effective – as previously stated, more than [Redacted] our customers who receive the text alerts pay in sufficient funds before the expiry of the grace period.
- 26. The current retry period industry minimum is set at 2 pm. We believe this to be adequate. We set our retry period to 3:30 pm, which it is possible to achieve within the context of existing payment system processes. Extending the retry period beyond 3:30 pm may necessitate costly changes to our payments processing rules and standards, or may lead to beneficiaries not receiving funds until a day later. We therefore consider that 3:30 pm time is a suitable time for all providers.
- 27. It is essential that the grace period is set after the retry cut off time. If the grace period cut off time is earlier than the retry period cut off time, a customer may pay unarranged overdraft fees on a transaction that will not be paid (unless customer deposits funds).

28. We agree that common terminology would be helpful.

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

29. In general, HSBC fully supports the principle of encouraging and enabling customers to make informed choices. However, the CMA must be careful to take into account the fact that unarranged overdrafts by their nature are designed to meet short term emergency borrowing needs that are unplanned. There are important features of how customers think about overdrafts which militate against a remedy focused on advance choices about unarranged overdraft facilities producing the intended outcomes. For this reason, and in contrast to remedy one, we consider that this remedy proposal as currently framed by the CMA is likely to generate unintended adverse consequences for customers.

30. In HSBC's experience, customers generally exhibit pronounced optimism bias when thinking about their likely future need for an overdraft – i.e. they tend to think they won't need one (even if their past behaviour would objectively tend to suggest that they will). If providers are required by the CMA to offer customers a choice (even an active choice as opposed to an opt in) over whether to have an unarranged overdraft facility, there is a high risk that customers will exhibit an optimism bias and elect not to have an unarranged facility. When their optimism is not borne out in their subsequent actions, this may then lead to essential future payments not being processed, causing significant customer detriment. Unarranged overdrafts by their nature constitute short term emergency borrowing that is unplanned: it is difficult for customers to predict when and if this need will ever arise. (For example, a customer may open a new account when they have no reason to believe they would ever need an unarranged overdraft. However, some years later they may suffer an unanticipated adverse change to their circumstances.)

31. In addition, as explained below at paragraph 40, we see the increasing customer adoption of contactless card usage as a major obstacle to the success of any opt-out scheme, given that in HSBC's view it will not be feasible to provide the opted-out customers with a contactless card.

32. We consider that the effective use of text alerts, in combination with grace periods, when customers enter an unarranged overdraft are the most effective means by which to improve customer outcomes.

33. Although we have not conducted any detailed assessment of the likely levels of work the changes contemplated by remedy two would require, our initial understanding is that it would be considerable. Particularly in light of our views on unintended adverse consequences, we consider that the benefits of this remedy would not outweigh the considerable implementation costs.

34. If, notwithstanding our concerns, the CMA decides that it wishes to push forward with this remedy, we urge the CMA to recommend to the FCA that it conducts trials to test customer reaction to the remedy, and also seeks to understand better (i) whether customers are exhibiting an optimism bias in electing not to have an unarranged overdraft, and then suffering a detriment when an important payment is declined, and (ii) whether there would be sufficient take-up by overdraft customers given the issue around contactless debit cards.

35. In the following paragraphs we address some of the more specific questions posed by the CMA.

(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?
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- (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?

36. The following additional comments are made subject to our general remarks above (i.e. we consider that requiring customers to make an advance choice to opt in or out of having an unarranged overdraft facility is likely to generate adverse consequences and is disproportionate).
37. If an active choice is preferred by the CMA, we consider that there is a material risk that a large proportion of customers will make a choice which suits their current financial position and behaviour, but not their future financial position and behaviour (i.e. they exhibit an optimism bias).
38. In respect of existing customers, we do not see the benefit in communicating with customers who do not use their overdrafts: any requirement to communicate with customers who always stay in credit would be disproportionate. Any prompts for existing customers who do use their overdrafts, offering the option to opt out of an unarranged overdraft, would be best communicated alongside the PNA statement which customers who use their overdrafts receive.
39. As regards the approach to fees and rewards, we consider that this should be a commercial decision for each individual provider. In essence, if a large number of customers opt out of unarranged overdrafts, and providers suffer a cost increase and/or revenue drop, they may seek to rebalance their overdraft pricing. It should be left to each individual provider to decide whether to spread the costs across all customers, overdraft customers, or only customers who opt out. Any rule which restricts a provider's freedom to set pricing is likely to distort competition.
40. We see the increasing usage of contactless cards as a major obstacle to the success of any opt out scheme: if customers decide to opt out of unarranged overdrafts, HSBC would need to stop providing them with contactless cards and instead supply restricted use debit cards, which do not have any contactless functionality. This is because contactless cards do not require authorisation at point of sale, so it is not possible to prevent a customer with a contactless card from exceeding their arranged overdraft limit. We consider it very likely that, with the increasing ubiquity of contactless payments, customers will be very unwilling to forego this functionality.

41. The CMA raises as a possible alternative that providers could give customers who wish to opt out of unarranged overdrafts the option to continue to use a contactless card, on the basis that if the use of that card takes a customer over their arranged overdraft limit, the customer will still be subject to additional charges for this unarranged use.
42. The CMA's alternative option would lead to a perverse outcome – and therefore send the wrong messages to customers about responsible borrowing – given that it would essentially involve the customer electing to have an unarranged overdraft for non-essential spend items on their contactless cards, but not for more essential items like utility bills.
43. If the CMA wishes to continue to pursue remedy two, we urge it to conduct (or recommend the FCA conducts) rigorous trials, before any potentially onerous requirements to introduce a choice for customers (either new or existing) is imposed.
44. As regards information which communications should contain, we consider that these would need to make it very clear to customers what the risks are if they opt out. Any trial should include such communications.
45. It would be inappropriate for the CMA to set a target for the number of customers who respond to any such communication from their provider – it is impossible to predict what such a target should be.

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

46. We agree in principle with the CMA that a requirement for providers to set and prominently display the maximum monthly limit for their PCA's unarranged overdraft charges will increase customer awareness and engagement, thereby facilitating both shopping around by customers and competition between banks as to their overdraft charges. It will avoid many of the significant unintended consequences that a mandated cap is likely to generate.
47. Such a requirement could be implemented in a period of months. We consider that the same monitoring requirements we propose for remedies one and three could apply to this remedy.

(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?
- (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?

48. We consider that the maximum cumulative charge should be specified on a monthly basis.
49. The MMC should apply to all unarranged overdraft charges, with the exception of debit interest, where this is the same as for arranged overdrafts. HSBC incurs a cost of funds in respect of all overdraft advances, and applies the same rate of interest in respect of arranged and unarranged overdrafts. The purpose of displaying the MMC is to show customers what additional charges they are subject to when using an unarranged overdraft. If the interest rate does not vary between arranged and unarranged overdrafts, the interest would not be an additional cost for using an unarranged overdraft. We receive a negligible number of complaints in relation to overdraft interest on arranged and unarranged overdrafts.
50. We consider that providers should be given discretion to apply different levels of fee cap to different types of account. Different types of account may exhibit different types of customer overdraft behaviour, and providers should be free to reflect these behavioural differences in the MMCs. Such an approach will also be more conducive to effective competition across individual account types.
51. We agree with the CMA's provisional thinking that a regulated upper limit would be ineffective in promoting competition, and may actually lead to worse customer outcomes.
- a. Providers may be incentivised to coalesce around the limit rather than compete more actively on the level of the limit. A regulated upper limit may be considered as normalising or validating a particular maximum level of unarranged overdraft charge.
  - b. If there is less differentiation in providers' MMCs, there will be less incentive for customers to shop around. As such, this remedy cuts across the general aim of the remedy package (i.e. to improve customer engagement).
  - c. If the limit is set too low, this may have an impact on providers' willingness to provide unarranged overdraft facilities (i.e. reduced credit availability for higher risk customers).
  - d. A regulated upper limit may distort providers' pricing behaviour, leading to higher overdraft charges for arranged overdrafts.
  - e. A regulated upper limit may discourage customers from lowering their unarranged overdraft usage and staying within their arranged overdraft limit.
52. We struggle to see how an opt-in to a higher MMC would be effective in practice.

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

53. We agree in principle that it may help to facilitate competition if KPIs are published on a periodic basis which draw comparisons between PCA providers.
54. It may be appropriate for such information to be supplied to the FCA, for it to publish, with a view to PCWs and the Media making use of the data (in a manner equivalent to the FCA's sunlight remedy in the Cash Savings market study).
55. A sunset clause may be appropriate in respect of this remedy, as competition between PCWs may foster the development of comparison data on PCW platforms which is more effective and user friendly than data which providers are mandated to provide to a Regulator.

- (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?
- (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?

56. There are a number of KPIs that could help drive improved outcomes for overdraft customers. These may include:
- a. Price (including interest rates, fee cap levels, daily charges, unpaid or paid item charges etc);
  - b. Customer costs in respect of specific charging scenarios;
  - c. Nature of alert service (channel, content, opt-in or opt-out); and
  - d. Customer complaints data in respect of overdrafts.
57. There may be some issues around comparability. For example, some providers charge for unarranged overdrafts on a per day basis, while others charge on a per event basis. Assessments would also need to be conducted product by product, not by brand (for example, unlike other HSBC accounts, HSBC Premier has no unarranged overdraft charges).
58. The CMA suggested that a KPI might include "information on the level of customers' overdraft usage, in particular unarranged overdraft usage, at each provider."<sup>4</sup> We do not consider this to be an appropriate KPI because it does not follow that lower overdraft usage is an indication of better experience with a particular provider. There are many reasons why customers of a

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<sup>4</sup> Para 161(c), CMA Supplemental notice of possible remedies.

particular provider may have higher overdraft usage. For example, this may be attributable to the characteristics of the provider's underlying customer base.

59. We do not consider that targets should be set for any KPIs – the process of competition should be sufficient to incentivise providers to improve their KPI score.