

# Review of 2008 Northern Ireland Personal Current Account banking order (as amended in 2011)

Provisional decision

17 May 2016

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## 1. Summary

- 1.1 The Competition and Markets Authority (CMA) has a statutory duty to keep under review orders made under the Fair Trading Act 1973 (FTA) and under the Enterprise Act 2002 (EA02).<sup>1</sup> From time to time, the CMA shall consider whether, by reason of any change of circumstances, an order is no longer appropriate and needs to be varied or revoked.<sup>2</sup>
- 1.2 Following consultation in May 2015, we decided to open a review of the [2008 Northern Ireland Personal Current Account \(PCA\) banking order as amended in 2011 \(the order\)](#) alongside the review of the 2002 SME banking undertakings and the retail banking market investigation, which covers retail banking services to personal current account (PCA) customers in the UK, including Northern Ireland. The review of the order is being undertaken by the same panel members as the retail banking market investigation.
- 1.3 We have provisionally decided that market and regulatory developments following the making of the order, and the retail banking market investigation's proposed remedies package,<sup>3</sup> represent a change of circumstances such that the order in its entirety can be revoked.
- 1.4 Our provisional decision reflects an individual assessment of each of the articles in the order. In addition, we have taken into account representations made by a number of parties that the implementation of a single regulatory regime across the UK is preferable to the maintenance of separate requirements for providers in Northern Ireland and Great Britain, which is both costly and complex.
- 1.5 Our provisional decision is summarised in Table 1 below.

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<sup>1</sup> See [Remedies: Guidance on the CMA's approach to the variation and termination of merger, monopoly and market undertakings and orders \(CMA11\)](#), paragraph 2.2.

<sup>2</sup> See EA02, section 162(2).

<sup>3</sup> Our provisional decision is based on the assumption that our proposed remedies package is adopted. We will revisit our assessment of the effect of the proposed remedies on the provisions contained in the order should this not be the case.

**Table 1: Summary of provisional decision**

<b>Article</b>	<b>Description</b>	<b>Provisional decision</b>	<b>Rationale</b>
<b>Information requirements</b>			
Article 4	Clear and comprehensible marketing communication	Revoke	Article 4 requires the banks to fulfil obligations similar to the requirements of existing and impending regulations (eg the Financial Conduct Authority's (FCA's) Banking Conduct of Business Sourcebook (BCOBS) and the Payment Accounts Directive (PAD)), which apply to the whole of the UK.
Article 5	Information on charges and interest rates	Revoke	Article 5 requires the banks to fulfil obligations similar to the requirements of existing and impending regulations, which apply to the whole of the UK.  The retail banking market investigation's proposed remedies package intends to combine information provision with tools to enhance price and service comparison.
Article 6	Pre-notification of overdraft charges and interest	Revoke	Article 6 is rendered obsolete by market developments, as well as the retail banking market investigation's proposed overdraft alerts remedy, which apply to the whole of the UK.
<b>Switching information</b>			
Article 7.1	Annual switching notification	Revoke	Articles 7.1 to 7.3 are rendered obsolete by the retail banking market investigation's proposed remedies package, which is likely to address uniformly across the UK the issues covered by these provisions, as they combine information provision on switching with tools to enhance price and service comparison.
Articles 7.2 and 7.3	Switching leaflet	Revoke	

Article	Description	Provisional decision	Rationale
<b>Switching process</b>			
Article 8.2	Provision of authorised overdraft	Revoke	The introduction of the Current Account Switch Service (CASS) in 2013 renders obsolete the switching requirements under the order.
Article 8.3	Provision of fee-free overdraft for three months following switch	Revoke	
Articles 8.4 to 8.6	Refund of charges incurred as a result of the failure of the switch	Revoke	
Article 8.7	Inclusion of information on authorised overdraft and refund of charges in switching leaflet	Revoke	

## 2. Introduction

- 2.1 The CMA has a statutory duty to keep under review orders made under the FTA and EA02. From time to time, the CMA must consider whether, by reason of any change of circumstances, an order is no longer appropriate and needs to be varied or revoked.<sup>4</sup>
- 2.2 As part of its consideration of whether to conduct a review, the CMA initially assesses whether there is a realistic prospect of the review finding that there has been a change of circumstances since the order was first made.<sup>5</sup>
- 2.3 In May 2015, the CMA received 11 responses to its consultation, all of which welcomed the CMA opening a review of the order. Following consultation, the CMA [decided to open a review](#) of the order alongside the review of the 2002 SME banking undertakings and the retail banking market investigation, which covers retail banking services to PCA customers in the UK, including Northern Ireland.

## 3. Background

- 3.1 On 19 February 2008, the Competition Commission (CC) made the order for the purpose of remedying, mitigating or preventing the adverse effect on competition (AEC) and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the AEC found in the PCA market in Northern Ireland.
- 3.2 The order was varied in 2011 following a review by the CC, which found that there had been a change of circumstances as a result of the coming into force of the Consumer Credit Directive (CCD) and the Payment Services Directive (PSD).<sup>6</sup>
- 3.3 The order requires any institution that offers PCA banking services in Northern Ireland to 10,000 or more customers (or 5,000 or more customers if the institution is part of a larger group, which has 10,000 or more customers) (the banks) to comply with various information and switching requirements.

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<sup>4</sup> See [CMA11](#), paragraph 2.2.

<sup>5</sup> See [CMA11](#), paragraph 3.10.

<sup>6</sup> The CCD established a common set of rules for consumer credit providers on the form, content and manner of provision of pre-contractual and ongoing information on consumer credit agreements, including some types of overdrafts. The PSD established a common set of rules for payment services providers on the form, content and manner of provision of pre-contractual and ongoing information on payment services to consumers. Therefore, a number of provisions in the order were deleted, as they were no longer relevant or exceeded the requirements of the CCD or PSD.

## ***Information requirements***

- 3.4 The banks are required to:
- (a) ensure that marketing communication is in easily understandable words and in a clear and comprehensible form (see Article 4);
  - (b) provide the following information with any marketing communication designed to assist a customer when selecting a PCA:
    - (i) the existence of and level of any charges and interest rates;
    - (ii) the circumstances in which each of the charges and interest rates would apply;
    - (iii) the time when each of the charges and interest rates would be applied; and
    - (iv) the way in which the charges and interest rates are applied to the PCA, including whether discretionary policies exist as to how they apply to unauthorised overdrafts (Article 5); and
  - (c) to notify a customer at least 14 days before deducting authorised or unauthorised overdraft charges and debit interest (Article 6).<sup>7</sup>

## ***Switching requirements***

### *Switching information*

- 3.5 The banks are required to notify a customer annually that they can close their account and switch to another bank, and where they can find further information on how to switch (Article 7.1).
- 3.6 At the same time, the bank must provide the customer with a switching leaflet,<sup>8</sup> which should include:
- (a) an explanation of the details of the current switching process, including any changes expected to be made to the switching process in the following six months;

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<sup>7</sup> This does not apply where a customer requests a bank to close their PCA, where the banks can deduct an overdraft charge and/or debit interest at any time following the date of the request.

<sup>8</sup> The switching leaflet was developed by all of the banks together under the coordination of the British Bankers' Association (Article 7.4).



- (b) a statement explaining that using the bank's switching service helps customers to switch their PCA to another Bank; and
- (c) an explanation that customers are not charged for switching (Articles 7.2 and 7.3).

### *Switching process*

- 3.7 The new bank is required to offer switchers an authorised overdraft in accordance with its usual credit assessment criteria (Article 8.2).
- 3.8 The new bank cannot apply or levy any authorised overdraft interest or charge for at least three months from the date the customer opens the PCA (Article 8.3). Where the customer declines the authorised overdraft offered by the new bank, or is ineligible for an authorised overdraft, the new bank is required to refund the customer any interest and/or charges incurred as a result of a failure of the switching process (Articles 8.4 and 8.5).<sup>9</sup>
- 3.9 The banks are required to include in the switching leaflet (and any other document that details their switching service and any incentives to switch) a reference to the availability of an authorised overdraft for switchers, and the refund of any interest and/or charges incurred as a result of a failure of the switching process (Article 8.7).

## **4. Provisional decision**

- 4.1 We have provisionally decided that market and regulatory developments following the making of the order, and the retail banking market investigation's proposed remedies package, represent changes of circumstances such that the order can be revoked.
- 4.2 Our provisional decision reflects an individual assessment of each of the articles in the order. In reaching our view, we have taken into account representations made by a number of parties that the implementation of a single regulatory regime across the UK is preferable to the maintenance of separate requirements for providers in Northern Ireland and Great Britain, which is both costly and complex.

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<sup>9</sup> The old bank is required to refund any interest and/or charge incurred on a PCA held at the old bank as a result of the failure of the switching process, regardless of whether or not the interest and/or charge was incurred as a result of an error by the old bank (Article 8.6).

## ***Information requirements***

### *Clear and comprehensible marketing communication*

- 4.3 The CC imposed Article 4 (the duty to ensure that marketing communication is in easily understandable words and in a clear and comprehensible form) to address the difficulties that customers perceived and experienced in searching for and switching PCAs. This was due to the unduly complex charging structures and practices adopted by the banks.<sup>10</sup>
- 4.4 We have provisionally decided to revoke Article 4, as it requires the banks to fulfil obligations similar to the requirements of existing and impending regulations applying to the whole of the UK. For example:
- (a) Barclays told us that the FCA's BCOBS 4.1.1 required firms to communicate in 'easily understandable language and in a clear and comprehensible form', and Regulation 47(1)(c) of the Payment Services Regulations required information to be provided or made available 'in easily understandable language and in a clear and comprehensible form'.<sup>11</sup>
  - (b) LBG, among others, told us that PAD<sup>12</sup> required firms to provide a pre-contractual fee information document, as well as a regular statement of fees, and also aimed to standardise the information presented to consumers in marketing and other material.
- 4.5 It is as yet unclear how PAD will be implemented in the UK, although it will require the standardisation of terms and definitions to describe the key services that are linked to payment accounts and subject to a fee.

### *Information on charges and interest rates*

- 4.6 The CC imposed Article 5 to address its findings that banks had unduly complex charging structures and practices, and banks did not fully or sufficiently explain these structure and practices.<sup>13</sup>
- 4.7 We have provisionally decided to revoke Article 5 for the following reasons:

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<sup>10</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.42.

<sup>11</sup> See [Barclays' response to the retail banking market investigation updated issues statement](#), paragraph 9.2.

<sup>12</sup> PAD sets common regulatory standards that EU member states must meet, in order to improve the transparency and comparability of fees related to current accounts. PAD came into force on 17 September 2014 and member states must transpose most of its provisions into national law by 18 September 2016.

<sup>13</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.64.

- (a) Article 5 requires the banks to fulfil obligations similar to the requirements of existing and impending regulations, which apply to the whole of the UK (see paragraph 4.4). For example:
- (i) PSD requires payment service providers to provide customers with information on charges before entering into a contract.
  - (ii) PAD requires a fee information document to be provided before entering into a contract for a payment account with a consumer.
- (b) Recent and ongoing market developments have had and are likely to continue to have an impact on customer behaviour. For example:
- (i) The increasing digitalisation of banking is allowing customers to take greater control over the management of their banking arrangements. (eg the FCA found that signing up to text alerts and mobile banking reduced the amount of unarranged overdraft charges incurred by customers by 24%).<sup>14</sup>
  - (ii) The Open Banking Working Group (OBWG) was launched in August 2015 to deliver a framework for the design of an open Application programming interface (API) standard in UK banking, focusing on personal and business current accounts. This would enable SMEs and PCA customers to accurately compare alternative products and providers using their transaction histories. The OBWG published its report in February 2016.
- (c) In response to our retail banking market investigation’s provisional findings, which found that there was low customer engagement in the PCA market,<sup>15</sup> we have provisionally decided to implement a number of remedies that are intended to combine information provision with tools to enhance price and service comparison. For example, we have provisionally decided to:
- (i) facilitate greater comparison between providers by mandating the timely development of open API standards, the sharing of customer transaction data and the provision of open product and service data;<sup>16</sup> and

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<sup>14</sup> See [FCA occasional paper on the impact of annual summaries, text alerts and mobile apps on consumer banking behaviour](#).

<sup>15</sup> See [retail banking market investigation provisional findings report](#), p227.

<sup>16</sup> See Section 3 of our provisional decision on remedies.

- (ii) prompt PCA customers to consider making changes to their banking arrangements at times when they may be more receptive to such messages. These prompts intend to provide PCA customers with pricing information and guidance on how they can compare their existing banking arrangements to alternatives in the market.<sup>17</sup>

#### *Pre-notification of overdraft charges and interest*

- 4.8 The CC imposed Article 6 to address the feature that banks did not fully or sufficiently explain their charging structures and practices, which led to difficulties in customers making informed choice regarding their banking arrangements.<sup>18</sup>
- 4.9 We have provisionally decided to revoke Article 6, as it is rendered obsolete by market developments, including the increasing use of SMS alerts to pre-notify customers of impending overdraft charges.
- 4.10 In addition, in response to our retail banking market investigation provisional findings, which noted that overdraft users have limited awareness of and engagement with their overdraft usage,<sup>19</sup> we intend to:
  - (a) require, as an initial measure, PCA providers to auto-enrol their customers to receive an unarranged overdraft alert; and
  - (b) recommend to the FCA that it identifies, tests and implements measures to increase customers' engagement with their overdraft usage and charges.<sup>20</sup>

#### **Switching information**

- 4.11 The CC imposed Articles 7.1 to 7.3 to encourage customers to switch by regularly reminding them of the availability of switching services and the ease of switching using these services.<sup>21</sup>
- 4.12 We have provisionally decided to revoke Articles 7.1 to 7.3 for the following reasons:
  - (a) First Trust Bank has suggested to us that the annual notification of switching information and the provision of a switching leaflet, if deemed to

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<sup>17</sup> See Section 3 of our provisional decision on remedies.

<sup>18</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.145.

<sup>19</sup> See [retail banking market investigation provisional findings report](#), p238.

<sup>20</sup> See Section 5 of our provisional decision on remedies.

<sup>21</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.160.

be effective, should be considered for application across the UK.<sup>22</sup> However, we have seen no evidence to suggest that the provision of the annual statement and switching leaflet has had a material impact on customer engagement in Northern Ireland, on customer awareness and knowledge of the switching process or switching levels. Further, the banks' PCA propositions in Northern Ireland do not appear to have been impacted in any material way by these requirements.

- (b) Danske Bank told us that Bacs' quarterly dashboard for the third quarter of 2015 indicated that awareness of the CASS in Northern Ireland was 74%, compared with 72% in the South East and Northern England and 71% in Scotland. Danske Bank told us that the rise in awareness coincided with the distribution of its annual statements and switching leaflets.<sup>23</sup> We do not think that this represents strong evidence of greater awareness in Northern Ireland compared with other counties in the UK.
- (c) A number of our proposed remedies would render obsolete the provision of switching information as prescribed by the order. For example, we intend to:
  - (i) provide PCA customers across the UK with information about the benefits of switching using CASS when they are likely to be more receptive to such information;<sup>24,25</sup> and
  - (ii) raise customer awareness of and confidence in CASS through mass public awareness campaigns across the UK.<sup>26</sup>

### **Switching process**

4.13 The CC imposed Articles 8.2 to 8.7 to address both actual and perceived difficulties in the switching process, thereby adjusting the balance between the costs of and benefits from switching.<sup>27</sup>

4.14 We have provisionally decided to revoke Articles 8.2 to 8.7, as the introduction of CASS<sup>28</sup> in 2013 and the remedies we are proposing in the

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<sup>22</sup> See [First Trust Bank response to the retail banking market investigation notice of possible remedies](#), paragraph 6.

<sup>23</sup> The documents were submitted to customers in early July and the dashboard covers the period from July to September.

<sup>24</sup> See Section 3 of our provisional decision on remedies.

<sup>25</sup> The information to be provided to customers is subject to further testing.

<sup>26</sup> See Section 4 of our provisional decision on remedies.

<sup>27</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.180.

<sup>28</sup> Over 40 UK banks and building societies are currently signed-up to CASS and we think that this represents sufficient coverage of the PCA market.

retail banking market investigation render obsolete the switching requirements under the order as explained below.

#### *Provision of authorised overdraft*

- 4.15 Under Article 8.2, the new bank of a switching customer is required to offer switchers an authorised overdraft in accordance with their usual credit assessment criteria.
- 4.16 In our retail banking market investigation, we provisionally found that although providers are required to offer an overdraft to switchers in accordance with their usual credit assessment, overdraft customers could be deterred from applying to open a new account, because they may fear that the same overdraft facility as they currently hold would not be offered to them by a new provider.<sup>29</sup>
- 4.17 We intend to address this by introducing the following proposed measures, which apply to providers across the UK:
- (a) We intend to make an order or seek undertakings from Bacs to work with CASS participants to perform a review of the account opening and switching process to ensure that the PCA providers continue to offer a firm decision on the overdraft offered after a customer has completed a provider's application process, but before they have switched accounts.
  - (b) We intend to recommend to the FCA to consider requiring all PCA account providers, after open APIs have been implemented, to offer tools indicating a customer's overdraft eligibility on their website and/or via third parties such as PCWs.<sup>30</sup>

#### *Provision of fee-free overdraft for three months following switch*

- 4.18 Under Article 8.3, the new bank cannot apply or levy any authorised overdraft interest or charge for at least three months from the date the customer opens the PCA. This requirement was put in place in response to the perception among customers that switching was risky.<sup>31</sup>
- 4.19 This provision is not included under CASS, where a provider is required to indicate whether they intend to provide an overdraft to a switcher, and if so, the amount of that overdraft, but can levy overdraft charges and interest immediately. However, the CASS guarantee performs a similar purpose in

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<sup>29</sup> See [retail banking market investigation provisional findings report](#), p223.

<sup>30</sup> See Section 5 of our provisional decision on remedies.

<sup>31</sup> See [CC report on PCA banking services in Northern Ireland](#), paragraph 6.176.

providing reassurance to customers as to the security of the switching process. Under CASS, the new provider offers the following guarantee:

- (a) The service is free to use and the switcher can choose a switch date.
- (b) The new provider is responsible for the redirection of all payments and receipts.
- (c) The new provider automatically redirects (for 36 months) payments accidentally made to the switcher's old account to their new account.
- (d) The new provider will refund any interest paid or lost and charges made on either the old or new account as a result of the failure of the switching process.

4.20 There was a general consensus among parties that the introduction of CASS, and in particular the CASS guarantee, served the same purpose as Article 8.3, as it protected customers against a delay or error in the switching process. Therefore, it does not appear necessary to require banks in Northern Ireland to both comply with Article 8.3 and offer a guarantee under CASS.

4.21 A number of banks told us that, in response to Article 8.3, they offered all their customers across the UK an interest-free overdraft for a limited period following their switch. However, we do not think that this necessitates the extension of the requirement across the UK, as this could be an unnecessary additional restriction, which could stifle innovation and competition among banks.

4.22 Further, our proposed remedies package includes a number of measures intended to increase customer awareness of and confidence in CASS (see paragraph 4.12(c)).

#### *Refund of charges incurred as a result of the failure of the switch*

4.23 Under Articles 8.4 to 8.5, where the customer declines the authorised overdraft offered by the new bank, or is ineligible for an authorised overdraft, the new bank is required to refund the customer any interest and/or charges incurred on the PCA held at the new bank as a result of a failure of the switching process.

4.24 Under Article 8.6, the old bank is required to refund the customer any interest and/or charges incurred on the PCA held at the old bank as a result of a failure of the switching process.

4.25 These provisions are effectively replicated by the switching guarantee offered by the new provider under CASS (see paragraph 4.19).

*Inclusion of information on authorised overdraft and refund of charges in switching leaflet*

4.26 Under Article 8.7, the banks are required to include in the switching leaflet (and any other document that details their switching service and any incentives to switch) a reference to the availability of an authorised overdraft for switchers, and the refund of any interest and/or charges incurred as a result of a failure of the switching process.

4.27 This requirement appears to be no longer necessary, as we have provisionally decided to revoke requirements under the order for the banks to provide their PCA customers with a switching leaflet (see paragraph 4.11). This is because under our proposed remedies, we intend to raise customer awareness of and confidence in CASS through mass public awareness campaigns across the UK.<sup>32</sup>

**Other provisions**

4.28 Given that the revocation of Articles 4 to 8 of the order would represent the entirety of the operative provisions, we have also provisionally decided to revoke the entire order, including:

- (a) Article 1: citation and commencement;
- (b) Article 2: general interpretation, index of defined expressions etc;
- (c) Article 3: powers of direction;
- (d) Article 9: supply of information to the OFT;
- (e) Article 10: duty to submit reports on compliance with the Order to the OFT;
- (f) Schedule 1: specified charges and interest rates; and
- (g) Schedule 2: template compliance report.

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<sup>32</sup> See Section 4 of our provisional decision on remedies.