

RETAIL BANKING MARKET INVESTIGATION

Draft Explanatory Note

Retail Banking Market Investigation Order 2017

This note is not a part of the Order

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Introduction

1. The Competition and Markets Authority (CMA) published its findings in the Retail Banking Market Investigation in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Retail Banking Market Investigation: Final Report on 9 August 2016* (the 'Final Report').
2. The Final Report sets out the CMA's findings that there are features of the retail banking market in both Great Britain and Northern Ireland which alone and in combination give rise to adverse effects on competition (AECs).
3. The CMA decided on an integrated package of measures to remedy, mitigate or prevent the AECs (and associated detriment) that it found. The Retail Banking Market Investigation Order 2017 dated [x] 2017 (the 'Order'), alongside undertakings entered into by Bacs Payment Schemes Limited, gives effect to that package of remedies. It consists of:
 - (a) three cross-cutting foundation measures that will underpin increased competition in the retail banking markets which have the object of increasing customer engagement and making it easier for personal and business customers to compare the prices and service quality of different Providers and of encouraging the development of new services;
 - (b) additional measures to make current account switching work better;
 - (c) a set of measures aimed at PCA overdraft users, a group of customers who suffer particularly from the competition failures in the PCA market; and
 - (d) a set of measures targeted at the specific problems in SME banking, making it easier for SMEs to compare different Providers and reducing the hold that incumbent banks have in the market for BCAs and SME loans.
4. Terms defined in the Order have the same meaning in the Explanatory Note. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

Possible consequences of not complying with the Order

5. Section 167 of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.

6. The CMA has the power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
7. Section 167 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

Review of the Order

8. The CMA has a duty under section 162 of the Act to keep under review the carrying out of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Providers may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.
9. In the Final Report, the CMA recommended that the FCA should:
 - (a) consider appropriate additional measures of service quality as well as the scope, methodology and publication of those measure set out in Part 3 of the Order (see paragraphs 13.115 and 13.155);
 - (b) identify, research, test and, as appropriate, implement measures to increase customers' engagement with their overdraft usage and to assess the ongoing effectiveness of the MMC and considers whether measures could be taken to further enhance its effectiveness (see Figure 15.1 and Figure 15.2).
10. If, as a result of its work implementing these recommendations, the FCA introduces rules that render provisions of the Order unnecessary, the CMA could, subject to a review under section 162 of the Act, vary or remove part of the Order as relevant. The intention is for such a review to be conducted in advance of the FCA rules coming into force with any variation or removal timed to coincide with the coming into force of FCA rules. In doing so the CMA recognises the need to avoid unnecessary regulatory duplication.
11. Part 11 of the Order will cease to have effect five years after the Order is made as set out in Article 8.

Structure of the Order

12. The Order is divided into 14 parts and has three Schedules:

- (a) **Part 1** contains general provisions which include specifying when each Part of the Order comes into force, who it applies to and definitions that are used throughout the Order. These definitions are also used in this Explanatory Note.
- (b) **Part 2** implements the open API standards and data sharing remedy (see Figure 13.1 of the Final Report). This includes the creation of the Implementation Entity and Implementation Trustee, the obligation to implement, maintain and make widely available API, data and security standards, and the information that will need to be made available through those standards.
- (c) **Part 3** implements the service quality remedy (see Figure 13.2 of the Final Report). This includes the requirement to publish service quality indicators, provisions setting out how those indicators will be generated and how they are to be published.
- (d) **Part 4** implements the prompts remedy (see Figure 13.3 of the Final Report). This includes a requirement for Providers to cooperate in the FCA's programme of research and to send prompts to SME customers that fall outside the FCA's remit.
- (e) **Part 5** implements the remedy in the current account switching package not provided in the BACS undertakings (see Figure 14.5 of the Final Report). It includes the provision of transaction histories to customers at account closure and up to 5 years afterwards.
- (f) **Part 6** implements the overdraft alert remedy (see Figure 15.1 of the Final Report). This includes requiring Providers to auto-enrol customers in alerts, collect customer mobile phone numbers, and specifies when alerts are to be sent and their content. It also has similar provisions to Part 4 about cooperating in FCA's programme of research.
- (g) **Part 7** implements the Monthly Maximum Charge remedy (see Figure 15.2 of the Final Report). This includes the requirement both to specify an MMC and to disclose it no less prominently than other information.
- (h) **Part 8 and Part 9** implement the increased transparency of cost and eligibility of SME lending remedy (see Figure 16.1 of the Final Report). Part 8 includes the requirement to publish and display representative APRs for Unsecured Loans and EARs for standard tariff Business Overdrafts, the need to publish additional contextual information and make data available to intermediaries. Part 9 includes the requirement for larger banks to offer a tool on their website to enable SMEs to obtain an indicative price quote and indication of eligibility with access provided to at

least two finance platforms and at least any two comparison sites (including the eventual winner or winners of the Open Up Challenge).

- (i) **Part 10** implements the SME banking comparison tools remedy (see Figure 16.2 of the Final Report). This includes the Nesta prize funding arrangements, the provision of product specification and transaction data for the data sandbox process, the requirement to list on finance platforms and comparison tools including the 'Open Up Challenge' winner, the need for certain Providers to continue to fund the BBI and a safeguard remedy.
 - (j) **Part 11** implements the standardisation and simplification of BCA account opening remedy (see Figure 16.4). This includes the requirement for Providers to apply a Standard Information Set when opening a BCA account in defined circumstances and to establish a steering group to monitor implementation and agree changes.
 - (k) **Part 12** contains obligations on Providers to produce compliance reports and submit them to the CMA.
 - (l) **Part 13** contains provisions allowing the CMA to give directions as to compliance with the Order.
 - (m) **Part 14** relates to the provision of information to the CMA for the purposes of monitoring compliance with the Order and reviewing its operation.
 - (n) **Schedule 1**: Implementation Trustee Functions.
 - (o) **Schedule 2**: Communication of MMC.
 - (p) **Schedule 3**: Share of contributions to the funding of the Open Up Challenge process.
13. This Explanatory Note follows the structure of the Order and contains three Schedules:
- (a) **Schedule 1**: Open API standards and data sharing:
 - (i) Part A – Agreed Arrangements
 - (ii) Part B – Agreed Timetable and Project Plan
 - (iii) Part C – Implementation Trustee
 - (b) **Schedule 2**: Presentation of service quality indicators
 - (c) **Schedule 3**: BCA Account Opening:

- (i) Part A – Standard Information Set
- (ii) Part B – Additional Questions
- (iii) Part C – Governance Arrangements

Part 1 – General

14. Article 2 provides for different parts of the Order (and in some places different articles) to come into force at different times.
15. The draft Order refers to ‘Providers’ throughout. Articles 3, 4 and 5 control who that refers to in each Part or Article. Article 3 provides a very wide application which is limited by the application of de minimis exemption in Article 4 and exceptions in Article 5.
16. The de minimis exemption for Part 3 is somewhat different and more complex than that which applies to other parts. This is due to the importance of maintaining stability in the participants in the service quality remedy. Brands not subject to this remedy will not be able to volunteer to be included in it in part this is due to a concern about Brands with few PCAs or BCAs being able to generate sufficiently robust survey results. These concerns do not apply to rapidly expanding brands or Brands that are well above the de minimis threshold following a divestiture. Even where a brand has sufficient scale to participate in the remedy it will still take time to be included in the surveys and for customer data to be gathered.
17. The number of active PCAs and active BCAs for the purposes of the de minimis exemption will be based on the number of active accounts on 31 December which will be reported in compliance reports in the following year. In relation to service quality where a Brand is above the de minimis threshold set out in Article 4.1 by the 31 December 2016 (as recorded in the 2017 compliance report) it will be included in the remedy from the start.
18. For other remedies subject to a de minimis level they need to be above that level at the end of two calendar years before the relevant parts of the Order will apply. This is intended to allow time for these Providers to take preparatory steps. By way of an example if in June 2019 a Provider exceeded the threshold and it was still exceeded by 31 December 2019, in February 2020 they would submit a compliance report stating they were above the threshold. Assuming the Provider remained above the threshold on the 31 of December 2020 they would submit a second compliance report in February 2021 stating they were (again) above the threshold. The relevant part of the Order would then apply to that Provider on 1 March 2021. Such a Provider

may, however, want to consider how to comply with the relevant part at least from June 2019.

19. Article 5 provides an exception to the application of the Order targeted at private banks and other Providers of PCAs or BCAs where there are special circumstances. This was discussed in paragraph 12.14 of the Final Report. The approach proposed is to have a simple mechanism of excluding from the remedy private banking divisions of groups subject to the remedy where PCAs are offered exclusively to customers with more than £250,000 of investable assets. The justification for excluding the application of PCA provisions for such customers does not apply to the extent that BCA products are provided by the same Brand or division. Where the investable asset threshold is lower (or there is no threshold) it is still open to Providers to demonstrate to the CMA's satisfaction that PCAs are provided to customers independently from the provision of PCAs to other customers and done so along some private banking or specialist banking service. This could include wealth management or investment services but does not necessarily need to include these. In making this determination the CMA will have regard to the list of attributes provided in Article 5.4. It is not necessary for each of these criteria to be met for the provision of PCAs to certain individuals to be considered operationally independent but they do need to be substantially met. There is also an exclusion where Brands or divisions are closed to new customers.
20. Providers wishing to rely on the private banking exclusion are invited to discuss this with the CMA in advance of the Order being made. Provision is also made in Article 5 for entities or divisions of PCA or BCA Providers subject to the Order to be excluded from the application of the Order where they are closed to new customers.
21. Article 6 reflects paragraph 15.58 of the Final Report. This recognised that certain Providers did not currently offer any alerts and might take longer to implement Articles 23 to 25. Providers wishing to take advantage of this derogation may submit a request to the CMA in writing explaining why they think they should benefit from delayed implementation of these Articles and the proposed length of the delay (up to a maximum of six months). Such request should be supported by evidence.

Part 2 – Open API standards and data sharing

22. Article 10.1 provides for the creation of the Implementation Entity, which will develop read only open and common technical and product data standards (specified in Articles 12 and 13) and read and write open and common

banking standards for the secure sharing of transaction data (as specified in Article 14).

23. See Part A of Schedule 1 to the Explanatory Notes for the Agreed Arrangements. If any changes to the Agreed Arrangements (composition, governance, funding or budget) are approved by the CMA, the CMA will publish a notice setting these out. Such changes will either: require approval of the CMA having been proposed by the Implementation Trustee; or be made by the CMA following consultation. The CMA will consider these in the light of the Final Report and ensuring they are necessary to the aim pursued. The same approach will be adopted in relation to the Agreed Timetable and Project Plan.
24. Article 10 imposes an obligation on Providers to comply not only with the Agreed Arrangements and the Agreed Timetable and Project Plan but to use their best endeavours to ensure that the Implementation Entity does so. The use of a 'best endeavours' obligation, as set out in our Final Report, acknowledges that each individual Provider will not be in a position to ensure compliance but that, particularly when acting collectively, they will have a very significant impact on its activities. This is consistent with, and intended to complement, the Implementation Trustee's role as chair of the Implementation Entity.
25. Articles 11.1 to 11.4 deal with the appointment and possible replacement of the Implementation Trustee. The current Implementation Trustee is set out in Schedule 1 Part C of these Explanatory Notes. The process envisaged for appointing a replacement Implementation Trustee is intended to be similar to that used to appoint the current Implementation Trustee. It will be important to have a replacement appointed with as little delay as possible. This may be reflected in any assistance required under Article 11.4 and is the reason for the limited period for Providers to appoint from the person or persons approved by the CMA. Article 11.4.2 also includes assistance that each bank may be asked to contribute such as staff.
26. The products and reference data identified in Article 12 is consistent with the Final Report. This is subject to any further information the Implementation Trustee considers necessary for the effectiveness of the remedy, in which case the Implementation Trustee will seek approval from the CMA to expand the scope of the product and reference data. See Explanatory Notes on Part 8 for interaction with SME lending remedies.
27. Article 13 provides for survey quality indicators to be released through an API. It also provides for all anonymised underlying data generated from responses to survey questions (approved by the CMA in accordance with Article 16.1) to

be published via open API unless the information is already made public through other means. This underlying data will likely be in database format to an agreed specification which preserve respondent anonymity. It is envisaged that all of this data will be made available for each brand subject to Part 3. Therefore while the obligation to release this data only applied to Providers subject to Part 2, the data released will include granular data for all brands included in the surveys.

28. Article 14, which deals with the use of APIs for transaction data, is less detailed reflecting the need for the Implementation Entity and Implementation Trustee to provide the detail of how this is to be achieved and what it shall encompass.
29. Articles 12 to 14 all provide that information shall be 'made continuously available'. For clarification, the reference to 'continuously available' means that Providers are required to publish rates on an ongoing basis from the date the relevant Article comes into force.
30. As explained in the Final Report, we are not able to require Providers to share data about products which are outside of terms of reference. Nevertheless, we envisage that those charged with implementing this remedy will be mindful of the benefits that might be obtained by, for example, including, in their discussions on standards, products which are defined as payment accounts in PSD2 but are not BCAs or PCAs. In addition, we are aware of the draft EBA Regulatory Technical Standards. Wherever possible, without compromising the Agreed Timetable and Project Plan, we consider the EBA standards and those under the Order should be aligned. However, this is subject to meeting the requirements of the Order.
31. It has been suggested to us that once the Read-only Data Standard and Read/Write Data Standard are adopted there may be merit in either (i) expanding the scope of the Implementation Entity or (ii) creating a new industry body overseeing the structure. The CMA while wishing to ensure the remedy remains effective would welcome the industry taking ownership of the remedy and it may be appropriate at that stage either to agree different arrangements (eg with different funding structures) or it might be appropriate for the CMA to review whether parts of the Order should be amended or can be revoked.

Part 3 – Service quality

32. Article 15 imposes an obligation to publish service quality indicators on the basis of Brands and specifies what those indicators are. Article 16 sets out how the data underpinning the service quality indicators is to be collected.

Article 17 to be read alongside Schedule 2 to these Explanatory Notes specifies where and how the service quality indicators are to be published. Article 13 in Part 2 is also relevant to this remedy as it is the mechanism for the release of underlying granular details unless this information is made available by other means.

33. The service quality indicators set out in Article 15.1 and Article 15.2 are taken from paragraphs 13.106 and 13.107 of the Final Report. Other metrics have been proposed (eg telephone banking, splitting out branch and business centres, distinguishing between online and mobile banking) but do not consider departing from the Final Report is warranted. Further we consider that where there might be confusion as to what aspect of service quality is being measured this is best addressed through the design of the survey questionnaires.
34. Article 15 is intended to strike a balance between getting sufficient sample size, relying on survey responses that are up-to-date, and allowing time for the survey agency (or agencies) to process the results and Providers to prepare them for publication. The indicators based on the previous calendar year's results will be published on the first working day of February each year. These will be updated on the first working day of August with responses from the first half of that calendar year taking the place of responses from the first half of the previous calendar year. There will be a period of a month between the end of the collection period and publication. It is for Providers to agree with the appointed survey agency or agencies when, during that month, the results of the survey have been calculated and are to be provided.
35. People who have not used certain services for a long time may not have an accurate view of the quality of service currently offered. We considered specifying a defined period in the Order within which survey respondents must have used the relevant service. This would exclude any responses in relation to a service that had not been used by that person in the past, for example, 12 weeks. We have not done so and instead propose that while there is a defined time, what that time should be is considered as part of the design of the survey methodology. The advantages of having responses based on recent experience may need to be balanced against the impact on sample size. We would, however, be very concerned about a survey methodology which accepted responses on services that had not been used in the past year.
36. To allow this remedy to be in place within 18 months of the Order being made (as provided in the Final Report) the requirement to collect service quality information in Article 16 needs to come into force earlier. We are aware that work has already begun, led by the BBA, to develop detailed proposals for

how the relevant data will be gathered. The CMA is keen to provide whatever assistance we can to help those subject to this remedy develop a proposal that is likely to be approved.

37. We would expect up to four independent robust surveys covering all brands over the de minimis threshold. That is one for:

(a) PCAs in GB;

(b) PCAs in NI;

(c) BCAs in GB; and

(d) BCAs in NI.

Each survey would need to ensure the contact sample is representative and that the sample sizes are robust. Some parties have suggested that we specify a minimum sample size (eg of 100 at least for the smaller Providers). We do not think this is wise, as it could encourage adoption of sample sizes that are in fact insufficiently robust. Instead we expect Providers, working as part of the BBA process to ensure that any proposal will include acceptable sample sizes. Face-to-face or telephone surveys are preferable, though consideration will be given to mixed methodology surveys. We have very significant concerns about the use of online only surveys but consider it would be premature to rule out their use completely at this stage. We would, however, have to be convinced their use was warranted and our concerns about them addressed before approving a survey methodology based upon them. Whether the proposed survey is new or built on an existing survey is a matter for the Providers to consider; in principle, the CMA has no objections to either.

38. In terms of metrics, the preamble to the question of asking customers about their willingness to recommend the PCA/BCA Provider could ask the customer to think about (some of) the following: the functioning of their current account, recent interaction(s) with the Provider, the quality of staff and customer service in relation to their current account, ensuring that respondents are less likely to consider other factors (eg price, media coverage, etc) in their response. In relation to relationship and account management, we would expect the survey question to ask about the care and attention (or similar terms) the SMEs receive from their Provider such that the question is applicable to all SMEs and is comparable across Providers.

39. Article 16.3 is intended to avoid a situation where the information that can be made available through APIs is limited by the survey agency claiming

ownership over it. To provide meaningful granular data, we would expect the survey to collect at least the following demographics:

(a) in relation to PCA customers:

- (i) age;
- (ii) gender;
- (iii) working status and/or income band;
- (iv) use of overdraft; and
- (v) location (first two letters of postcode in GB and first two letters and number in NI).

(b) in relation to BCA customers:

- (i) age of business;
- (ii) sector;
- (iii) size of business (turnover/number of staff);
- (iv) use of overdraft/SME lending; and
- (v) location (eg first two letters of postcode in GB and first two letters and number in NI).

40. Article 16.4 reflects the discussion starting at paragraph 13.125 of the Final Report. We are concerned that customer lists may be necessary in order to generate sufficient sample size for smaller brands. The extent to which Article 16.4 is required will depend on the sampling and data collection methods proposed by the Providers (insofar as they are approved by the CMA). It will be for the Providers to consider how best to achieve a fair survey using sufficiently large sample sizes in a way that does not raise disproportionate data protection issues.

41. As set out in paragraph 13.128 of the Final Report the funding of this remedy will be based on the market share of those Brands in the four markets surveyed (GB PCA, NI PCA, GB BCA, NI BCA). The intention is for the CMA to, in confidence, disclose to each Provider their share of the total cost of the survey. Any further disclosure would depend on whether the Providers contracted directly with the survey agencies or did so through a third party (for example the BBA). We have considered alternative approaches if Providers are concerned about the proportion of the total costs being disclosed either to survey companies or the BBA (depending on the approved proposal). For

instance each Brand could be put in groups of three with costs apportioned in relation to each Brand in a group based on the average market share of the group. We think this would be a more complex process and would result in some Providers paying more and some less than they would be based purely on market share.

42. Article 17 specifies where and how the service quality indicators are to be published. While the requirements of 17.1.1 and 17.1.2 could be met by a poster, they could also be met through digital displays which may or may not be interactive. We have decided not to specify in the Order any particular size for the display as its prominence may depend on where the information is placed. A display of a certain size on the door of the branch may be prominent while a similar sized display behind the counter would not. Overall where the information is to be displayed in the branch we think it unlikely that anything less than A2 size would be prominent. Compliance monitoring for this requirement could be achieved through mystery shopping and possibly the receipt of complaints.
43. As set out in the Article 17, for websites, including those optimised for mobile use, we require Providers to display the indicator set out in Article 15.1.1 no more than one click away from the home page, for example, on the PCA or BCA specific page of the website. We expect the presentation of the indicator on websites to be consistent with that required for all indicators in branch (and which is set out in Schedule 3), though we are aware that this may not include all the explanatory text from Schedule 3. From this, other indicators set out in Article 15.1 should be set out no more than one click away from that page, and this page should include explanatory text as included in Schedule 3.
44. We also require Providers to include service quality indicators in their mobile banking applications. We accept that, unlike a website, there may not be a specific page relating to PCAs or BCAs where metrics could be displayed and that the layout of mobile applications will differ between Providers. However, we do require that the indicator set out in Article 15.1.1 is displayed in mobile applications, for example along the bottom of the screen or as an option on a drop down menu. We expect the presentation of the indicator in mobile applications to be consistent with that required for all indicators in branch (and which is set out in Schedule 3). From this we think it likely to be acceptable for Providers to choose to display the other indicators set out in Article 15.1.1 within the mobile application or provide a link to where these can be found on the Provider's website or mobile optimised website.
45. The Final Report specified that the service quality indicators are to be published in leaflets likely to be seen by prospective customers. In response to Providers concerns about reprinting such leaflets every six months we have

provided in Article 17.1.4 that the indicators may be published in inserts to the leaflet. Again compliance with this may be monitored through mystery shopping and possibly the receipt of complaints.

46. It has been suggested to us that we should require the service quality indicators to be included in e-mails and by telephone. This was not included in the Final Report and while we are open to Providers using these channels to communicate the service quality indicators we do not think this should be part of the Order.
47. We have conducted market research on various ways in which the service quality indicators are to be presented. This was published on 14 October 2016 and is available on our website.¹ We have also published further market research on a more developed draft of the proposed presentation. This indicated a clear preference for displaying not simply the score of customers Brand alongside their rank but also the identity of the top five Brands (and their score) for each of the indicators. We intend to put this high level requirement into the Order itself while more details of the specification of the presentation is provided in Schedule 2 to these Explanatory Notes. Article 17.4 of the Order sets out the mechanism for the CMA to amend this, and the CMA may do so in advance of the requirement to publish service quality indicators comes into force.

Part 4 – Prompts

48. Article 18 supports the work that the FCA has proposed to undertake following the CMA's recommendation that they undertake a research programme to identify those prompts most likely to increase customer awareness of the potential benefits of switching and prompt customers to consider their banking arrangements. The outcome of this research programme will inform how the FCA responds to one of the CMA's other recommendation; that the FCA use its rule-making powers to implement a series of prompts to be communicated to PCA and BCA customers. The FCA published its response to the recommendations contained in the CMA's Final Report on 3rd November 2016² (see in particular paragraphs 4.28 to 4.45) (the 'FCA's Response').
49. As set out in paragraph 4.43 of the FCA's Response, firms who want to work with the FCA on the prompts research programme have been invited to express an interest in doing so. Once Article 18 comes into force, the FCA will

¹ Research Works (October 2016), [Competition and Markets Authority Banking Remedies: Presentation of qualitative research findings](#).

² FCA (November 2016), [Our response to the CMA's final report on its investigation into competition in the retail banking market](#).

be able to notify any Provider subject to Part 4 that they are a Selected Prompts Providers and therefore subject to the obligations set out in Article 18.2.

50. The timeframe for the Prompts Research Programme is a matter for the FCA. In the FCA's Response they have indicated that they expect to take research and testing on prompts forward through the course of 2017. We are aware of concerns about customer's ability to opt-out of receiving prompts and the impact on other communication sent by banks to customers in the treatment sample. The CMA expects such concerns to be addressed as part of the design of the Prompts Research Programme by the FCA.
51. Article 19 addresses the situation where, following the Prompts Research Programme and consultation, the FCA makes rules requiring prompts to be issued. If the scope of the FCA's rules do not extend to all SMEs (for example, the FCA's Banking Conduct of Business Sourcebook extends only to micro-enterprises, but not to all SMEs), Article 19 provides that providers will also be required to send equivalent prompts in relation to BCAs held by larger SMEs. This requirement does not, however, apply in relation to BCA's held by SMEs with annual sales revenue (exclusive of VAT and other turnover-related takes) of more than £6.5 million even though they are within the Retail Banking Market terms of reference. The CMA will also retain discretion not to require a provider to send such prompts. This discretion is expected to be exercised sparingly and only where the effect of complying with the Order would be unreasonable, ineffective or disproportionate. The basis for this provision is provided in paragraph 13.206 of the Final Report.

Part 5 – Transaction History

52. Article 20 implements the remedy summarised in the first bullet point Figure 14.5 of the Final Report. This specifies that transaction histories should be provided at the time of account closure, unless the customer decides to opt-out. A number of parties have suggested that the Order should, instead, adopt an opt-in mechanism. Doing so would, however, be inconsistent with the Final Report and the reasoning set out there. Providers are given considerable flexibility in how to implement this remedy, the information may be provided electronically including through APIs and by giving customers access to a portal from which their transaction history can be downloaded.
53. Article 20 provides for Payment Transaction Histories to be provided at account rather than customer level. Therefore where a customer has changed their account type (eg from youth accounts to full accounts) information needs only be provided in respect of the account being closed rather than in respect of all previous account within the past 5 years. Where a customer has moved

from one account to another with the same Provider Article 20 will not apply so long as customers retain access to the Payment Transaction History from their old account. As the information is to be provided at an account level it needs to be provided only once in respect of joint accounts, Providers not offering the information to both account holders will need to consider how best to manage this.

54. Some Providers have raised concerns about how this interacts with the CASS switching process. While in the Final Report the CMA decided not to mandate any changes to the CASS process. Insofar as a change might assist Providers to comply with this requirement this is a matter for those Providers to work with BACS to implement. Ultimately it is for Providers to consider how best they communicate with customers closing their accounts.
55. Article 20 specifies certain information does not need to be provided. The most notable example of this is in relation to transactions that occurred more than five years before the date of closure. Customers should be able to request shorter periods (eg transactions over the past two years) but the Order does not require provision of information for more than a single continuous period.
56. Article 21 is intended to align with rights of access to personal data provided in Section 7 of the Data Protection Act 1998. The Article does not require Providers to supply Payment Transaction History information that is more than five years old. A customer requesting their Payment Transaction History three years after they closed their account would be entitled to only the last two years of transaction information under this Order.
57. While it might be assumed that the information to be provided under the Part would be in the same format as the account statements provided at the time, this is not a specific requirement.
58. Some Providers have suggested that this requirement is subject to a 'sunset clause' once Part 2 of the Order is brought fully into force. While use of APIs may be an effective means for Providers to implement this remedy it is not clear at this stage whether it will render Part 5 unnecessary for all those subject to it. This, obviously, does not preclude the use of the remedy review process provided in section 162 of the Enterprise Act if warranted at the relevant time.

Part 6 – Automatic enrolment into a programme of alerts

59. The heading of this Part of the Order has been amended from the heading given in the Final Report ('Unarranged Overdraft Alerts') to clarify that it

applies not simply to ‘unarranged overdrafts’ assuming the EBA adopts the FCA’s proposed definition in the context of the Payment Accounts Directive. Instead, as set out in the Final Report, this Part of the Order is intended to apply where there is an attempt to exceed a ‘Pre-agreed credit limit’. This is defined in Part 1 and includes circumstances where an arranged overdraft (defined in accordance with the FCA’s proposal to the EBA) is exceeded but customers are offered a second tier or some other form of additional arranged overdraft. This may, for example be, where a daily charge of 50p becomes a daily charge of £5 after a set limit which varies from customer to customer. It is not intended to capture a stepped increase in rates or charges due to increased borrowing that is applied at the same level for all overdraft users. An example of this would be an increase in daily charges from 75p to £1 when customers borrow over £1000 and increase again to £2 when customers borrow over £2,500 Equally it is not intended to apply in circumstances where there is no charge for exceeding (or attempting to exceed) a Pre-agreed credit limit. A similar approach is adopted in Part 7 in respect of MMCs.

60. Article 23 provides for the enrolment of new and existing customers in the Programme of Alerts. Article 24 sets out the circumstances in which ‘Alerts’ are to be sent. Article 25 specifies the content of Alerts. Article 26 imposes certain obligations on Providers to collect mobile numbers to ensure that the automatic enrolment is effective. Finally, Article 27 provides a requirement on providers to cooperate in the FCA alerts research in terms similar to those of Article 18.
61. Part 6 is necessarily set at an account rather than customer level, multiple account holders would (subject to Article 23.2) have each of their accounts enrolled. Where an account is held jointly the Provider may, but is not required to enrol both customers in alerts.
62. Having provided the general obligations in Article 23.1 the situations where a PCA does not need to be enrolled in alerts are specified in Article 23.2. These are broadly:
 - (a) where the account type renders an Alert less relevant;
 - (b) where the Provider is prevented from sending Alerts to the account holder;
 - (c) where the account holder has requested not to be enrolled in Alerts or an equivalent programme which may predate the Order.
63. In relation to the last of these the CMA acknowledges that customers who have already consciously opted out of receiving alerts that are equivalent to those mandated by the Order should not be required to do so again. The

intention is for the monitoring requirements to identify whether an alternative program of alerts meets the requirements of Article 23.2.3 and 23.2.4. The CMA can discuss with Providers in advance of the Order coming into force whether we think it likely that their program will meet these requirements.

64. The CMA has recommended and the FCA has agreed to undertake work to identify, research, test and, as appropriate, implement measures to increase overdraft customers' engagement with their overdraft usage and charges. See Article 27 of the draft Order and FCA's response. Those Providers taking part in the FCA's Alerts Research Programme may be required not to send alerts or required to send different alerts to certain customers. It is envisaged that this will be for a limited period of time and will only be in respect of a subset of customers. In the absence of a remedy review, once the Alerts Research Programme has concluded accounts previously excluded from the full application of Part 6 should be included again.
65. Article 24.1 and Article 24.2 sets out the circumstances when an Alert should be sent. Where the Provider charges unpaid item fees (or equivalent) the Pre-agreed credit limit may not be exceeded but an alert should nonetheless be sent. The inclusion of Article 24.2.3 is intended to acknowledge that Providers may be aware of transactions that have not yet been included in the account balance that will, in the absence of any payment in (or change in the Pre-agreed credit limit), result in the Pre-agreed credit limit being exceeded. Under these circumstances Providers are required to send an Alert. This Article does not impose a requirement on Providers to send an Alert when it considers it likely that a Pre-agreed credit limit will be exceeded (eg the account is very close to the limit) but is unaware of any future transaction that would do so. If, however, a Provider does send an alert in such circumstances (ie a Near limit alert) it may have a similar effect as sending an Alert (see Article 24.3.5).
66. Some Providers have proposed that an Alert should only be sent once a penalty free buffer has been exceeded. This would not be consistent with the remedy or the Final Report. While such buffers are welcomed customer should know as soon as they are using their buffer rather than wait until it is has been exceeded.
67. The effectiveness of this remedy will be undermined if Providers are required to send multiple alerts to customers who are aware that their account has exceeded a Pre-agreed credit limit. Article 24.3 is intended to address this. It allows, but does not require, Providers to agree with customers when they would like alerts to be sent (or not sent). In the absence of an alternative agreed with customers Providers are not required to send an Alert on a day in which they have already sent an Alert which may also be a Retry alert. Where

a Pre-agreed credit limit has been exceeded an Alert does not need to be sent again until an Alert Trigger occurs after the account is no longer exceeding that limit. Where a Near-limit alert is sent further alerts are not required until there has been an Alert Trigger after the account balance is no longer below the relevant threshold. As confirmed in Article 24.6 the fact that the Order does not require an Alert to be sent under different circumstances does not mean doing so is prevented or intended to be discouraged.

68. Article 24.4 requires Providers to use reasonable endeavours to ensure that the Alerts are capable of being *received* as soon as possible after the Alert Trigger. There are various reasons why an alert would not be received by a customer for some time. The customer's mobile phone may be turned-off or there is a network failure. In such circumstance the Alert is either, not capable of being received or no reasonable endeavour by the Provider could be expected to prevent the delay (or both). Instead this clause is intended to require Providers to take steps to remove delays in customers receiving Alerts that the Provider is able to control or reasonably influence.
69. As set out in our Final Report (see paragraph 15.22 et seq) the CMA understands the interactions between the mandated alerts in this Order and the retry alerts being introduced separately, and has provided flexibility in the drafting of the Order to allow Providers to take account of this.
70. The content of Alerts set out in Article 25 is not intended to be adopted word for word and does not need to distinguish between the possible scenarios set out in Article 25.1.1 (although they could do). Providers are required to communicate a time for customers to take action to avoid charges (albeit that time might be very limited) unless they have declined the transaction and imposed an unpaid item charge. This does not undermine the need to send retry alerts where warranted. It may be that, in accordance with Article 24.4.2, the Alert is sent on the day after the Alert trigger. Such customers may not be able to avoid charges incurred in the previous day but should be informed that if they act by a specific time they will be able to avoid any further charges.
71. Article 26 implements the decision set out in paragraph 15.30 of the Final Report. Providers may actively seek to collect existing customers' mobile numbers but the Order only requires them to do so when existing customers update their contact details. The need to use 'reasonable endeavours' to collect phone numbers does not require repeated requests where customers have not responded. It will be for Providers to implement it in such a way that is consistent with data protection (and all other applicable) law. The fact that the Order requires automatic enrolment does not prevent Providers having discussions with both existing and new customers about what kind of alert they would find most helpful.

72. The alerts research programme set out in Article 27 is subject to the same consideration as that for the prompts in Part 4. See paragraphs relating to Part 4 above.

Part 7 – Monthly Maximum Charge

73. Article 28 imposes an obligation both to specify an MMC and not impose further charges once it has been met. Article 29 imposes obligations on how it is to be presented.
74. The MMC will apply to charges that could accrue to an account as a result of exceeding (or attempting to exceed) a Pre-agreed credit limit. This would not include charges that would be incurred for using an arranged overdraft or, for example, overseas debit card fees.
75. The Order has clarified that it is only where overdraft charges incur a charge that would be included in the MMC that the MMC needs to be disclosed. Providers may wish to disclose their MMC on other occasions. Schedule 2 if the Order has been informed by the customer research conducted by Research Works published on the CMA website for consultation on 14 October 2016.³
76. While the description uses the phrase ‘unarranged overdraft charges’, the MMC remedy will continue to apply in circumstances where customers have exceeded a ‘Pre-agreed credit limit’ as defined in the Order regardless of whether they, according to the FCA’s proposed definition in the context of the Payment Accounts Directive, are in an unarranged overdraft. This is intended to be captured in the second bullet point of the description.

Part 8 – Publication of rates for SME lending products

77. Article 30 imposes a requirement on all Providers of Unsecured Loans and standard tariff Business Overdrafts to SMEs, for values up to £25,000, to publish and display representative APRs for Unsecured Loans and EARs for standard tariff Business Overdrafts (up to the value of £25,000). For clarification, the reference to ‘continuously publish’ in Articles 30.1 and 31.1 means that Providers are required to publish Rates and contextual information on an ongoing basis and make available at all times from the date Part 8 comes into force. Those published Rates and contextual information should be kept up-to-date. Where Providers are in the process of amending the

³ Research Works (October 2016), [Competition and Markets Authority Banking Remedies: Presentation of qualitative research findings](#).

published Rates, they should ensure that the amended Rates are uploaded as soon as is reasonably practicable.

78. Providers are required to show the Representative APR for Unsecured Loans and a Representative EAR for standard tariff Business Overdrafts for borrowing up to the value of £25,000. This threshold does not reflect the customer's total borrowing but applies to individual loans.
79. The definition of Representative is intended to reflect the definition for 'Representative APR' in the FCA's Consumer Credit Sourcebook (CONC) which applies to personal lending. It makes clear that the 51% rule is linked to the Provider's reasonable expectations at the time of the publication, display or communication of the information. Providers should therefore consider, at that time, the relevant agreements which they reasonably expect to be entered into as a result of the publication, display or communication of the information, and ensure that the 51% in that definition takes account of the APR and EAR of those agreements. This should also take into consideration the fact that the information may appear on the websites of intermediaries (such as finance platforms and comparison sites) as well as the Provider's own website. Providers should consider whether the representative APR is still correct when they update the information on their website. Providers should also note that, although the CMA has sought to replicate provisions from CONC where appropriate in Part 8, it is not intended to be identical in all respects and there are some differences.
80. Article 30.5 confirms that in the case of a conflict between the provisions of Part 8 of this Order and rules under the Consumer Credit Act 1974 or the Financial Services and Markets Act 2000, the rules under those two statutes shall prevail. The purpose of this provision is to clarify that Providers must still comply with any rules arising from existing legislation, including those contained in the various statutory instruments made under each and the rules set out in the sourcebooks contained in the FCA Handbook, in particular CONC. Although much business lending is unregulated, providers are already subject to rules on financial promotions relating to credit agreements with consumers or, where the amount of credit is less than £25,000, financial promotions relating to credit agreements with partnerships consisting of two or three persons not all of whom are bodies corporate or unincorporated bodies of persons which do not consist entirely of bodies corporate and is not a partnership.
81. Article 30.2 makes clear that the obligation to publish and display Rates applies to existing SME lending products in scope of the remedy being offered to customers from the date the remedy is implemented. To the extent that lenders may offer SME lending products in scope of Article 30 to customers at

some future date (ie if a product is not in existence at the date the remedy is implemented but is offered at a later date), the requirement would also apply to those new products in scope of the remedy once they are being offered and/or marketed to customers.

82. Article 30.4 provides clarification on the renewals which are in scope of the requirement to publish and display Rates for standard tariff Business Overdrafts in accordance with Article 30.1.2 and confirms that this requirement applies where Providers are offering a new standard tariff Business Overdraft to existing or new SME customers.
83. In our Final Report we decided to require some additional contextual information in addition to APR/EAR in order to ensure that SMEs viewing the Rates on Providers' webpages are able to understand and compare them. In Article 31.2 we have listed the contextual information which we consider ought to be included as a minimum for Unsecured Loans and standard tariff Business Overdrafts. The minimum requirements we have listed for loans largely replicates what lenders have to show for loans on the personal lending side (from CONC 3.5.5), although is not identical.
84. In our Final Report, we decided that product and pricing data for standard tariff Business Overdrafts and Unsecured Loans should be made available as open data to intermediaries within six months of the Order being made. Article 32.1 requires that Providers shall release and keep updated, without charge to Third Parties charges, terms and conditions, and how they reasonably expect APR and EARs to vary with loan size and length (for borrowing up to the value of £25,000). Providers should also release to Third Parties the information referred to in Articles 30.1 (Representative APR and EAR) and 31.2 (additional contextual information). For the avoidance of doubt, we would stress that the requirement to make data available to Third Parties under this Article is separate to the requirement for certain providers to release product and reference data under Article 12 which comes into effect on the earlier date of 31 March 2017. Although we are mindful of ensuring that the open data aspect of those remedies which relate to SME lending are aligned insofar as possible and the remedies complement each other, they are different remedies, with the requirements under Article 12 only applying to a subset of providers.
85. In terms of the method for complying with Article 32.1, Providers who are in scope of Article 12 of the Order shall release the data to Third Parties in accordance with the Read-only Data Standard. Given that the product specification information to be made available under Article 12 is almost identical, it is appropriate to align this with the method provided for in Part 2, Article 12 (in accordance with the Read-only Data Standard). However, it

should be noted that whilst there is a degree of product overlap between Article 12 and the SME lending remedies in Articles 8 to 10, there are some key differences. For example, BCA and SME lending products in scope of Articles 8 to 10 refer to products offered to SMEs with a turnover not exceeding £25 million whereas for Article 12 the SME turnover threshold has been lowered to £6.5million. Credit cards are in scope of Article 12 but are not in scope of Parts 8 to 10, although Providers can include credit cards should they wish to do so.

86. Releasing data in accordance with the Read-only Data Standard is not a requirement for all Providers and those Providers not in scope of Article 12 of the Order can decide on the most appropriate method for releasing the data to Third Parties (although can also release the data in accordance with the Read-only Data Standard if they wish to do so).
87. Article 32.3 sets out minimum loan size and length increments Providers should use when making the data available on how APR and EARs vary with loan size and length. Five loan size and length increments have been prescribed. For overdrafts we have suggested five overdraft sizes. As minimum increments have been prescribed, Providers can provide a greater number of increments and combinations should they wish to do so. Providers need to comply with the increments set to the extent that they offer products in line with the minimum increments (eg if a Provider offers loans of £25,000 for a term of 5 years then it must comply with the requirement for that increment). We would welcome views from Providers on the minimum increments set. In the event that we receive representations and evidence during the consultation that different minimum increments should be used (including breakdowns of the distribution of loan sizes and terms), we will consider whether the minimum loan size and length increments set are the most appropriate.
88. As noted in our Final Report (paragraph 16.57(a)), we recognise that the process of deciding upon a Representative Rate may be more challenging for smaller lenders, and we will take this into account in assessing the reports we receive from them and their compliance. For example, for such smaller providers, will not require them to provide pricing information for those loan size and length combinations, or overdraft sizes, they do not offer, or do not expect to be asked to offer.

Part 9 – Tool offering indicative price quotes and eligibility indicator

89. Article 33 requires RBSG, LBG, Barclays and HSBCG to offer a tool in a Prominent location on their websites to enable SMEs to obtain an indicative price quote and indication of their eligibility. We have required that this would cover all Unsecured Loans and standard tariff Business Overdrafts for borrowing up to the value of £25,000. The reference to ‘continuously offer a tool’ in Article 33.1 means that Providers are required to offer a tool on their websites on an ongoing basis and make ensure that it is available at all times from the date Part 9 comes into force. In terms of the output of the tool, Article 33.2 sets out some guidelines implementing what we decided in our Final Report should be the minimum information to be returned to the SME customer. We said in our Final Report that we would consult upon the exact format to be used and would welcome views from the Providers during the formal consultation on the minimum information to be returned to users.
90. As explained in our Final Report, we decided that the tool should provide information to the user, at the time of use of the tool, on the proportion of all users using the tool who received an end quote that was the same or within a given range (such as +/-10%). This would have the advantage of allowing customers to have a very good understanding of the likely relative accuracy of the offers they were being provided, and would avoid setting any rules on prices themselves. Article 33.3 implements the use of confidence requirement for the tool and requires that Providers shall provide information to the user on the proportion of all users using the tool who received an end quote that was the same, better or no more than 10% above the indicative quote. In terms of the time period that Providers should use to measure the percentage of customers who received an end quote that was the same, better or no more than 10% above the indicative quote, we consider that Providers should measure this over an initial 3 month period once the tools are operational (with a view to ultimately conducting future comparisons over a 12 month rolling period). We would welcome views from Providers on whether a shorter period would be more appropriate. An additional 3 month period is also allowed for Providers to comply with Article 33.3 once the tools are operational (the timescale for complying with Article 33.3 is now 15 months from the day on which the Order is made). We considered it appropriate to allow the additional time in recognition of the fact that Providers need a period of time to gather data to enable them to provide the indication required to users.
91. We decided in our Final Report that providers subject to our Order should provide relevant access to any two finance platforms designated under the

Small Business Enterprise and Employment Act 2015 (SBEE Act) for a period of three years and any two comparison sites, including the eventual winners of the Nesta Challenge Prize (paragraph 16.49 Final Report and Figure 16.1). Article 34.2.1 sets out the timeframe for Providers to provide access to Third Parties. An additional 3 months has been allowed for Providers to provide access to finance platforms (Providers are now required to do this within 15 months after the day on which the Order is made). The additional time has been allowed in recognition of the fact that Providers may need a short period of time once the tools are operational to work with finance platforms to connect the tool to their systems. However, we note that Providers can start the process of working with finance platforms in preparation for this at an earlier stage.

92. Article 34.2.2 provides that Providers should provide access to comparison sites, including the eventual winners of the Open Up Challenge, within 3 months of the end of the Open Up Challenge process. However, to assist the Open Up Challenge process, we would encourage Providers to seek to make prototype versions of the tool available to the Open Up Challenge participants at the earliest possible stage.
93. In terms of the options for how providers could provide access to the output of the tools, we decided in our Final Report that the optimal choice of solutions for providing access to Third Parties may vary between banks and that they may choose between options (b) or (c) as set out in our Final Report (paragraphs 73 and 75 of Appendix 16.1). We have replicated those two options in Article 34.3.
94. We decided in our Final Report that the information input requirements for the tools should be primarily determined by banks themselves and that they should work with comparison sites to develop certain minimum standards in that regard (paragraph 77 of Appendix 16.1). Article 34.5 makes clear that providers shall use their best endeavours to work with finance platforms and comparison sites to develop minimum standards. The CMA will take into account the efforts and steps taken by Providers in engaging with and working with these Third Parties when monitoring compliance.

Part 10 – SME banking comparison tools

95. As explained in our Final Report, this remedy is designed to bring about the creation of one or more comparison sites which make it easier for SMEs to undertake comparisons of price and service quality (paragraph 16.67 Final Report). We decided to support the Nesta Challenge Prize (now branded as the Open Up Challenge) as a way of creating one or more commercially sustainable SME comparison tools (Figure 16.2 Final Report). We identified

the Nesta process as offering the best prospect for delivering in a timely manner an effective remedy through the entry or expansion of innovative SME comparison tools. We thought that because it was driven by competition rather than regulatory design it was more likely to give rise to innovative solutions and could also provide SMEs with 'one-stop shop' tools which do more than simply offer price comparisons (paragraphs 16.71 and 16.72 Final Report).

96. We decided to require RBSG, LBG, Barclays, HSBCG, Santander, Danske, Bol and AIBG to support the Open Up Challenge process. This includes contributing, in the proportions given in Schedule 3, to the costs of the Open Up Challenge process. Article 35 reflects the funding requirement set out in the Final Report. The success of the Open Up Challenge process depends upon the cooperation of the Providers – Article 35.7 makes clear that, subject to compliance with legal and regulatory requirements, Providers shall use their best endeavours to avoid taking any action that might have the effect of impeding or interfering with the Open Up Challenge process and avoid omitting to take any action where that omission might have that effect.
97. In the unlikely situation that one or more of the banks fail to pay their share in compliance with the Order, this may leave a funding deficit which may have an adverse impact on the Open Up Challenge process. Although we would look to enforce the Order in those circumstances, we considered it appropriate to include a provision dealing with the reapportionment of funds in the event of such a funding deficit arising to ensure appropriate steps are taken to mitigate any adverse impact on the Open Up Challenge process (Article 35.5). We make clear in this article that such a reapportionment of funds would be paid on the understanding that it will be repaid to the providers in question promptly when the amount is subsequently received from the non-paying bank. Article 35.5 is also subject to Article 35.6 which provides that the CMA would first consider whether it is appropriate to initiate the reallocation of funding provision in the Order.
98. Article 36 requires the Providers to provide product specifications for all BCAs, standard tariff Business Overdrafts and Unsecured Loans for use by entrants to the Open Up Challenge. In terms of the method and timing for doing this, given that the product specification information to be made available under Article 12 is almost identical (save for some differences as referred to at 87 above), it is appropriate to align this with the method and timing provided for in Article 12 (in accordance with the Read-only Data Standard) unless a different timeframe and manner for making the data available is specified by Nesta provided this is not before 31 March 2017. Providers will also be required to comply with reasonable requests from Nesta

for sample or draft product specification data to be made available at an earlier time.

99. With regard the requirement for Providers to provide samples of anonymised BCA customer transaction data reasonably necessary for use by entrants to the Open Up Challenge, we note that the anonymisation methods to be utilised will be a matter for the Data Partner appointed by Nesta to discuss and agree with the Providers. We would expect, for example, that personal identification information would be anonymised (eg account holders' names and account numbers) but not all of the information which is currently anonymised/redacted for PCAs through Midata. For the avoidance of doubt, the reference to Midata in this Article is included as an indication of the type of data which ought to be provided as a minimum but the data to be provided under Article 37 will include more than is available through Midata for PCAs.
100. In our Final Report we noted that, although we are promoting the development of new SME comparison services, rather than relying on existing ones, sites such as BBI do provide a valuable service. Their funding could be withdrawn before other measures that we are proposing come into effect, including those arising from our remedy on service quality information (Part 3). We decided therefore to require, as a transitional measure, that existing supporters of BBI (Barclays, HSBCG, LBG and RBSG) ensure that BBI continues to collect and publish survey information which permits comparisons between providers on the basis of their service quality by continuing its funding (paragraphs 16.110 and 16.111 Final Report). Article 38 reflects this requirement and provides that those banks shall continue to fund the BBI in the proportions they were funding it as at 9 August 2016 until the first set of data is to be published under Article 15.4 of the Service Quality Indicators remedy on 1 July 2018.
101. As a transitional measure, we are requiring Providers to make available through two or more finance platforms designated under the SBEE Act, details of their BCAs,⁴ and Unsecured Loans and standard tariff Business Overdrafts for borrowing up to £25,000 within one month of the Order. Article 39 implements this requirement. However, we have aligned the timing of this remedy and method for releasing the data with the requirement under Article 12 for Providers to provide third party access to product information and reference data by 31 March 2017. The reasoning behind this is that sharing product information via API will be more useful for the designated finance platforms (than say, information in an excel spreadsheet). Further, the time and effort required to provide such product data in other (non-API) formats

⁴ Where those sites currently provide, or will provide in the future, BCA comparisons.

only a short while ahead of them being made available in API format seems to be disproportionate to the potential gain.

102. Article 41 sets out the requirements for the safeguard remedy. Article 41.1 provides that the timeframe for commissioning a new SME comparison tool will be approved in advance by the CMA provided it is no more than nine calendar months from the notification to Providers. A two stage process is provided for in the event that one of the trigger events occurred; the banks submit their project plan and specification to be approved by the CMA (stage one) and then, subject to approval, commission the new SME comparison tool (stage two). Time limits have been included for both stages with a view that providers commission the new SME comparison tool within nine months of notification being given that one of the trigger events has occurred, unless the period is extended by the CMA. Providers shall use their best endeavours to ensure that the SME comparison tool commissioned under Article 41.1 shall be providing its services to customers within 12 months of having been commissioned, unless the CMA grants an extension.
103. The trigger events are provided for in Article 41.4. With regard to the second level of trigger provided for in Article 41.4.2, we have distinguished between it not being commercially sustainable and it not providing services that enable customers to compare SME banking products and have suggested review factors for each of these (41.5 and 41.6).

Part 11 – Standardisation of BCA account opening

104. Part 11 should be read in conjunction with the banks' proposal coordinated by the British Bankers Association published on the Retail banking market investigation case page⁵ ('BBA proposal'). While the CMA is consulting on that proposal it is currently minded to accept it and this is reflected in the drafting of Part 11.
105. The key component of this remedy is the 'Standard Information Set' which is a series of information requirements which may be fulfilled by asking question during account opening but may be sourced in some other way. The proposed Standard Information Set is set out in Part A of Schedule 3 to this Explanatory Note. The Order provides for the Standard Information Set to exist outside the Order. It will be included as a schedule to the explanatory note and then any valid amendments will be reflected in the version published by the BBA. This is intended to allow considerable flexibility to the industry to adapt the Standard Information Set over time. The current draft of the Part 11 of the

⁵ BBA, [Proposal to implement the CMA's remedy to standardise BCA opening procedures](#).

Order does not include any provision for the CMA to approve changes to the Standard Information Set although this could be included if it was considered beneficial.

106. We have considered whether the Article 42.2 list of circumstances in which additional or supplemental may be required should be an open or closed list. Having it as an open list would add flexibility but could undermine the purpose of the remedy as there would be effectively no constraints on departing from the Standard Information Set. Instead flexibility has been given by maintaining the closed list but including within it other situations where it would be unreasonable for a Provider not to seek further information.
107. Having agreed a simplified process, there is no obvious incentive for banks individually or collectively to make the process of opening BCAs more complex than it needs to be. For this reason we are proposing to sunset this remedy after 5 years. That is not to say we do not see value in the remedy after 5 years but rather that the Order will no longer be needed to achieve that value.
108. Article 43 provides for the creation of a steering group. The CMA expects this work to have begun in advance of the making of the Order. The purpose of the steering group is to assist with the implementation of the remedy and ensure that it continues to adapt to changes. The CMA does not intend to oversee or take an active role in the steering group subject to compliance with the terms of reference and governance arrangement. The CMA has recommended that the FCA assumes an observer role and they have accepted.

Part 12 – Monitoring and compliance reporting

109. This sets out the monitoring and compliance reporting requirements. The intention is to simplify compliance reporting but having a single report in February each year with any additional reporting only required shortly after the remedy comes into force. The CMA intend to develop a straightforward online form to make compliance reporting as simple as possible.

Schedule 1 Part A – Agreed Arrangements

Implementation entity – composition and governance

1. The Implementation Trustee will be supported with sufficient and appropriate resources to enable him to take informed and timely decisions over matters considered by the Implementation Entity Steering Group (IESG), which he will chair.
2. The IESG will comprise one representative from each of the nine Providers specified, five representatives responsible for convening the Advisory Groups (FinTechs, payment service providers, third parties, challenger banks and parties concerned with the implementation of PSD2), two customer representatives (one consumer, one small business) and four observers - one each from HM Treasury, the Payment Systems Regulator, the Financial Conduct Authority and the Information Commissioner's Office. The five representatives responsible for convening the Advisory Groups will have equal voting rights with the nine Providers.
3. The Implementation Entity (IE) must draw on the expertise of all stakeholders in the interests of customers. In order to do so, there will be Advisory Groups open to all interested parties to help shape the development of the standards eg Data, Security, API. Advisory Group representatives will represent the views of their constituency and assist the IE to bring suitably qualified experts into the work streams, ensuring the representation of stakeholders' views in the programme of work.
4. To help ensure wide stakeholder engagement and input, there will be an open sharing of IE outputs during the development of the standards via the IE Advisory Group and website. There will be a variety of other communications including regular information bulletins and events, to ensure the stakeholder community is kept updated.
5. The governance process will follow recognised industry good practice, such as that seen through the development of ISO standards.
6. A Programme Director has been appointed and there will be a well-resourced, independently led core programme team comparable with other collaborative programmes.

Implementation entity – budget and funding

7. The IE will be sufficiently and appropriately resourced to enable it to successfully complete the tasks required by the Order.

8. A budget of £2 million has been agreed with the nine Providers to mobilise the programme and make an assessment of the resource required to deliver the remedy under Part 2 of the Order.
9. Funding will be apportioned between the nine Providers based on UK market share, paying 6 – 9 months forward working capital window with a forecast review every 3 months.

Reference and product information data sets

10. In considering the approach to reference and product information, initial analysis has identified a lack of suitable open standards. The IE will therefore need to establish the standards from the ground up.
11. In doing so, the IE will engage with the relevant users of the APIs and other key stakeholders to ascertain their data requirements and establish a core proposition. In addition to the core proposition, there will be an extensible schema of optional elements, which will be more loosely defined.
12. In parallel to this consultation, the IE will establish the common set of reference data elements available across the nine Providers and begin to understand the transformations required to map these to a common standard.

Customer transaction data sets

13. The sharing of customer transaction data is much more complex and requires, for example, robust security arrangements and identity management to protect this far more sensitive information. The IE will ensure that customers are fully protected against privacy and security risks and fully informed of the potential benefits and risks of sharing their financial information with third parties. These protections will need to take account of both the General Data Protection Regulations and the 4th Anti Money Laundering Directive.

Safeguarding customers' interests

14. To safeguard customers, it is important to establish a technology-based Trustmark, which is widely recognised and that institutions participating in the Open Banking Service can utilise. This should be re-enforced through a 'white list' of certified participants available via a central registry. The central registry will also form the centre of the inter-institution trust model, required to ensure that technical measures can be implemented to minimise the risk of rogue parties attempting to impersonate institutions to defraud customers.

Consistency with PSD2 requirements

15. To ensure an efficient outcome, the APIs developed will allow adopters to comply with the second Payment Services Directive (PSD2) requirements:
 - (a) The IE will seek to minimise the potential for any customer confusion that could have arisen in the absence of this consistency.
 - (b) The IE aims to establish a clear technical framework to facilitate the safe introduction of PSD2, without removing the ability for innovation at the edges.
 - (c) The IE will align write functionality with the payment initiation services that apply under PSD2.
16. The work programme will need to iterate with the clarification of standards for PSD2 and a specific Advisory Group will be set up to help achieve a successful outcome. The European Banking Authority have recently published the initial draft of the Regulatory Technical Standards (RTS) for PSD2, which provides some additional guidance.

Future operational governance

17. The IE and the IT will be mindful of the need to see the implementation of the CMA's remedies in the wider context. They will need to ensure that open banking standards and governance processes are maintained beyond the implementation of the last stage of the CMA remedies in January 2018 and are consistent with the adoption of open API standards in other sectors of the financial services market, for example mortgages.
18. The IE and the IT will therefore consider the most appropriate structures and processes to ensure that the benefits of open banking to consumers are sustained and developed going forward. This may, for example, entail the creation of an Open Banking Authority as foreseen in the OBWG's Open Banking report. Valuable work in this area has also and more recently been undertaken by the Payment Services Forum.

Schedule 1 Part B – Agreed Timetable and Project Plan

This Schedule will be included in the final order. The CMA envisages publishing a draft for comment separately prior to doing so but this will depend on the timing of when a document the CMA would be willing to approve is submitted.

Schedule 1 Part C – Implementation Trustee

The Implementation Trustee appointed on 3 October 2016 is Andrew Pinder.

Schedule 2 – Presentation of service quality indicators

1. This schedule contains details of the visual formatting of service quality indicators required in Article 17.
2. All Providers required to publish service quality indicators (as specified in Article 15) shall do so in a consistent visual format, which will be notified by the CMA, to include the following:
 - The heading: Independent Survey Results;
 - Reference to whether the indicators relate to PCAs or BCAs;
 - The month and year in which data is published;
 - The Provider's scores for each metric shown as a percentage;
 - The Provider's logo;
 - A comparison with top 5⁶ Providers for each metric, by showing the percentage scores for each of the 5 Providers which have the highest scores along with the names and logos of those Providers⁷;
 - Horizontal bars showing visually the score of the Provider as well as the Providers to which it is being compared (as outlined above);
 - Statement that Providers are displaying these results as part of a regulatory requirement;
 - Additional information on the survey, such as:
 - The name of the survey agency;
 - Questions asked in the survey;
 - Indication of sample sizes;
 - Dates over which data was collected;
 - A link and QR code to a website⁸ where customers can see the full survey results and more detail on survey methodology and previous results.

⁶ Or remaining 4 Providers in the top 5 if the Provider publishing the data is in the top 5.

⁷ We have considered alternative comparisons, in particular: the percentage scores for the 5 Providers which have the highest scores but with no names given, and the averages of the [3/5] highest scoring Providers shown as percentages. Our customer research found that these alternative comparisons would not go far enough towards remedying the AECs we have found.

⁸ This may be a third-party website (e.g. the BBA, or survey company), or a page on Providers' own websites.

Alongside the link and QR code, Providers may also include an invitation to ask staff in branch for more details.

3. Figures 1 and 2 below show a visual representation of what the CMA intends to notify to the Providers in accordance with Article 17.3 of the Order.

Figure 1: Publication of service quality indicators for PCAs

Not real data: for illustrative purposes only

PERSONAL CURRENT ACCOUNTS

August 2018

Independent survey results

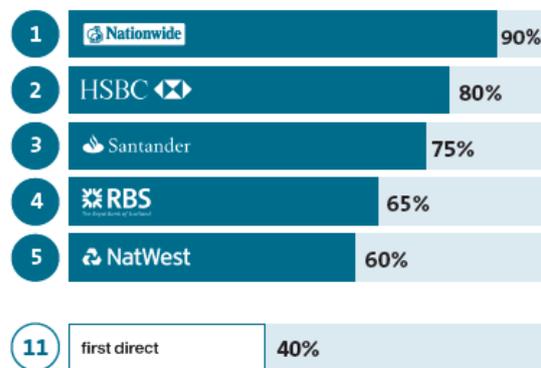
As part of a regulatory requirement, an independent survey was conducted asking customers of the 14 largest personal current account providers, whether they would recommend their provider to friends and family.

% who would recommend

Overall service quality

We asked customers how likely they would be to recommend their personal current account provider to friends and family.

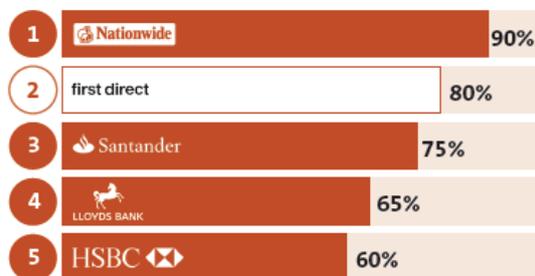
Ranking



Online and mobile banking services

We asked customers how likely they would be to recommend online and mobile banking services to friends and family.

Ranking



Overdraft services

We asked customers how likely they would be to recommend their overdraft services to friends and family.

Ranking

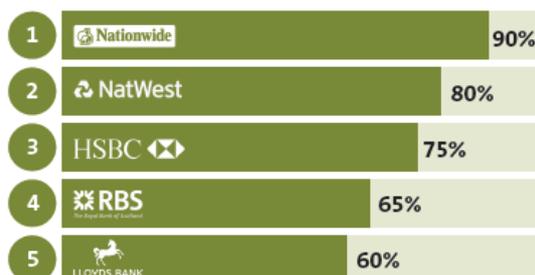


Services in branches

We asked customers how likely they would be to recommend their services in branches to friends and family.

Note: First Direct does not have branches

Ranking



Results of an independent survey, as part of a regulatory data requirement.

Customers with Personal Current Accounts were asked on a scale of [1-5] how likely they would be to recommend their bank, their bank's online and mobile banking services, their bank's services in branches, and their bank's overdraft services to friends and family. The results show the proportion of customers who responded [4 or 5].

Participating banks: Bank A, Bank B, Bank C, Bank D, Bank E, Bank F, Bank G, Bank H, Bank I, Bank J, Bank K, Bank L, Bank M, Bank N.

Sample size: A minimum of 100 customers were surveyed for each bank. X,000 people were surveyed in total.

To find out more visit www.website.com.

Not real data: for illustrative purposes only

Figure 2: Publication of service quality indicators for BCAs

BUSINESS CURRENT ACCOUNTS July 2018

Not real data: for illustrative purposes only

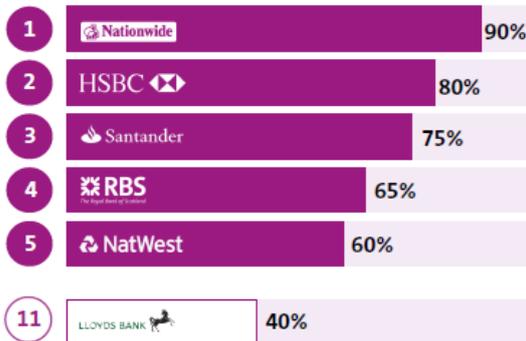
Independent survey results

As part of a regulatory requirement, an independent survey was conducted asking customers of the 14 largest business current account providers, whether they would recommend their provider to friends and family.

Overall service quality

We asked customers how likely they would be to recommend their business current account provider to friends and family.

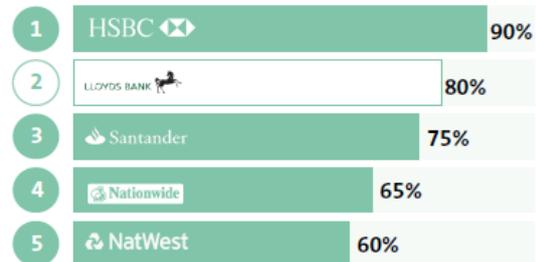
Ranking



Online and mobile banking services

We asked customers how likely they would be to recommend their online and mobile banking services to friends and family.

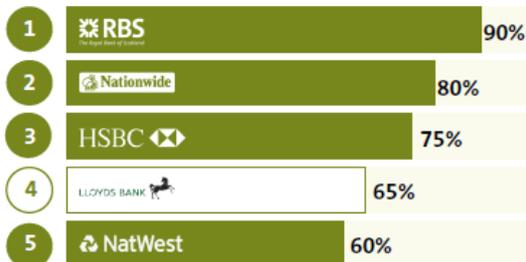
Ranking



Overdraft and SME loan services

We asked customers how likely they would be to recommend their overdraft and SME loan services to friends and family.

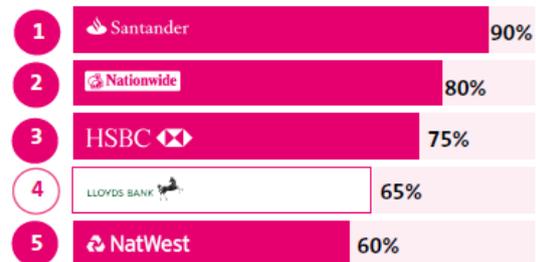
Ranking



Relationship/account management

We asked customers how likely they would be to recommend their relationship/account management services to friends and family.

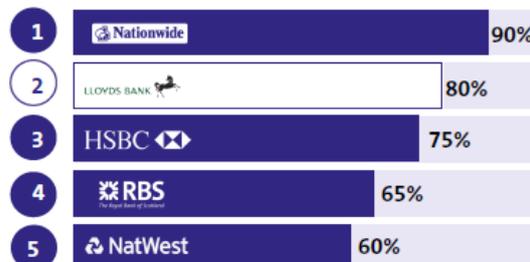
Ranking



Service in branches and business centres

We asked customers how likely they would be to recommend their branch and business services to friends and family.

Ranking



Results of an independent survey, as part of a regulatory data requirement. Data collected between month/year to month/year.

We publish the information in the tables above because the Competition and Markets Authority has asked us to do this so that you can compare these figures. In providing this information, we are not giving you any advice or making any recommendation to you. We only sell current accounts from [My bank] and can only give you information about our own products and services.

Customers with Business CurrentAccounts were asked on a scale of [1-5] how likely they would be to recommend their bank, their bank's online and mobile banking services, their bank's services in branches, their bank's overdraft and SME lending services, their bank's relationship/account management services to other SMEs. The results show the proportion of customers who responded [4 or 5].

Participating banks: Bank A, Bank B, Bank C, Bank D, Bank E, Bank F, Bank G, Bank H, Bank I, Bank J, Bank K, Bank L, Bank M, Bank N.

Sample size: A minimum of 100 customers were surveyed for each bank. X,000 people were surveyed in total.

To find out more visit www.website.com.

This survey covers Great Britain/Northern Ireland only.

Not real data: for illustrative purposes only

Schedule 3 Part A – Standard Information Set

Questions Summary			
	Information that banks will require to open your account:		
Category:		1. Core Information For All Types of Businesses that All Banks will Require:	Description of the Information/answer the bank is looking for, with examples. Optional if the SME wishes to populate any of these fields in preparation
CORE INFORMATION THAT WILL ENABLE THE BANK TO MAKE A DECISION ON OPENING A BCA:			
Organisation Details	1	If you are starting a new business or switching from an existing Provider	Are you starting a new business or are you switching an existing business account from another bank. If you are switching your account from another bank, the bank may ask to see your most recent bank or financial statements
	2	The legal status of your business	Drop down (Sole Trader, Single Director, etc.) with explanations of the different types of entity
	3	Business name	Explanation as to what this means and how it differs from the other name options
	4	Registered name	Explanation as to what this means and how it differs from the other name options
	5	Trading name	Explanation as to what this means and how it differs from the other name options
	6	Business start date	Explanation of what this means, eg if you are changing legal status from a sole trader to a limited company
	7	Details of any existing personal and business banking account(s) you hold at either the selected new bank or at your existing bank	Explain why this is required for both personal and any existing business accounts at the selected bank or at an existing bank. (prompt to provide sort-codes and account numbers)
Business Activity	8	Your primary business activity (eg electrician, online retailer). A description of your primary and any secondary business activity, products and services that you provide	The bank will want to know what your main business activity is (Drop down boxes) A detailed description of the type of work (primary and secondary activities) you do, services you provide and/or your products

			<p>Also, what the account is going to be used for - eg normal business trading; holding funds on behalf of your Clients; Wages A/c; Rent A/c) (free text)</p> <p>Here are some examples of some typical business descriptions as guidance</p>
			<p>If your business is one of the sectors regulated by a UK professional body (eg Financial Services/Institutions; Solicitors; Estate Agents and other businesses who hold money on behalf of clients) the bank will ask if you hold the required licenses to trade, with license names and numbers</p> <p>Drop down box of main types to help guide the SME</p>
	9	Your Customers - if you trade with customers outside the UK	<p>If you trade with customers outside the UK, the bank will want to see a breakdown of your main customers, the country they're based in and approximate share of business turnover per customer:</p> <p>Country (drop down), % turnover (structured number entry)</p> <p>The bank will also want details if you have any business assets or operations outside the UK</p>
	10	Your Suppliers - if you trade with suppliers outside the UK	<p>If you trade with suppliers outside the UK, the bank will want to see a breakdown of your main suppliers, the country they're based in and approximate share of business turnover per supplier:</p> <p>Country (drop down), % turnover (structured number entry)</p> <p>The bank will also want details if you have any business assets or operations outside the UK</p>
	11	Other Products & Services required - eg lending; savings; cards; international services	<p>Explanation as to why this is required so as to understand the customer's needs. Eg, if trading overseas, are trade finance products required; does the selected bank offer the range of products required. Drop down box.</p>
Financial Details	12	The amount of capital or funds you are investing in your business	<p>New Business - the amount of capital or funds you plan to invest in your new business to set it up.</p> <p>Existing Business - how much you have already invested in your business over the past 5 years.</p>
			<p>The source of the capital/funds that you have invested in your business to set it up.</p>

			If these amounts will be paid into your account once opened, and how much will be paid in from each source. Drop down box.
	13	The expected turnover of your business in the next 12 months	Explanation of what this means and why this is required
	14	How much money you expect to be paying into your account with the selected bank in the next 12 months and the way you will be doing that	A breakdown showing approximately how much you will be paying into your account in the next 12 months in cash (& frequency), cheque, electronic. Drop down box to help.
	15	Number of employees	Explanation of what this means and why this is required
Owners details		For each of your owners/directors/partners:	Note that ID&V will be required for any individuals who own or control over 25% of the businesses shares or voting rights
	16	Preferred title	Drop down (Mr, Mrs etc.)
	17	The name, role and details of all owners/ directors/partners of the business	The bank needs to understand who the ultimate owners of your business are. Name (free text), role (drop-down), if a Limited Company shareholding (SUM = 100%), voting ownership (SUM = 100%), authorised user (Y/N) + ability to insert free text description
	18	Legal name	First, middle, last name
	19	Any previous name(s) including maiden name and prior legal names	Explanation of what this means and why this is required
	20	Date of birth	
	21	Nationality(ies) including dual nationalities	Explanation of what this means and why this is required
	22	Citizenship	Explanation of what this means and why this is required
	23	Country of residence	Explanation of what this means and why this is required
	24	Your country & place of birth	If place of birth is outside the UK, TIN required. Explanation of what this means and why this is required
	25	Please provide your current home address	May only be needed if different from home/business/trading/correspondence address)
	26	Date you moved into your current home address	Current address required

			Only answer if <3 years at current address, previous home address
			Only answer if <3 years at current address, date you moved into your previous home address
Contact Details	27	Business/trading address	Explanation as to what this means and how it differs from the other address options
	28	Business correspondence address	Explanation as to what this means and how it differs from the other address options
	29	Registered business address	Explanation as to what this means and how it differs from the other address options
	30	Business contact details for email/phone/mobile/ and your preference	Email/phone/mobile/and your preference for means of contact
	31	Personal contact details for email/phone/mobile/ and your preference	Email/phone/mobile/and your preference for means of contact
		[Some banks will not require you to answer all of these questions as, in some cases, they can obtain this information from other sources]	
UK Tax Residency Regulations -	32	If your business was previously established or is it resident for tax outside the UK	<p>Explain meaning and why required. If you are a UK Sole Trader this will ask you to provide your UK NI Number - XX-XX-XX-XX-XX.</p> <p>Or to provide a UK Tax Identification Number or equivalent for each country you are a tax resident in.</p> <p>Country (drop down, UK auto selected), tax number/national insurance number.</p> <p>UK VAT Registration Number</p>
	33	If your business generates >50% of its income from one or more of the following sources	(Drop down) Sales of Goods/Subscriptions/Donations/Provision of Non-Financial Services/Grants
	34	Employment status	Explanation of what this means and why this is required

Schedule 3 Part B – Additional Information

ADDITIONAL INFORMATION: The information below is not part of the banks decision-making process but will help to complete the account opening process:		
Services Required		Your bank may also want to discuss additional product & service options to make sure you get the best from your new account. Additional product & service options will vary from bank to bank but examples might typically include:
	1	Business Online/Mobile/Telephone Banking services
	2	Business website
	3	Business Debit Card
	4	Business Cheque/Paying-In Book
	5	How you wish your statements to be delivered?
	6	How you prefer to be contacted about products and services relevant to your business

Schedule 3 Part C – Governance arrangements

Governance mechanism for a periodic review of the Standard Information Set

The Group will be established by the Banks and the BBA under terms of reference to be developed as part of implementation of the Remedy.

As set out in the CMA's Final Report, the Group will commence after the Standard Information Set has been approved by the CMA and implemented by the industry.

It is currently expected that the Group's activities will include:

Control of Content and Change

1. Maintaining the content of the Standard Information Set over time, ensuring that the content remains current, valid, relevant and meets the intended aims and benefits of the Remedy and Order.
2. Reviewing the appropriateness of the Standard Information Set over time, recommending changes in light of new regulation, developments and innovations.
3. Establishing and maintaining an effective process to oversee changes to:
 - (a) the content of the Standard Information Set;
 - (b) the Banks that are subject to the Remedy (applying the threshold of 20,000 active BCA customers).
4. Ensuring that in the context of any change there is an appropriate balance between ensuring the stability of the Standard Information Set without constraining innovation and improvements in process and customer experience.
5. Maintaining close links where appropriate with relevant regulatory bodies, eg: FCA; JMLSG and other related bodies.

Communications

6. Establishing and managing the guidelines regarding communication of the Standard Information Set.

Compliance

7. Consideration of a defined set of compliance criteria and key success factors, with appropriate measures, for the operation of the Standard Information Set, subject to the approval of the CMA, and monitoring of compliance through the Banks and/or the BBA providing compliance reports on an annual basis to the CMA.

Modus Operandi

8. The Group will:
 - (a) Make decisions and resolve issues by consensual agreement;
 - (b) Provide practical advice, information and guidance on the interpretation of the Remedy and Order to participating banks;
 - (c) Act as a forum through which any proposed issues which may result in a requirement for the standard information to be amended can be raised and discussed ahead of introduction.

Membership

9. Membership of the Group shall comprise:
 - (a) Chair – Executive Director, Corporate & Commercial, BBA
 - (b) Deputy Chair – group member by annual rotation
 - (c) Secretariat - BBA
 - (d) One voting representative will be invited to join the Group from each of the Banks subject to the Remedy at the relevant time.
10. There will also be an observer from the FCA.
11. Group members may from time to time request attendance of guest organisations (including for example the CMA, representatives from the SME Business Groups and the JMLSG) at the discretion of the Chair.

Duration

It is proposed that the Remedy should be in force for a term of no longer than 5 years from the date of the Order. The Banks would also welcome the opportunity to review the operation of the Remedy if there is a material change in any of the facts or circumstances on which the decision to require the Remedy is based.