

22 December 2016

Competition & Markets Authority
Victoria House
Southampton Row
London
WC1B 4AD

FAO. Julie Hawes

Dear Sirs,

Retail Banking Investigation: Consultation on draft Order

Thank you for the opportunity to provide feedback on the Retail Banking Investigation draft Order. The accompanying draft Explanatory Note makes clear that the CMA has listened to providers' concerns during some earlier interactions, which is appreciated. However a number of legitimate concerns do not appear to have been addressed and insofar as they are applicable to Tesco Bank and its customers, these are set out below.

Article 9 – Interpretations

The definition of "PCA" suggested in article 9 appears closely aligned to the definition of "payment account" adopted in the Payment Accounts Regulations 2015 ("PARs"). We understand that concerns have been raised about this already. The CMA may not be aware that the 'usage for day-to-day payment transactions' test that forms part of the PARs definition (and is included in Article 9.1c) is likely, for some banks, to capture accounts that are not 'current accounts' – for example, instant-access savings accounts that include the relevant functionality and indicate a degree of day-to-day usage by customers. Adopting the PARs definition may therefore have the consequence of bringing in to scope accounts that are not generally considered to be PCAs, to which many of the CMA remedies (for example relating to overdrafts) would not apply. This risks the remedies being applied inconsistently between banks, causing confusion for customers and surely undermining the CMA's stated aims. We would be grateful if the CMA would confirm its intention is not to capture accounts that are not generally considered to be PCAs.

As an alternative, we would suggest the CMA applies the definition of ‘current account’ adopted for the purposes of the Immigration Act 2016, which was discussed by the House of Commons’ Fifth Delegated Legislation Committee on 5 November 2014. The Committee proposed that ‘current account’ should encompass only those accounts *that are used principally* for day-to-day banking – savings accounts were expressly excluded as their principal purpose is different. We believe such a definition will more appropriately reflect the CMA’s intentions and avoid unintended adverse consequences.

Article 15.4 – Requirement to publish service quality indicators

As currently drafted, 15.4 proposes that providers must publish service quality indicators just four weeks after the underlying data has been collected. We believe it would be premature for the CMA to specify a defined period before the providers’ independent survey agency has been appointed and a survey methodology agreed. We recommend that the CMA adopts a less prescriptive approach and that providers who are subject to this remedy should be required to agree with the independent survey agency(s) a short but realistic timescale, subject to CMA approval, once the logistics of collecting and updating service quality information are known.

Article 17.1 – Specification of publication

The CMA proposes that the service quality indicators should be published “in information leaflets (or inserts inside such leaflets) likely to be seen by prospective customers.” We appreciate the option to publish using inserts, as opposed to within the body of leaflets themselves. However even the requirement to publish an insert on a strict six-monthly basis and arrange for this to be inserted, distributed and displayed (with old copies then withdrawn) will represent a logistical challenge for providers who manage brochureware more dynamically throughout the year. Realistically, to avoid the wastefulness of having to deliver a dedicated six-monthly ‘print run’ for the inserts, providers would need to realign other brochureware activity to this rigid schedule and this would undermine their ability to market to customers in a flexible and competitive way.

As an alternative, we therefore propose that the relevant leaflets should simply be required to ‘signpost’ customers to where the service quality indicators can be found on the provider’s website and/or mobile app. Such signposting would not need to be updated so frequently, avoiding a disproportionate level of cost and wastage for the provider. It would also align to the experience of providers such as Tesco Bank, whose prospective customers primarily research our products and services online. Those providers who may wish to publish the service quality indicators themselves, whether in leaflets or inserts, could still do so.

Article 29 – Communication of MMC

We note that Article 29.1 requires the level of the MMC to be disclosed whenever information relating to the relevant charges is disclosed. We also note, in Article 29.2, that the standardised term and definition of the MMC must be used in any communications relating to the MMC “intended to be used for the purpose of helping [...] understand the terms of a PCA to which that MMC applies.”

Tesco Bank’s interpretation of the above is that when a provider is simply stating or notifying a customer of a charge to which the MMC applies, they must state the level of the MMC but it will not always be necessary to add the standardised term and definition. Said term and definition will only require to be included in contexts where the provider is seeking to help customers understand the MMC itself (for example in a price list, FAQs or online brochureware.)

This would seem a sensible and proportionate approach and if it reflects the CMA’s intention, it would be helpful to include in Article 29.2 some ‘avoidance of doubt’ wording of the kind in Article 17.1.4, for example: “For the avoidance of doubt this requirement does not impose an obligation on any Provider to use the standardised term and definition of the MMC every time the level of the MMC is disclosed.”

Article 56.1.2 – Additional compliance report requirements

As currently drafted, 56.1.2 requires all compliance reports to include a certificate signed by both a Director and a Non-Executive Director. We understand that concerns about the appropriateness and proportionality of this requirement have already been raised.

Submission of regulatory and compliance reporting is an executive, not non-executive, responsibility. The majority of reporting submitted to other regulators such as the FCA and PRA does not require non-executive signoff. Whilst we appreciate that the CMA will wish to ensure there is the proper accountability for compliance reporting, we believe requiring signoff by a single Executive Director should provide sufficient comfort and would be a more proportionate approach.

We would be pleased to discuss our comments further if that would be helpful.

Yours faithfully,

David McCreadie
Managing Director
Tesco Bank