

RETAIL BANKING MARKET INVESTIGATION

Summary of responses to the consultation on the draft Retail Banking Market Investigation Order and Explanatory Note

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Introduction

1. On 23 November 2016 the Competition and Markets Authority (CMA) consulted on a [draft order](#) (the Order) and a [draft explanatory note](#) (the Explanatory Note) for the implementation of the remedies set out in the [Final Report](#). The consultation closed on 23 December 2016 and the final Order (and final Explanatory Note) were issued on 2 February 2017.
2. During the consultation, the CMA received 26 submissions relating to the Order and the Explanatory Note. Non-confidential versions of the responses

received are available on the CMA's webpages.¹ The CMA took account of each of these responses when preparing the final Order and Explanatory Note. This document sets out some of the main points raised in response to the consultation, particularly where the CMA's response to the points may not be clear from the final version of the Order and Explanatory Note. It does not seek to address each of the points considered by the CMA.

3. Capitalised terms in this document have the same meaning as defined in the Order, unless otherwise specified.

Part 1 – General

Article 2 – Commencement

4. One provider suggested that Article 2.9 be amended to state that Part 3 (other than Article 16) enters into force on 1 August 2018, for consistency with the other dates set out therein.

CMA response: We thought this was a helpful suggestion and have amended Article 2.9 accordingly.

Article 4 – De minimis exemption

5. One provider suggested that for the purposes of simplifying implementation the de minimis threshold in Article 4.7 should refer to the number of active PCAs only, to avoid referring to different definitions across different remedies.

CMA response: We accept that retaining the same PCA de minimis requirement across different remedies may be, marginally, simpler for banks to apply. We have, however, retained the original approach which was based on our conclusion set out in the Final Report. As the MMC remedy does not apply to certain types of PCAs, most notably basic bank accounts, it is reasonable to exclude such accounts from the calculation of the de minimis level.

Article 5 – Exceptions to the application of the Order

6. We received a number of comments on the way in which we detailed the exemption for private banking in this Article.

¹ www.gov.uk/cma-cases/review-of-banking-for-small-and-medium-sized-businesses-smes-in-the-uk.

7. One provider supported the exclusion of private banking from the Order and considered that Articles 5.1 and 5.2 were proportionate.
8. The BBA noted that the private banking and wealth management exemption should be applied on the basis of the principle that private banking and wealth management services are not the target of the CMA review and remedies. Therefore, the BBA recommended amending Article 5.3 to exclude these services from the Order, irrespective of the size of the firm and the number of customers.
9. In relation to private banking clients with BCAs, the BBA recommended that an addition is made within Article 5 to make provision for the CMA to determine that, where PCAs have been exempted from the Order, providers can apply to the CMA for BCAs to be exempted as long as the BCA de minimis threshold is not exceeded at a brand or division level.
10. One provider noted that they would welcome clarification of the type of information that the CMA would require from providers in support of any applications for determinations under Articles 5.2 or 5.5 in the final version of the Explanatory Note. Similarly, another provider requested greater clarity regarding the determination process under Article 5 for private banking and in relation to closed accounts, including the timings for this process and what would happen in the event an application for determination was unsuccessful. In this regard, the BBA recommended that the CMA provide itself with discretion under the Order to extend implementation deadlines where a firm has made an unsuccessful request for a determination, given that firms and divisions that unsuccessfully seek a determination will need adequate time after the CMA's decision to implement the requirements of the Order.
11. One provider expressed concern regarding the applicability of the private banking exception following changes to Article 5 after the informal consultation. They proposed that the CMA amend Article 5.3 such that where the CMA has made the determination, the Order shall not apply to that division or Brand if it has fewer than 150,000 active PCAs in GB and NI combined and has fewer than 20,000 active BCAs in GB and NI combined. They also proposed that the CMA amended Article 5.4 so that it also applies to BCAs.
12. Alternatively, this provider suggested that the CMA should refocus Articles 5.5 to 5.9 to allow for an exemption for on sale products in addition to closed products, where a Brand has fewer than 20,000 active BCAs. Another provider also noted that the CMA should distinguish between 'mainstream' BCAs and those offered by private banks and include an equivalent set of

criteria in a similar way to the distinction for 'mainstream' PCAs and those offered by private banks in Article 5.4.8.

CMA response: In light of these comments, Article 5.2 has been expanded to cover BCAs. As Part 8 'Publication of Rates for SME lending products' has general application and is not restricted to providers of BCAs (ie it is applicable to all providers of SME lending products), we do not believe that brands that are excluded from the Order pursuant to Article 5.2 should be released from the need to comply with its requirement. We have, however, in Article 5.3, provided for the possibility of divisions or brands to be exempted from the application of Parts 9 (Tool offering indicative price quotes and eligibility indicator) and 10 (SME banking comparison tools and Open Up Challenge) under certain circumstances.

Clarification of the process and of the type of information required to support an application for determination under Article 5.2 and Article 5.5 is set out in paragraphs 23 and 24 of the Explanatory Note.

13. The BBA noted that the exemption as drafted in Article 5.1 may not work for some divisions/brands operating in a group and recommended that the CMA should include an additional provision to exempt divisions that cater solely to Specified Individuals, even though some of the PCA products provided may also be provided to retail customers by other divisions in the group. While acknowledging that Article 5.2 usefully provides a flexible mechanism for accommodating firms that are not covered by Article 5.1, the BBA recommended redrafting Article 5.2 such that if Article 5.1 is not successful in excluding all firms / divisions that have only Specified Individuals as customers, these firms should be able to apply for a determination.

CMA response: We have not changed the Order in response to this comment. We do not need to make provision for identical products offered to Specified Individuals because we do not consider that the products offered to them are exactly the same products as those offered to other customers.

14. The BBA noted that the CMA may receive many requests for a determination which it may find difficult to process in a timely manner. This could cause difficulty for firms as they will be uncertain as to whether or not they need to comply with the Order. They recommended we consider allowing more discretion to the deadlines where a firm or division has made an unsuccessful request for a determination.

CMA response: The criteria set out in Article 5, combined with the guidance in the Explanatory Note provide clarity on the circumstances and on what basis the CMA

will make a determination under Article 5. Where a provider is uncertain as to whether the criteria can be demonstrated to be met, it should plan on the basis that it will have to comply with the relevant parts of the Order by the associated commencement dates. In any case Article 5.11 requires the CMA to make a determination within one month of receiving all the information it deems necessary to make the determination.

Article 6 – Derogation

15. One provider requested that the CMA provides further details and guidance on the evidence that the CMA will require providers to submit as part of an application for derogation under Article 6. They also indicated that they would like the CMA to explain how it expects to assess applications.

CMA response: Clarification of this has been provided in the Explanatory Note.

Article 8 – Expiry of certain provisions

16. While welcoming the CMA's proposal to sunset the BCA account opening remedy after five years under Article 8.1, one provider suggested that the CMA considers the inclusion of sunset clauses or provision for review for other remedies, to ensure that remedies do not remain in force where they are no longer necessary.

CMA response: We have considered this and do not think that sunseting is appropriate for provisions of the Order other than the BCA account opening remedy. While some parts of the Order will fall away over time (eg Part 4) it is not clear at the time of making the Order when this will be. The Explanatory Note sets out consideration of sunseting in relation to certain individual Parts. We will keep the Order under review and take necessary action when appropriate.

Article 9 – Interpretations

17. One provider requested clarification on whether the APR should be calculated in line with the APR calculation methodology in CONC Appendix 1.2.

CMA response: The Order has been amended to provide this additional clarification.

18. In relation to the definition of 'BCA' one provider noted that under the Consumer Credit Act (CCA) references to an individual could refer to a sole trader or a partnership but excludes an incorporated body. In contrast, they

understood that the CMA intended all SMEs, sole traders and partnerships to fall within this definition of SMEs, thereby being considered as BCA customers. They considered that this could cause confusion about the use of the word 'individual' so recommended that we clarify that BCA products are products wholly or predominantly used by customers for their business.

CMA response: The definition of 'SME' makes it clear that a 'business' includes anything that could be regarded as an 'undertaking' under the Competition Act 1998, and it states, for the avoidance of doubt, that it includes companies, partnerships, individuals operating as sole traders, associations of undertakings, non-profit-making organisations and (in some circumstances) public entities.

19. One provider noted that the definition of 'Business Overdraft' did not distinguish between secured and unsecured overdrafts.

CMA response: The definitions section of the Order has been amended to include a definition for Unsecured Business Overdraft.

20. On 'credit card', one provider noted that the definition under the Consumer Credit Act did not include credit cards provided to SMEs that are incorporated. They suggested that the definition be amended without reference to the CCA.

CMA response: The definition has been amended to reflect this comment.

21. One provider considered the definition of 'Payment Transaction History' did not cover the transactions which the CMA intends to capture and the definition currently refers to information contained in the regular statement referred to in BCOBS 4.2.1 which does not apply to current accounts. This provider suggested that the definition should consider the interaction between the Payment Services Regulations 2009 (in particular the definition and regulations 45 and 46) and BCOBS.

CMA response: The definition has been amended to reflect this comment.

22. While noting that the definition of 'PCA' in Article 9 appears closely aligned to the definition of 'payment account' in the Payment Accounts Regulations 2015 ('PARS'), one provider indicated that 'the usage for day-to-day payment transactions' test that forms part of the PARs is likely, for some banks, to bring into scope accounts that are not generally considered to be PCAs. Accordingly, two providers asked the CMA to confirm its intention not to capture accounts that are generally not considered to be PCAs. Alternatively, one provider recommended that the CMA applies the definition of 'current

account' adopted for the purposes of the Immigration Act 2016, as they believe that such a definition will more appropriately reflect the CMA's intentions and avoid unintended consequences.

CMA response: The definition of PCA has been amended to clarify that savings accounts, credit card accounts and e-money accounts are not included within its scope and the scope of the CMA's Order reflects its terms of reference and AEC findings. We have also amended the definition in relation to mortgage accounts to make it consistent with the Final Report and the [Bacs Undertakings](#).

23. In relation to 'Representative' one provider made three points:
- that the draft Order removed the key assumption used to calculate representative APRs under CONC: the link with a financial promotion;
 - an APR is calculated with a specific purpose within a financial promotion, as it is an indicative rate and that once the customer has an agreement, the representative APR is no longer relevant as they will have a personalised rate; and
 - that using the representative APR outside the context it is designed for would be confusing.
24. Another provider recommended that we delete the words 'as a result of the publication, display or communication' from the definition as banks will not be aware whether credit is provided to SME customers as a result of the publication, display or communication of the rate or as a result of other factors, eg a recommendation from family or friends.
25. Another provider recommended that we add the words 'Where a provider has already determined that a customer is eligible for credit at a specific Rate, the Representative Rate for that customer is the rate offered to that customer' to the end of our definition.

CMA response: On the first provider's three points, we do not agree that our definition of 'Representative' removes the key assumption used to calculate representative APRs under CONC. Our definition of 'Representative' is closely aligned with the CONC definition including retaining the key assumption used to calculate representative APRs. Providers should regard the information displayed on their website as a financial promotion and, as would be the case under CONC if it related to consumer credit, it must contain certain information as we have required (ie the Representative APR).

In relation to other advertising/marketing materials, again the intention is to ensure providers provide certain information as is required under Part 8. The intention is not to require providers to publish customer-specific rates, but to publish general indicative rates (see paragraph 99 Explanatory Notes).

On the second provider's point, we do not agree. Retaining these words is necessary so that providers know what to base their assumptions on and the existing formulation is in line with CONC. Providers don't have to think about other factors (eg family and friends), just how many SMEs they reasonably expect to see the information and enter into an agreement (see paragraph 98 of the Explanatory Notes). Nor did we agree with the second provider that we should delete the words highlighted in paragraph 24.

On the third provider's point, we do not consider that the addition of the suggested text is required. If a provider is targeting advertising to one customer or a particular sub-group of SMEs then the APR would only need to reflect that customer or sub-group (as it is they that are likely to enter into an agreement as a result). We have however provided clarification on this point in the Explanatory Notes (paragraph 99).

26. One provider noted that the definition of arranged and unarranged overdrafts were inconsistent with those in CONC. Another provider suggested that we amend the definition of 'Working Day' as only holidays fixed by the Banking and Financial Dealings Act 1971 would be suspended as opposed to other public holidays. This respondent also suggested that 12 July and the day after the last Christmas holiday be excluded from the definition of a working day in Northern Ireland.

CMA response: We acknowledge the difference but have decided not to alter the definition. These reflect the AEC findings in the Final Report and as such are necessary to achieve an effective remedy.

In addition to holidays fixed by the Banking and Financial Dealings Act 1971, the definition of 'Working Day' included two public holidays – Christmas Day and Good Friday. We have also excluded 12 July from being a Working Day in Northern Ireland. We have not excluded the day after the last Christmas Holiday (ie 27 December if Christmas Day does not fall on a weekend) as this is officially a working day.

Part 2 – Open API standards and data sharing

Article 10 – Creation of the Implementation Entity

The scope of our remedies package and that of PSD2

27. Several respondents pointed to the difference in scope between our remedies package and PSD2, both as regards the parties who would acquire obligations under the two sets of arrangements and the products that would be covered.
28. Two finance providers drew attention to the possible confusion that could arise if different firms, or the same firms providing a range of products, found themselves having to comply with two different and inconsistent sets of regulations.
29. An industry representative body also expressed the hope that, eventually, all types of transaction data would be available through open APIs and suggested that the CMA or HMT should indicate that this was the longer term goal.
30. One provider, referring to the need to take account of the recent Payment Strategy Forum (PSF) publication [A Payments Strategy for the 21st Century](#), went further, proposing that the Order should make explicit the Implementation Trustee's obligation to have regard to the requirements of PSD2 and that the Order or Explanatory Notes should acknowledge the PSF proposals for the longer-term regulatory oversight of the sector.
31. Further, several parties stressed the need to ensure that the requirements of the Order did not conflict with the requirements of PSD2. Grounds for arguing that the two sets of requirements could be inconsistent or incompatible focussed on (a) the timing of implementation or (b) the scope of the two regimes.

CMA response: As we explained in our Final Report,² whilst there are obvious benefits in achieving compatibility between our remedies package and PSD2, our order making powers are constrained by our terms of reference, and our AEC findings in the Final Report. Our terms of reference, AEC findings and remedies do not, for example, extend to payment services which are not current accounts, though such payment services are covered by PSD2.

² [Final Report](#), paragraph 13.25.

We have nonetheless sought to make it clear both in our Final Report and in communications with the Implementation Entity and Implementation Trustee that where possible, and if it can be done without jeopardising our timetable, the Implementation Entity and the Implementation Trustee should endeavour to ensure its requirements are compatible with PSD2. We believe taking into account the wider context of PSD2 will make our remedies more effective. Further, the Implementation Entity Advisory Group now includes parties whose responsibility it is to identify areas of potential incompatibility and draw them to the Implementation Entity Steering Group's attention. We have made a number of amendments to the Order and Explanatory Note to clarify this position.

Equally, while we do not have powers to require it, we share the desire to ensure that there is effective longer term oversight of the broader API 'ecosystem' as this would enhance the effectiveness of our remedies. Such longer term arrangement would include those within the scope of our remedies, and also those within the scope of PSD2. We again referred to this in our Final Report.³ We have made it clear to the Implementation Trustee that we envisage that a successor body to the Implementation Entity could take on this role and that in structuring the Implementation Entity he should bear this in mind, particularly in the context of the PSF's report cited in paragraph 30.

We have discussed ways in which the organisations and processes that we have created to implement our remedies could be modified to play a role in the implementation of PSD2. We also note the proposal from the PSF in relation to longer term governance arrangements, with these being considered as a potential future solution. This issue is covered in paragraphs 38 and 39 of the Explanatory Note.

Implementation timetable (for 'write-access')

32. Several respondents referred specifically to the timetable for the adoption of open standards for write-access applications (the technology which supports payment initiation services) as entailing significant technical challenges whose 'acceleration' would in their view bring little customer benefit. Their reasoning was that the European Banking Authority's (EBA's) Regulatory Technical Standards (RTS) for write-access applications may not be adopted until the end of 2018 yet we are proposing that common UK standards should be agreed within the Implementation Entity by January 2018. This, they argued, could give rise to providers incurring unnecessary costs in, subsequently, adopting different standards if these were mandated by the RTS. Requiring

³ [Final Report](#), paragraph 13.39.

the adoption of write-access standards by January 2018 could also jeopardise the timetable for read-only access applications which were the basis of most of the use-cases which would deliver the CMA's central product comparison remedies.

33. Linked to this, one provider suggested that as regards Article 2.10, which relates to the commencement of Article 14 in conjunction with Article 10.6, the Explanatory Note should reflect paragraph 13.81 of the Final Report. In particular, the Explanatory Note should explicitly recognise the Implementation Trustee's remit that while January 2018 remains the deadline for the agreement of the standards underpinning this element of the remedy, he or she may approach the CMA for agreement to delay in the adoption and implementation of these standards if to do so otherwise would give rise to significant risks or inefficiencies arising from their lack of alignment with the PSD2 RTS.

CMA response: We have amended Article 10 to clarify the importance of consistency with PSD2 and paragraph 38 of the Explanatory Notes refers to the RTS.

The draft RTS on strong customer authentication does not indicate to us that there will be a material problem in terms of compatibility but if differences did arise in any subsequent RTS, the Implementation Entity could seek to modify the RTS as part of the consultation process and we would expect this to happen. Should irreconcilable differences emerge, the Order allows the Implementation Trustee, with our agreement, to vary the Agreed Arrangements including the Agreed Timetable.

That said, the draft Order upon which we consulted permitted the Implementation Trustee to propose changes to the timetable for read and write elements of the Read/Write Data Standard but that date would have needed to be the same for both. We do not think there is any justification for delaying the introduction of read and write access although have provided a mechanism within the commencement provisions (Article 2.10) of the Order for amendments to the Agreed Timetable to allow for the possibility for the date of read-access and of write-access, in accordance with the provisions of the Read/Write Data Standard, to be different in the event external factors require such a change. However, we consider that the date in the Order should remain as 13 January 2018. We do not think that this approach, which allows flexibility while seeking to address a timely outcome, will give rise to providers incurring unnecessary costs.

Other comments on Article 10

34. One provider was concerned that challenger banks were not given the resource needed to hold the larger banks to account and their voice may not be heard in the Implementation Entity. This provider also stressed the need to ensure there were checks and balances in place to ensure the Implementation Entity designed APIs in a way that did not only benefit the largest banks. They also questioned the value of 'trustmarks' that could be used to indicate which financial service providers use the open API framework. They felt that this scheme could be undermined unless there are clear regulations.

CMA response: The views and interests of challenger banks will be represented through a Challenger Bank Advisory Group with a place on the Implementation Entity's Steering Group. Taken together with the fact that the Implementation Trustee has been given broad powers to make decisions in line with the Order and his Mandate, this is sufficient to ensure that the interests of challenger banks, as well as consumers and technology firms are properly reflected in the actions of the Implementation Entity.

On the issue of 'trustmarks', we are aware this is being considered by the Implementation Entity as part of its important work on communicating Open Banking and building trust and confidence amongst consumers and businesses, which is a key part of making Open Banking a success. In developing proposals in this area participants will need to ensure they do not introduce any unnecessary barriers that hamper the entry of third party service providers and the development of new products and services.

35. An industry representative body proposed that we should mandate the Implementation Entity to work with the FCA to create a transitional solution to 'legitimise the use of screen scraping,' by Third Party providers by ordering banks to alter their terms and conditions to allow the use of screen scraping by service providers whose security arrangements were deemed satisfactory.

CMA response: We did not consider that this additional remedy, which we had in any case not adopted in our Final Report, would be effective or proportionate in addressing the AECs that we had found.

36. One provider suggested we add a definition for 'fair usage policy'.

CMA response: We do not consider any of the requirements in the Order should be subject to a fair usage policy. To the extent that such a policy is appropriate in

Part 2, it can be accommodated by the Implementation Entity, within the Read-only Data Standard and Read/Write Data Standard. This issue is covered in the Explanatory Note.

Article 11 – Appointment of the Implementation Trustee

Appeals against the decision of the Implementation Trustee

37. One provider noted that the Implementation Trustee was being given broad powers to require banks to comply with his written instructions and said that the providers should be able to appeal his decisions and directions in appropriate circumstances and suggested that the Order be amended to include clear procedures by which they could be challenged.

CMA response: We have deliberately given the Implementation Trustee broad, but nevertheless limited, powers in order to ensure that the project can be driven forward within the deadlines specified, even in the face of opposition from some providers on some issues. Allowing providers to challenge individual Implementation Trustee decisions could put the timetable at risk by giving rise to delays while they were adjudicated, or could lead the Implementation Trustee to avoid making reasonable decisions that were nonetheless controversial and liable to challenge in order to prevent such a challenge causing delays. We have therefore decided not to introduce an appeals procedure within the Order.

Nevertheless we have amended Article 11.6 to make clear that the Implementation Trustee's powers to require compliance with his decisions or directions is limited to those matters set out in the Order or written Directions from the CMA. It is also important to note that changes to the scope of the Implementation Trustee's powers through, for example, changes to the Agreed Arrangements or Agreed Timetable and Project Plan requires the approval of the CMA (see Article 10.6). Any such decision by the CMA would itself be subject to judicial review.

Article 12 – Release of product and reference information

Reference data

38. One provider said that business centre locations should be included in the specified reference data as this was the equivalent for SMEs of branch locations.

CMA response: We agreed with this and included business centres within the specified reference data.

Product data

39. One provider said that the use of the term 'benefits' in Article 12.1.2 could be subjective and might not include features such as the availability of mobile banking.

CMA response: For clarification we added the term 'features' to this Article.

Inclusion of commercial credit cards

40. Several providers, including the BBA, objected to the inclusion of commercial credit cards within the scope of the remedy on the grounds either that these products had not been a focus of the investigation and/or that they were not within our terms of reference. One provider suggested that their inclusion was inconsistent with our conclusion that broadening the range of products for which open data through APIs was mandatory could risk delays to an already challenging timetable.

CMA response: Business credit cards were clearly within our terms of reference and our AEC finding related to SME lending, which includes credit cards. We therefore considered them to be in scope of the Open Banking remedies as regards to availability of their terms and conditions via common, standard APIs. The Implementation Entity has confirmed that they could be included in its work programme without risking the overall timetable for the delivery of Open Banking. We therefore decided not to change the Order in this regard.

Unsecured loans

41. Some respondents suggested that only Unsecured Business Overdrafts should be covered in Article 12.4.2 and only Unsecured Loans up to £25,000 included within Article 12.4.3.

CMA response: We agree and have amended these definitions accordingly. Doing so is consistent with the Final Report and with the approach taken to other elements of the remedy package.

Back book products

42. One respondent expressed the view that the ruling of back book products out of scope of the release of product and reference information from March 2017 could render the remedy ineffective since customers with such products would not be able to compare them with products currently being marketed.

CMA response: Back book products were excluded from the scope of the release of product and reference information following representations during the informal consultation.

Although back book products are excluded from the product and reference data to be released from March 2017 they are not excluded from the obligation to share transaction data that will be adopted from January 2018. Once these obligations are in force we expect tools to be developed to enable customers to compare the cost of their present account (including back book products) with new ones on the basis of actual and equivalent usage. While there may be benefits from including back book products in the March 2017 release, for example for customers not wishing to share their transaction data, we concluded that the cost of doing so would outweigh the benefits.

Youth accounts

43. One provider noted that the definition of PCA products under Article 12.4.1 includes youth accounts. They pointed out that youth accounts have a number of functional differences to other types of accounts, such as the requirement to get parental consent that could pose challenges in applying the open API remedy. They suggested that we should remove youth accounts from the scope of this remedy so as to not risk the inclusion of these accounts delaying the progress of the overall remedy.

CMA response: Youth Accounts are included within the scope of PCA products for which product and reference information will be released through the Read-only Data Standard (See Article 12.4.1(f)) and would therefore not involve the issue of parental consent. The inclusion of youth account in PCA transaction data to be released through the Read/Write Data Standard is to be determined by the Implementation Entity and Implementation Trustee.

Interaction with SME remedies

44. One provider queried the interaction between Part 2 and the SME lending remedies noting that the product information would need to be made available via open API before banks have had an opportunity to restructure the pricing for a standardised, understandable format of APR/EAR and banks would be required to provide APR and EAR information under Part 2 before it exists given the SME remedy does not come into force until a later date.

CMA response: As explained in paragraph 33 of the Explanatory Note, in respect of Article 12.1.2(b), the only SME lending interest rates that must be made

available when Article 12 comes into effect are those which providers already publish as at that date. For providers that do not publish rates for SME lending products, the requirement to publish rates under Article 12 should reflect the requirement to publish representative APRs and EARs in Part 8 and should only apply from the date on which providers are required to publish such representative rates under Part 8.

Part 3 – Service quality

Article 15 – Requirement to publish service quality indicators

Turnaround from completion of the survey to publication of results

45. Several providers and the BBA argued that the proposed turnaround time between the completion of the survey and the publication of its results of 4 weeks is too short because it takes a considerable amount of time for materials to be produced and distributed. They also noted that it may unduly delay the time the survey agency has for analysis of survey results. They proposed that we amend the Order to give providers flexibility to update the results in quarter 1 and quarter 3 of each calendar year.

CMA response: We accept that printed materials (ie posters and leaflets), may take longer to produce and distribute than digital content. However, responses overall did not indicate or provide evidence for what would be a suitable timeframe other than to allow sufficient time. We consider it preferable to retain a specified timeframe within the Order to provide clarity on when results will be published. We consider it a key feature of this remedy that there is consistency across different providers both in the display of service quality indicators and when they are updated.

In light of the concerns raised, we have decided to amend the Order to allow for a six week turnaround time. We consider this is reasonable, bearing in mind the fact that providers can start preparing for the publication well in advance of receiving that final batch of survey data.

The applicable threshold for SMEs to be included in the survey

46. One provider highlighted that unlike other parts of the Order, Part 3 does not apply a turnover threshold to SMEs being surveyed. It argued that the service needs and expectations are different for small businesses compared to those of a medium or large size. It proposed that we amend the Order so that only SMEs with a turnover of less than £6.5 million will be surveyed.

47. Another respondent argued that it would be desirable to make a distinction between the experiences of different sizes of business.

CMA response: We discuss this issue in Part 3 of the Explanatory Note. The Final Report did not apply any turnover threshold to this remedy. We consider that there is limited merit in excluding larger SMEs from the survey and have not amended the Order. However, we note a survey methodology could provide for data to be collected such that results could be reported with certain customer groups, such as larger SMEs, excluded. Once the full results are published individual providers or third parties may wish to use the more granular data for comparisons, such as comparing quality for larger SMEs. We would expect the proposed survey methodology to set out how survey results for SMEs will be weighted so that the experiences of particular types or sizes of SMEs do not distort results. Ultimately we consider this to be a matter best addressed in the methodology to be proposed by the providers.

Governance

48. One provider expressed concern about the lack of specificity about oversight and governance arrangements for Part 3 which they considered was inconsistent with other remedies. Without oversight, they argued that there would be no process to oversee how the surveys are carried out or to allow for changes if the surveys are undertaken to an unsatisfactory standard.

CMA response: It is for the relevant providers to put forward a proposal to the CMA on how they will collect service quality information, including the methodology of the survey and the design of the questionnaire. This will be submitted and approved by the CMA. We did not consider it necessary for the purposes of this remedy to specify the precise means by which the relevant providers organise themselves to deliver their obligations.

We agree that there should be a simple mechanism for changes to the survey methodology to be proposed by the parties and agreed by the CMA in future years. This has been reflected in an amendment to Article 16.1.

Article 16 – Collection of service quality information

Timetable for delivering the survey

49. Several providers, including the BBA expressed significant concern about the proposed timeline for commencing the consumer research survey. They argue that once an agency is appointed it will take time to on-board them with

individual providers for security purposes and begin the fieldwork. In the version of the Order we consulted on, providers are required to present a proposed methodology and questionnaire to the CMA for approval on 1 May 2017 and commence fieldwork on 1 July 2017 so the first results can be published on 1 August 2018.⁴ Several respondents proposed that instead fieldwork should begin by the end of Q3 2017, but in the remaining time between then and 30 June 2018 (ie when they first survey needs to be complete) they can bolster the sample so the survey will have the same number of participants, and be robust, as it would be if it had taken place over a 12 month period. They have also suggested that we amend the Order so that on 1 May 2017 they will also submit a timetable for publication, rather than specifying a date in the Order.

CMA response: We appreciate that the timescales in the draft Order were demanding, in particular given the potential need for providers to put appropriate security protocols in place with the appointed agency. We have amended the Order to state that the indicators must be based on data incorporating results from October 2017 at the latest. We have also updated our Explanatory Note to explain our approach. Not specifying any date for publication of the service quality indicators would result in uncertainty and be inconsistent with the Final Report. A firm but workable timetable is appropriate because we want the impact of this remedy to be felt in the market as soon as practicable.

50. One provider suggested the CMA conduct testing to determine whether or not 12 months was an appropriate timeframe over which to interview consumers. They were concerned that by including data from a long time period, customers would be given an inaccurate picture of how well their bank was performing.

CMA response: In the Final Report, paragraph 13.125, we stated that the 12 month time period for collection of data was necessary to ensure the data was robust, in sufficient sample size, for smaller providers. However, we also noted that because results were updated every six months, each time updated data is published it covers the most recent 12 months. We see no reason to change the Order in this regard. In the Explanatory Note we set out that the survey methodology should consider the balance between surveying customers with a more recent experience and the impact on sample size. We also note that the first publication may be based on results gathered over a shorter period.

⁴ Article 15.4 of the [draft Order](#).

Survey methodology

51. Most parties that commented on Part 3 expressed in general terms the importance of the survey methodology in ensuring the robustness of the survey. One provider requested that the CMA appoint an independent statistician to ensure the results were robust and that the methodology did not unduly favour larger providers. One respondent considered it important that a third party carry out the survey and encouraged that the procurement process was as open and transparent as possible. They also encouraged consideration of whether using multiple providers would be more effective.
52. Several providers commented that a mixed methodology (eg online and face-to-face) may be suitable and welcomed that the CMA had an open mind on using some online surveys. Another respondent noted that it would be inappropriate to rule out one type of methodology (eg online surveys) as this may limit the ability to collect information from certain categories of people.
53. The Information Commissioner's Office (ICO) expressed concern about the necessity and proportionality of sharing large amounts of customer personal data. The BBA has proposed that it will adopt a 'free find' approach for sampling for all but the smallest providers as this will reduce the amount of data held by the agency and the associated security risks.
54. Finally the BBA asked to clarify a number of points:
 - Whether the survey has to be geographically and demographically representative.
 - Whether the survey needs to have a mix of customers on different products.
 - Whether customers that are in financial difficulty can be excluded on the basis that their responses may be influenced by actions that are taken on their account.
 - Whether survey questions should be aimed at customers that had arranged and used an overdraft (ie not unarranged overdraft users).

CMA response: We agree that the robustness of the survey methodology, and the safe handling of customer data, is crucial to ensuring that the service quality metrics are reliable and can be trusted by customers. The Order provides for the CMA (which has experienced statisticians on its staff) to approve the final methodology so that we can ensure that it will achieve the aims set out in the Final Report. We consider that it is for the industry (drawing in part on the expertise of

their appointed agency or agencies) to put forward a proposal with robust sampling techniques and survey questions that are precise enough to produce meaningful results. We are liaising with the BBA as they develop their proposal but it would be premature at this stage to comment further on what that methodology might look like in advance of the industry appointing a survey agency. We have not specified what mix of customers is required or whether they need to be geographically and demographically representative. However, the Explanatory Note sets out a number of data points we expect to be collected, which includes age and location.

In relation to the other points:

- We have not ruled out the use of online surveys as part of a programme but have significant concerns about using online-only surveys.
- We have clarified in paragraph 54 of the Explanatory Note that use of Article 16.4 must be proportionate and not raise unnecessary data protection risk.
- In relation to customers in financial difficulty and overdraft users this has been addressed in paragraph 46 of the Explanatory Note.

55. One provider noted that neither the Order nor the Explanatory Note clarified which providers would be compared in the survey. They argued that Article 17 should clarify that the service quality indicators for Northern Irish brands would only be compared against other Northern Irish brands.

CMA response: The Order is clear on the criteria for inclusion in the survey. The indicators in Northern Ireland will compare PCA and BCA providers in Northern Ireland that meet the de minimis threshold. The results will be based on surveys conducted in Northern Ireland. Some of these providers will be Northern Irish only brands, others will be active in GB as well.

Questionnaire design

56. One respondent noted that the survey could include additional questions about a customer's experience of a brand, such as the quality of the products, the ease of doing business, the resolution of complaints, staff competence etc.

CMA response: Providers are free in their proposal to suggest additional questions that they may wish to ask customers to use for other purposes. The Order cannot mandate such additional questions, as doing so would be inconsistent with the Final Report. We also note that the FCA, in response to our recommendation, is undertaking work on additional service quality metrics and

additional measures suggested could potentially be included within the scope of the FCA's work.

Inclusion of under 18s

57. The BBA highlighted that Market Research Society (MRS) guidance states that parental consent is required when surveying under 16s. They recommend that only account holders over 18 years old are sampled.

CMA response: This is addressed in paragraph 48 of the Explanatory Note. We agree that including account holders under 16 in the sample would be challenging as a result of the need to get parental consent and under 16s should therefore be excluded. We do not, however, see that the same issues arise when sampling 16 and 17 year-olds. We therefore decided to only exclude under 16s from the survey.

The format for presenting the results

58. Several providers suggested that it was too soon for the format and layout for the publication of service quality metrics to be prescribed, particularly given the fast-changing nature of communication with customers. They recommended we delay setting out the precise format until 6 months ahead of the first survey publication. One provider argued that we should not stipulate the requirement to display the top 5 brands. Another respondent argued that the Order and Explanatory Note did not go far enough in stipulating what would be considered 'prominent' and recommended we produce more detailed guidelines.

CMA response: We consider it valuable to clearly outline in the Order and the Schedule to the Explanatory Note how we envisage the metrics being presented to consumers. However, the Order allows for changes and modifications to the layout to be made (Article 17.4) and we can foresee that some changes may be necessary nearer the time once the precise wording of the questions has been determined.

59. Another provider suggested that the requirement to present information in branches should be reconsidered because (a) branches are of declining relevance and (b) information would need to be tailored to the branch's location to ensure that it is relevant to local customers. For example, they noted that there would be little consumer benefit in promoting banks that do not operation in that region.

CMA response: As set out in the Final Report, providers are required to present service quality information in their branches. In doing so, they are not promoting or advertising other brands, but providing information to customers to enable them to compare different providers' service quality. There is no requirement for providers to present the metrics based on the region of the branch, rather, they are required to present the results from either GB or NI as a whole. However, as information on geographical location will be collected as part of the survey, providers and third parties are free to present additional information to customers about services in particular locations.

60. A charity recommended that the 'overall' score should be given more prominence over the other scores.

CMA response: As illustrated in Schedule 2 of the Explanatory Notes, we have given all service quality metrics equal prominence. This allows customers to identify which metric is most relevant to the way in which they use their provider's services, such as whether they use mobile banking rather than branches.

The effectiveness of naming competitors in service quality rankings

61. One provider argued that naming competitors in the service quality metrics will be ineffective and risks confusing consumers because the providers at the top of the list may not be the right or relevant choice for individual customers. They preferred the unbranded comparison. One charity responded stating they particularly supported the inclusion of the top five Brands.

CMA response: The aim of the remedy is to provide 'relevant, reliable and comparable information [...] to help consumers choose between providers'; furthermore this information is intended to allow consumers to 'base an assessment of rival providers' service quality.'⁵ We therefore think it important that the presentation of results shows the names of other providers and where other providers fall within the rankings to allow consumers to make those comparisons. Our qualitative research⁶ found that consumers not only preferred to see the names of other banks, but that versions without that information frustrated consumers' ability to compare between providers. For example, when shown a version that omitted banks' names customers said 'If you knew the names of the other banks, it could almost be a conversation starter with your friends and family [...] the names of the other banks should be there. It doesn't mean anything

⁵ Final Report, paragraph 13.95.

⁶ Research Works (November 2016), [Service Quality Design Testing, Qualitative Research Report](#).

otherwise [...] taking the names out really devalues the information.’ We think that naming the other providers in the Top 5 is justified and proportionate, significantly enhances the effectiveness of this measure and provides consumers with the opportunity to choose between providers.

On the risk of confusing consumers, our research found that consumers did not consider the results to be offering advice or to be a piece of marketing information, but rather viewed it as raising awareness for them to do their own research. They also stated that the service quality information would be seen in the context of their own experience with the bank and information from other sources. We therefore do not think the presentation of the metrics is likely to give rise to consumer confusion.

Naming competitors in the presentation of results

62. One provider said that requiring providers to name competitors in the metrics is advertising and transfers valuable commercial real estate to competitors, without any evidence of increased effectiveness in engaging customers and is disproportionate to remedying the AEC. They suggested that if they attributed a value to the display of poster advertising in their branches to third parties, it would result in a significant cost to the industry to comply with the remedy.

CMA response: We do not consider the provision of independent information on service quality to constitute advertising, rather as shown in our qualitative research, we consider it provides consumers with information that enables consumers to compare between providers’ service quality. We did not consider that the amount of money it would hypothetically cost providers to advertise in their competitors’ branches to be a relevant exercise for assessing the cost and proportionality of this remedy. In light of the qualitative research we have amended the illustration of how the service quality metrics will be presented to make clearer that they are independent and are published as part of a regulatory requirement which we consider makes unequivocal that they are not advertising material.

Third party branches

63. One provider argued that the Order does not take account of providers that use third party branches, such as the Post Office. In addition to being discriminatory to other providers that do need to display metrics in branch, they contend that it will cause confusion as some customers will not see those metrics when they use the Post Office. They also noted that care would need to be given should the Post Office exceed the de minimis threshold and have

to display their own metrics in branch to avoid confusion between them and other third parties.

CMA response: Banks that use third party branches would not be required to display their results in those branches. However, in so far as such a bank also has its own branches, they will be required to display their service quality metrics in their own branches, as well as on their websites and their mobile banking applications. If the Post Office exceeds the de minimis threshold, we believe the design of the posters, for example by showing the Post Office logo in the relevant place in the metrics, would be sufficient to avoid confusion.

Presentation of joint rankings and results that are statistically insignificant

64. Several providers sought clarification on what would happen if providers get the same result or results are not statistically significant enough to state that one out-performed the other. They also highlighted that rankings may imply a material difference between providers which could be fictitious.

CMA response: We agree that it should be possible for there to be joint rankings. This would arise when providers get the same percentage result and have made this clear in the Explanatory Note (see paragraph 62). We expect the BBA's proposal will focus on creating a high quality survey that the banks can agree to as being fair and fit for purpose. Given that the rankings will be accompanied by bar charts customers will be able to judge the differences in scores. In our view the threshold for determining statistical significance is less important than making sure the survey is of high quality to ensure, as far as possible, that it reflects the true underlying levels of service quality being provided to customers.

Clarifications to the presentation of service quality metrics

65. One provider made some suggestions on how we can better reflect the Research Works customer research results in our design in Schedule 2 to the Explanatory Note, including removing references to a 'bank' and replacing it with PCA, explaining why providers may not be in the survey and amending the text used in instances where a provider doesn't have a branch presence.

CMA response: We have made minor amendments to the design of the service quality metrics. These are set out in Schedule 2 of the Explanatory Note.

Placement of metrics on websites

66. The Order requires the metrics to be displayed on the ‘main personal banking page’ of the website which shall be no more than one click away from the homepage. Several providers argued that this would mean the metrics were displayed on a page covering other products, such as credit cards and mortgages, which may be confusing or mislead consumers. They felt either that the current requirements in the Order were too prescriptive or that the Order should specify the metrics be displayed on the current account page rather than the personal banking page.

CMA response: The manner in which the metrics are displayed will emphasise that they relate to PCAs (or BCAs) rather than other personal (or business) banking products. We do not think customers will be misled or confused.

Funding

67. One provider said it is not clear whether cost allocation will be based on the number of PCAs in the survey as a percentage of the total number of PCAs in the survey. If that is the case, the provider queried whether the formula in the draft Order was correct.

CMA response: The formula has been amended to provide greater clarity on this issue.

Other comments

68. One provider argued that the service quality indicators in Articles 15.1.2 and Articles 15.2.3–5 should refer to ‘or’ rather than ‘and’ because, for example, a SME may have used a branch but not a business centre and would only be able to recommend one of those services.

CMA response: While the precise formulation of questions to be used in the survey will be for providers to propose, the presentation of the survey results will cover all of these indicators in aggregate, so the use of ‘and’ is appropriate. This is consistent with our Final Report, where we stated in paragraph 13.107, for example, that this indicator would cover ‘willingness to recommend provider’s branch and business centre services to other SMEs [users of services]’. We have therefore not amended this part of the Order.

Part 4 – Prompts

Article 18 – Prompts research programme

69. One provider suggested that Article 18.2.8 should include a requirement that requests for further information from the FCA should be reasonable.

CMA response: The introduction to Article 18.2 states that the FCA is only able to ‘*reasonably direct*’ Selected Prompts Providers and so it is unnecessary to add a further qualification in Article 18.2.8.

70. One provider recommended that all PCA providers should be mandated to provide a regular bill to their customers in a standardised format that delineates the cost of the customers’ account usage.

CMA response: This issue was considered during the inquiry. The Final Report did not specify the prompts to be researched. This will be for the FCA to determine. Providers can engage with the FCA directly on such issues.

71. One provider requested that Article 18.2.3 be amended so that Selected Prompt Providers would only be required to make changes to their systems that would not adversely impact the performance and resilience of their systems.

CMA response: The Order requires the FCA to act reasonably in directing actions. We consider that this should address any concern about a provider being required to take an action that raised concerns about resilience and performance of their system.

Part 5 – Transaction history

Article 20 – Provision of transaction history at account closure

Opt-out versus Opt-in

72. A number of respondents submitted that the transaction history remedy should be designed on an opt-in basis, rather than an opt-out basis. These respondents argued that the opt-out approach will require large amounts of sensitive information to be provided to customers, many of whom will not be expecting to receive it.
73. The approach we consulted upon was explicitly supported by one charity.

CMA response: Similar submissions were made during our investigation. We decided in the Final Report that providers would be required to provide the transaction history to customers at the time of account closure, unless customers decide to opt out. This approach would reduce the hassle factor for customers and would provide a degree of certainty for customers about receiving their transaction history. This helps address the risks, both real and perceived, of switching PCAs and BCAs; and it provides assurance to customers that their transaction history will continue to be available to them. In terms of potential issues related to security, there are various ways in which providers can tackle these risks, including providing the information through secure internet portals or the use of APIs, as well as engaging with customers in advance of providing their transaction history to them and there is also potential to enhance the CASS process to facilitate this remedy. We have made a number of amendments to the Order and Explanatory Note to provide additional clarity with regards to the ways in which providers can fulfil their obligations under this Article.

Timeline for providing transaction data

74. Two providers suggested that the timeframe for providing transaction data to customers be longer than seven working days from the date at which the customer has closed its account. One provider suggested that the period should be extended to 10 working days while another provider suggested 15 working days as this would provide additional time for the provider to contact the customer to verify, for example, address details and provide an opportunity for the customer to opt out of receiving the data, instead of the provider making the information available automatically in order.

CMA response: We can see merit in extending by a short period of time the period in which transaction history data is to be provided to customers. This is particularly beneficial where a provider is making this information available by hard copy (eg post) and would want to contact the customer in advance of sending the information. We have extended the period in the Order to 10 working days (in respect of 95% of account closures). We have maintained the 40 day period in Article 20.6.2.

The role of Bacs

75. A number of respondents suggested that Bacs should be required to work with CASS participants to agree amending the CASS process to include information and questions to be put to customers when switching their accounts. This would ensure customers would have an opportunity to make an informed decision about whether to opt-out of the provision of their

transaction data. Other providers indicated that they would request that the CASS processes be reviewed to provide an opportunity for customers switching through CASS to opt-out of the provision of transaction history. One provider submitted that as and when such changes are put in place, the order should allow for the obligation on providers to provide transaction history to be removed.

CMA response: We can see merit in the provision of transaction history information to customers by providers being facilitated by enhancements to the CASS process. This was however not part of the decision in the Final Report and so is not included in the Order.

Bacs has indicated to us that it welcomes the opportunity to work with CASS participants to further enhance CASS. Depending on how any such enhancements are introduced, this could be an effective way for providers to meet the obligations in the Order.

How transaction history is made available to customers

76. One provider noted its concern as regards customers that are not digitally enabled and who close their accounts. These customers would either need to be set up with a digital account or be provided their transaction data by post or by email on an unsolicited basis, with associated security risks. They proposed to address this issue by amending the Order to permit providers to conduct reasonable identification assessments before they make information available for download. This would allow providers to meet the requirements of the order.

CMA response: We recognise this potential issue and agree that where a provider chooses to make transaction history information available to a customer using electronic means, this may require identification assessments to take place where the customer has not previously held a digital relationship with the provider. We have amended the Order to allow for reasonable identification assessments to take place in advance of the provider having to make the transaction history information available to the customer (and, as stated above, we have extended the time period in Article 20.6.1 to 10 Working Days). We also note that such interaction between the provider and the customer would provide an opportunity for the provider to explain to the customer this requirement and to assess whether the customer wishes to opt-out from receiving the information at that time.

77. The same provider further stated that customer's ability to download their transaction history should be limited to period of 30 days, with a customer

thereafter being able to request their transaction data using the provisions in Article 21. This approach would avoid keeping the obligation to keep the information for download indefinitely.

CMA response: We see some merit in time-bounding the ability for a customer to download transaction history information. We considered that 60 days struck an appropriate balance and have made this change in Article 20.8. Providers will be able to offer a longer period and customers that do not access their transaction history information in this period will be able to request future access under the provisions of Article 21.

78. A charity submitted that providers should be required to provide transaction histories to customers in print format if requested. This would help to ensure that transaction history is available to digitally excluded customers.

CMA response: We decided in the Final Report that the format in which transaction history would be provided to customers would be at the discretion of the provider. For digitally excluded customers who currently bank with a provider that chooses to provide the information by electronic means, we would expect the provider to engage with the customer, eg to request an email address or to undertake reasonable identification assessments in order to be able to comply with the Order. See paragraph 71 of the Explanatory Note.

Circumstances where a transaction history should not be provided

79. Some respondents suggested that providers should not be required to provide transaction history to a BCA customer where the closure of a BCA was due to the failure of a business, which would not subsequently be using an alternative BCA to support it. Providing transaction histories to failed businesses would be costly, with no benefit to the customer.

CMA response: We agree that providers should not be obliged to provide failed businesses with their transaction history information on an opt-out basis. However, where a business requests its transaction history information, providers should make this available. We have amended the relevant articles accordingly.

Data protection

80. The ICO noted that a disclosure of payment transaction history mandated under the Order is not an exercise of individuals' rights under section 7 of the Data Protection Act or Article 15 of the General Data Protection Regulation

(GDPR), but nonetheless saw value in the Order reflecting the data protection requirements. They made three observations:

- The Order may be construed as meaning the provider must request a fee from the customer;
- Article 15 of the GDPR will provide individuals the right to obtain personal information within its scope free of charge. They suggested that consideration should be given to this in the Order; and
- The GDPR will require that information should be provided without undue delay and in any event within one month of receipt of the request.

CMA response: The Order has been amended to address these points. See also paragraph 76 of the Explanatory Note.

Other points on Part 5

81. Clarification was sought from a number of providers on the operation of Part 5. For example:

- Article 20.3: clarifying the meaning of where a customer retains access to an account: This should include where a customer retains access to their transaction history when they have changed account within the same provider;
- Article 20.3: making clear that the requirement in Article 21 for providers to continue to make transaction histories available to customers does not satisfy the exclusion in Article 20.3 for a customer who has retained access to its transaction history;
- Article 21: does the exclusions in Article 20.3 apply, eg where the customer retains access to its transaction history or where the customer has had their PCA or BCA closed due to fraud, impairment of the account being dormant;
- Article 21.3: does the ability to charge customers a fee no greater than would be payable under the Data Protection Act apply to requirements under the General Data Protection Regulation.

CMA response: We have provided additional clarification on these various points in the Order and Explanatory Note.

Part 6 – Automatic enrolment into a programme of alerts

Article 23 – Automatic enrolment

82. One provider sought confirmation that the requirement to enrol new customers in the Programme of Alerts within three working days did not commence until one month after Article 23 comes into force.
83. One provider argued that the requirement in Article 23.3 to enrol a new customer into the Programme of Alerts within 5 Working Days of Article 23.2 ceasing to apply was complex and disproportionate. They recommended we extend the time period to one month.

CMA response: We confirm that the requirement in Article 23.1 to enrol new customers in the Programme of Alerts within three Working Days of the account being fully opened commences one month after Article 23 comes into force. We have updated the wording of Article 23.1 to make this more clear.

We have extended the period in Article 23.3 from 5 Working Days to 10 Working Days, which we consider to be sufficient and will ensure customers are not subject to undue delay in receiving alerts.

84. One provider requested confirmation that Article 23.1 does not apply when a customer has not provided a UK registered mobile phone number and either a mobile banking application is not available or alerts are not available via a mobile banking application.

CMA response: We have amended the Order to reflect this comment.

Article 24 – Timing of alerts

'Buffers' for when consumers incur a charge

85. Some providers have proposed that an Alert should only be sent where a customer will incur a charge for exceeding an overdraft limit. This will mean, for example, that where an account has a buffer of £10 an alert would only be sent after that buffer has been exceeded. For customers that frequently go in and out of their buffer but not their unarranged overdraft it may be better for them to not receive an alert until they would be charged.

CMA response: This would not be consistent with the Final Report. While such buffers are welcomed, the default should be that customers know that they are using their buffer rather than wait until it has been exceeded. The Order does

not prevent Providers that offer penalty free buffers from giving customers the choice of being sent an alert after a buffer has been exceeded as well as or instead of an alert once the Pre-agreed credit limit has been exceeded. Article 25.1.2 clarifies that where an Alert is sent in circumstances where no Charges would be incurred due to a penalty free buffer not being exceeded the Alert does not need to communicate the period of time the customer has to avoid or reduce Charges. This issue is also discussed in the Explanatory Note.

Joint accounts

86. A charity highlighted that where joint accounts are concerned it should be a requirement to send prompts to both account holders. In their experience it was fairly common for one account holder to have hidden the extent of the financial difficulty from the other. The respondent also argued that communications should be sent to both account holders to encourage them to take action and seek help before financial crisis.

CMA response: Where an account is held jointly the obligation in Article 23.1 applies to each customer. The extent to which one joint customer can opt-out of the Programme of Alerts (or alter when they are received) on behalf of the other is a matter to be determined by each Provider. This issue is discussed in the Explanatory Note.

87. The BBA noted that there may be exceptional circumstances, such as systems outages, that could impede a firm's ability to send alerts before 10am as required under Article 24.5. They recommended that the Order be amended to require that these alerts be sent where it was operationally possible to do so.

CMA response: We do not consider this amendment necessary and would not wish to dilute providers' obligations under the Order. In any event the CMA would take such considerations into account when considering how best to respond to such failure to comply with the Order.

Article 25 – Content of alerts

88. One respondent argued that the Order contradicted the Final Report because it did not introduce a grace period.

CMA response: The grace period envisaged in the Final Report has been included in the Order in Article 25.1 and 25.5. It requires banks to communicate to customers that they have 'a period of time during which they have an opportunity

to take action to avoid or reduce Charges ... [and] inform the customer of the time by which they should take such action.'

Article 26 – Collection of mobile numbers

89. One provider requested that Article 26.1.2, which required providers to make customers aware that the refusal to provide a mobile phone number means the customer will not be enrolled in the programme of alerts, be amended so this obligation only applies to new customers.

CMA response: We agree and this has been addressed within the relevant article.

Other comments

90. One provider suggested that Article 27.2.8 should include a requirement that requests for further information from the FCA should be reasonable.

CMA response: The FCA is already subject to a requirement of reasonableness by the wording of Article 27.2 so there is no need to make this amendment.

91. The ICO noted its view that it may be possible for alerts to constitute direct marketing and care should be taken to ensure that those affected by the Order would not be required to do anything that would make them in breach of relevant legislation.

CMA response: This has been considered in the Final Report. We have taken care to ensure consistency between the Order and the relevant legislation.

Part 7 – Maximum Monthly Charge (MMC)

Article 28 – Specification of MMC

Definition of a 'month'

92. One respondent argued that the definition of a month should be any given 30-day period. It makes the point that if a bank sets an MMC of £80 and resets the period on the 1st of the month a customer using their unarranged overdraft from 17 January to 16 February could incur charges of up to double the MMC.

CMA response: This would not be consistent with decision in the Final Report that the definition of a month for the purposes of this requirement would be a provider's

billing cycle. We also have concerns that using a different definition would be more difficult in practice for a provider to comply with. We have therefore decided to retain the current definition of a month as the provider's monthly charging period.

Other comments

93. One provider suggested that we amend Article 28.5.2(b) to make clear that it excludes the charges for using a pre-agreed credit limit. Another provider states that they believed 'emergency borrowing', which is an additional tier of an arranged overdraft that is agreed upfront with a customer, is excluded from the remedy.

CMA response: Additional clarity has been provided in Article 28.5 and in the definition of a pre-agreed credit limit. This remedy does include emergency borrowing as described above (and in the Final Report).

Article 29 – Communication of the MMC

94. One provider expressed concern that the phrase 'MMC' could result in customers incorrectly concluding it was the maximum amount they could be charged in a month.

CMA response: We conducted detailed research on this issue – see the qualitative research report by Research Works published on the retail banking market investigation webpage on 1 December 2016. This risk was not identified in that research.

95. Schedule 2 of the Order sets out the standardised term and definition for the MMC based on consumer research. Several respondents have asked for a shorter version when delivering text messages or other shorter communication. One provider noted that it would be misleading to require all elements of Schedule 2 to be communicated to customers when some of those elements may not be relevant to the product offered.

CMA response: We agree that a short form version is appropriate in some circumstances and have amended Article 29.2.2 and Schedule 2 accordingly to provide for the communication of a short form definition. We do not agree that the long form or short form wording is potentially misleading – indeed, we think the use of standard wording will be helpful for customers.

Other comments

96. One charity expressed concern that because providers can set their own MMC it is unlikely that they will set it at a level low enough to offer protection to consumers. They also considered that the variation in the level of MMC across the industry may cause confusion for consumers when they compare products. They urged the CMA and the FCA to consider setting an industry-wide cap on the MMC or at least set an expectation of the maximum MMC they consider appropriate.

CMA response: The potential for setting an industry wide cap for the MMC was considered in the Final Report. The decision was to require providers to set an MMC but not to specify its level. We also recommended that the FCA reviews the effectiveness of the MMC after it has been introduced. We note that the FCA is conducting a review of high cost short term credit and has requested input on whether this should also explore issues relating to overdrafts.

Part 8 – Publication of rates for SME lending products

97. [✂]

CMA response: [✂]

Article 30 – Display of cost of unsecured loans and overdrafts

Requirement for providers to display the representative APR for borrowing

98. One provider argued that the requirement to display the representative APR for borrowing up to a value of £25,000 for individual loans and overdrafts should be amended to refer to ‘total business debt value’. They said that customers with a total business debt over £25,000 were likely to receive a tailored rate and if these customers were included in the calculation it would not give a true picture of the 51% representation.

CMA response: The purpose of this remedy is to show transparency for individual lending products up to the value of £25,000. The threshold does not reflect the customer’s total borrowing (eg ‘total business debt value’) but applies to individual loans and overdrafts (see paragraph 97 of the Explanatory Notes). We cannot change the approach we decided upon in our Final Report and we do not believe that our approach would distort representative rates.

99. One provider recommended that we require providers to display a Representative 'simple' annual interest rate for Unsecured Loans along with any applicable fees rather than a Representative APR as the 'simple' annual interest rate would not vary depending on the loan size or term (and so be easily comparable). They argue that, unlike consumer credit, with SME lending it is common for there to be an arrangement fee for unsecured business loans which would need to be included in the calculation of the representative APR so it may vary for loans with the same fee and interest rate where the loan amount or term is different. They have submitted that this may give rise to consumer confusion for SME customers when attempting to compare the Representative APRs for Unsecured Loans offered by different providers.

CMA response: We made it clear in the Final Report that we would require providers to include a representative APR for unsecured Loans (and an EAR for standard tariff Unsecured Business Overdrafts) which are used under the UK consumer credit regime for personal customers. Given this clear decision, we cannot now change our approach by requiring a 'simple' annual interest rate instead of the representative APR that we are requiring. We also required contextual information on how the APR was calculated to be published for loans, and information reflecting additional charges for overdrafts to ensure that SMEs viewing the rates on lenders' webpages are able to understand the characteristics of the Representative APR they are being shown and compare them. We do not agree that the measure(s) are likely to cause customer confusion in the manner suggested.

Order does not distinguish between regulated and unregulated lending

100. One provider considered that only products regulated under the Consumer Credit Act 1974 should be included within the remedy requirements, as there are currently no APR publication requirements for products not caught by that Act. They said that to include unregulated products in the scope of this remedy essentially extends the scope of the Consumer Credit Act 1974 and CONC, in effect applying regulation to purposely unregulated lending.

CMA response: We do not agree and have clarified this issue in paragraph 95 of the Explanatory Notes. The Order, implementing what we decided in our Final Report, deliberately does not distinguish between regulated and unregulated lending. As we noted in our Final Report (footnote 15 to paragraph 16.27), the UK consumer credit regime applies to SMEs which are sole traders and partnerships with three or fewer partners, for lending below £25,000. Therefore, much business lending is unregulated (eg lending to companies). It is intended that our remedy

applies to all lending to SME's which is in scope of Part 8, including unregulated lending.

Application of publication requirements to renewals of overdrafts

101. One provider suggested that where temporary changes are made to overdraft sizes, that are typically short term extensions of credit on the same terms as the existing overdraft, the requirement to publish the rates should still apply but the rates that are applied for the temporary period should not be included in the provider's calculation of representative rates. They considered that this would avoid rates becoming skewed by temporary changes.

CMA response: Our Final Report did not have an exemption for short term borrowing of any form so it would not be appropriate that the 'temporary' nature of this form of lending should be excluded. We do not consider it relevant that the short term extension of credit are on the same terms as the existing overdraft since our remedy applies to the cost of individual loans/overdrafts and not to the total amount of borrowing or whether there is a pre-existing relationship with the providers. We have therefore not made a specific exemption for 'temporary' overdraft increases.

Potential conflict between Order requirements and other legislation

102. One provider suggested that the CMA expand Article 30.5 to require the rules of CONC to prevail over the Order in the event of a conflict between the two.

CMA response: The Article has not been amended to reflect this point. A carve out has been made in the context of Part 8 making clear that in the case of a conflict between the provisions of that Part and the rules under the Consumer Credit Act 1974 or the Financial Services and Markets Act 2000, the rules under those two statutes shall prevail. This was because, although much business lending is unregulated, providers are already subject to rules on financial promotion relating to credit agreements where they are regulated. However, we do not consider it appropriate to include a wider carve out. In any event, we note that where there is a conflict between the Order and primary legislation, primary legislation prevails.

Article 32 – Making data available to intermediaries

Single APR for each loan size increment (making data available to intermediaries)

103. One provider said they offered a single tranche price for unsecured SME loans of 1-5 years and that it would be misleading for them to provide data for representative rates for 1, 2, 3, 4 and 5 year loan terms as the pricing does not vary by loan length. The rate only varies based on sector, credit risk and loan size. They suggested we amend Article 32.3 to state that providers ‘shall at a minimum use the following increments for loan sizes and length, ‘but may make data available for consolidated increments where loan pricing (ie interest rates and fees) do not vary between loan sizes and/or increments’.
- Another provider considered that the use of ranges of loans for the purposes of displaying the representative rate was a more appropriate method instead of specific price points, in order to give customers as much confidence as possible in the relevance of information available.

CMA response: We agree with the point made on single tranche price and have amended the drafting of the Order accordingly. We do not agree that we should move away from using minimum specific price points in favour of prescribing the use of ranges. Allowing providers to choose their own ranges could result in a lack of comparability where different ranges are used. If, on the other hand, the CMA was to prescribe the ranges, these may not reflect the ranges used by each provider. We also note that we are not being overly prescriptive in prescribing minimum increments. As explained in paragraph 107 of our Explanatory Notes, providers can provide a greater number of increments and combinations (including ranges) should they wish to do so. Furthermore, providers need to comply with the increments set only to the extent that they offer products in line with those increments.

Specificity with regard to what additional information third parties can request

104. Two providers sought clarification on and requested that the CMA specified what additional information third parties can request under Article 32.1.3 of the Order to ensure that this does not effectively result in providers being required to ‘personalise’ data sets for third parties.

CMA response: We do not consider it appropriate to be more prescriptive in specifying the additional information third parties can request. Article 32.1.3 limits the requirement to providing ancillary information reasonably requested by the third party that is necessary or desirable to enable use of the information in question and that is reasonably practicable for the provider to provide. We note

that providers can have early discussions with third parties with regard to what is reasonably practicable for them to provide.

Releasing data to third parties in accordance with Read-only Data Standard

105. One provider noted that the requirement in Article 32.2 for providers in scope of Part 2 to release data to third parties in accordance with the read-only data standard raised significant concerns. They said that, as far as they were aware, the Open Banking Implementation Entity is not currently providing for the capture of EARs in the API for overdrafts cited in Article 30.1.2 nor contextual information referred to in Article 31.2.1 and 31.2.2 in any of the APIs. They added that, in order for providers to be able to implement Article 32, it is important that a data standard for the publication of the data referred to in Articles 30.1.2, 31.2.1 and 31.2.2 is mapped out. In light of this, they did not believe that it was realistic to implement this remedy within 6 months of the Order.

CMA response: This issue is being addressed. In particular, we understand that the Open Banking Implementation Entity is providing for the capture of EARs for overdrafts and for contextual information in the APIs. Therefore we understand that the data standard for the publication of the data referred to is being mapped out. We therefore consider this concern is being adequately addressed and the 6 month deadline to comply is achievable. Relevant providers nevertheless, as members of the Implementation Entity, can seek to ensure this is being taking forward in a timely manner.

Other comments

106. Several providers sought a definition for 'standard tariff Business Overdrafts' and clarification that it did not include secured products.

CMA response: The term 'standard tariff Business Overdraft' distinguishes between bespoke tariffs that are typically negotiated. We have clarified that the definition does not include secured products by introducing a new definition for standard tariff Unsecured Business Overdraft.

Part 9 – Tools offering indicative price quotes and eligibility indicator

Article 33 – Provision of tool on providers' websites

Timeframe for implementation of use of confidence requirement for indicative quotes

107. In the draft Explanatory Note we sought views on whether a shorter period than three months was appropriate to allow providers to gather data which would enable them to provide the use of confidence indication required to users. No respondents thought we should allow less than an additional three months. One provider argued that an additional three months was not enough time to enable the collection of a sufficient pool of data to provide customers with a robust statistic and suggested that the implementation of Article 33.3 be delayed by three further months (eg so that it enters into force six months after the rest of Article 33, which is 18 months after the Order is made).

CMA response: We have not received any evidence to substantiate a claim that three months is insufficient time for providers to gather and analyse the necessary data. We note that only one provider has submitted that the existing three month timeframe is insufficient. We continue to consider that three months is an appropriate timeframe.

Percentage likelihood of eligibility for tool

108. In terms of the outputs of the tool, we decided that the minimum information which should be returned to the SME customer should include an indication of eligibility in a clearly understandable format (eg a percentage indicating the likelihood of being eligible for a given product at a given rate). In our formal consultation we explicitly sought views on Article 33.2 and the minimum information to be returned to users.
109. One provider requested that we remove the requirement to state the percentage likelihood of eligibility whilst other providers requested that we amend it. They argued that providing a precise percentage may not be customer-friendly and may give a misleading impression of the precision of the tool. Another provider noted that the lack of a consistent methodology across providers may lead to inconsistent results that will frustrate comparisons, and that the CMA would not be able to monitor whether banks are providing accurate indicative indications of eligibility. Another provider advocated the use of percentage bands (ie 60-70% likelihood) as opposed to more precise percentages. Another provider recommended the use of 'indicative yes', 'indicative no' and 'no indication' or 'highly likely', 'likely' and 'unlikely' rather than a percentage.

CMA response: We consider that the arguments raised in relation to this issue have some force and are allowing providers greater flexibility with regard to how they present to the end customer an indication of likelihood of being eligible for a given product at the requested credit limit, eg it is open to providers to use a precise percentage, a percentage range and/or indications of eligibility in words such as ‘very likely’, ‘likely’, ‘unlikely’ etc. However, in providing access to the tool to third parties under Article 34, in addition to providing, as a minimum, the information set out in Article 33.2.1, providers shall also provide those third parties with a percentage (or the means to calculate such a percentage) giving the likelihood of the user being eligible for a given product at the requested limit (expressed as a whole number) – Article 34.4.2.

Article 34 – Access to tool by third parties

110. One provider proposed that Article 34.1, which states that providers need to provide access to their price and eligibility tool to at least two finance platforms and two comparisons tools, should be amended because providers will need the co-operation of those third party tools in order to provide access that is beyond a provider’s control. They recommend we make it clear that providers should use their ‘best endeavours’ to provide access.

CMA response: We have decided not to adopt this recommendation. We note that we have allowed an additional three months for providers to provide access to finance platforms so that providers are now required to do this within 15 months after the day on which the Order is made). That additional time has been allowed in recognition of the fact that providers may require a short period of time once the tools are operational to work with finance platforms. We also note that providers can start the process of working with finance platforms in preparation for this at an earlier stage.

Part 10 – SME banking comparison tools

Article 35 – Open Up Challenge funding and cooperation with process

Equal access to challenge winners

111. One provider has requested assurances that the winner(s) of the Open Up Challenge Prize will give all banks equal access to their tools.

CMA response: We consider this will be a matter for negotiation between the ultimate Open Up Challenge Prize winner(s) and individual providers. We cannot

mandate that the winner(s) work with all providers but, in practice, we expect that they would wish to have a broadly-based platform in order to offer a good product to their users.

Article 37 – Provision of customer transaction data

Provision of customer transaction data to sandbox – reference to Midata

112. One provider recommend that the reference to Midata is deleted because the data required by the Open Up Challenge participants may not correspond to the transaction history data made available for PCAs through Midata.

CMA response: We originally added a reference to Midata to illustrate what we intended would be the minimum types of ‘transaction history data’ to be provided to Nesta or its agents. However, we can see the potential confusion this may cause if the data for PCAs does not correspond to BCAs. We have amended this Article accordingly by deleting the reference to Midata but make it clear that samples of transaction data required under Article 37.1 would include factors which drive the costs of BCAs (such as whether transactions are online or over the counter). We also make it clear that providers shall provide the transaction data under this Article whether or not the provider providing the transaction data charges for that service, eg if a provider does not charge customers for withdrawing cash, it should still include cash withdrawals in the transaction data if other providers charge for the service.

Provision of customer transaction data to sandbox – redactions and data anonymisation

113. One provider noted that there was a risk that providers may have to redact data (based on their data protection obligations) to such an extent that it could become of little use. The same provider also noted that guidance would be needed to ensure that the data that providers must supply is in a form that will still be useful, whilst also remaining within the limits of what providers are able to reasonably provide. Another provider requested that Article 37.1 be amended to clarify that the data they provide will be anonymised so it is no longer personal data for the purposes of the Data Protection Act 1998.

CMA response: We take the protection of personal data seriously. SME transaction data could include names of customers and depending on the nature of the SME this could be sensitive personal data. However, we note that the anonymisation methods to be utilised will be a matter for Nesta and its data partner to discuss and agree with the providers. We do not consider it appropriate

for the CMA to prescribe what anonymisation methods should be adopted. It will be important for providers to work with Nesta and its data partner to ensure that they are able to provide this data in compliance with requirements under the Data Protection Act whilst ensuring that the data remains useful for the Open Up Challenge Data Sandbox process. We would expect, for example that personal identification information would be anonymised (eg account holders' names and account numbers). This is made clear in the Order as providers are required to provide samples of anonymised BCA customer transaction data. We do not consider it necessary to be more prescriptive than that.

Article 38 – Transitional remedy

114. One provider stated that providers should not be required to include links to the BBI website until it can be shown to have improved in quality.

CMA response: The Order reflects what was clearly set out in the Final Report on this point and we have not amended this requirement.

Article 39 – Finance platforms

The potential overuse of hyperlinks

115. Several providers noted that a number of parts of the Order require them to display hyperlinks, such as the to the BBI website, comparison tool/s including the Open Up Challenge Prize winner/s and the SBEE Act finance platforms, and this risks 'hyperlink overload' (ie resulting in numerous hyperlinks on the same webpages), causing customer confusion or result in them paying less attention to them. One provider noted that there was potential to create competitive distortions as the provider websites will become an 'important gateway' and will be able to influence competition between comparison tools. They recommended that a more sensible solution would be to require providers to include a prominent 'Johnson' box on the relevant product page informing SME customers that comparison tools are available and prompting them to search for those tools. Alternatively, they suggested that the 'Johnson' box could include a link to an industry-wide landing page, which could be hosted on an independent website (such as the BBA), that sets out the links to the tools.

CMA response: We acknowledge the risk of 'hyperlink overload' from the various obligations under the Order, particularly where obligations are specified inflexibly. However, we also consider that it is important that links are displayed in a prominent place and do not agree that introducing a method which would result in

customers essentially searching for the comparison tools themselves would be an effective way of implementing what we decided in our Final Report. We have amended the Order to allow more flexibility to providers in relation to displaying hyperlinks to finance platforms and comparison tools. The new definition of Prominent for the purposes of Part 10, Articles 39.1.2, 40.1.2 and 41.7.2 makes clear that links must be no more than one click away from the business banking homepage. This allows flexibility to providers to decide on the method for displaying links on their websites (provided this is no more than one click away from the business banking homepage) (see paragraph 123 of the Explanatory Notes).

Article 41 – Safeguard remedy

The determination of whether an Open Up Challenge winner is commercially sustainable

116. One provider expressed concern about how the CMA will take account of market participants' views when assessing whether the Open Up Challenge winner is commercially sustainable and has sought clarification on who would be considered to be market participants and how the CMA would seek their views and take them into account.

CMA response: In the unlikely event that we have material concerns as to whether an Open Up Challenge winner is commercially sustainable we envisage that we will assess that case on the merits at time. We envisage that providers, such as those who have taken part in this consultation, would be consulted.

117. Another provider suggested that it would be premature to trigger the safeguard remedy before the Open Up Challenge process had completed.

CMA response: We have decided not to amend the Order as proposed by this provider. It provides for the safeguard remedy to be triggered in the event that the process fails or 'is likely to fail'. It is important that the CMA has the ability to intervene and implement a measure that remedies the AEC as soon as it becomes clear to the CMA that the process has or is likely to fail. However, we consider the more likely outcome to be one in which the Open Up Challenge process delivers a reliable outcome.

118. One provider argued that the timeframes in Article 41 were very short and that the CMA should not limit its discretion to granting an extension of no longer than six months in Article 41.2 as the development of a safeguard remedy may throw up technological issues which cannot be resolved in the time period despite the best efforts of the providers.

CMA response: We remain satisfied that the timing requirements set out in Article 41 are reasonable. However, we have removed the reference to the extension being limited to six months from the Order. Instead we make clear in the Explanatory Notes that we envisage such an extension would be no longer than six months, although this may be extended if circumstances require an extension of longer than six months is necessary (see paragraph 125 of the Explanatory Notes).

Part 11 – BCA opening procedures

119. We received no comments on this section of the Order. It remains unchanged.

Part 12 – Monitoring and compliance reporting

Article 45 – Obligation to submit Account Number Compliance Reports

120. One provider noted that Articles 45.1.2 and 45.2.3 (c) and (d) should contain references to Basic Bank Accounts. Similarly, another provider suggested that Article 45.2.1(c) and (d) is amended to refer to active Basic Bank Accounts in order to simplify implementation.

CMA response: We agree with this proposal and have amended the Order accordingly.

Articles 46 and 50 – Obligation to submit compliance statement on compliance with Parts 2 and 6

121. One provider noted that it is unclear when certain interim compliance reports will be due and recommended that the CMA clarifies these points in the final Order. In particular, they noted that it is unclear:

- (a) whether an interim compliance report is needed for Articles 10, 11 and 12 on 1 February 2018; and
- (b) whether a Part 6 compliance report should be submitted for Articles 26 and 27 only on 1 February 2018.

CMA response: On (a), an interim compliance report is due within a month of Article 12 coming into force, that is within a month of 31 March 2017, after which a compliance report on this Article will be due on 1 February 2018. No compliance report is envisaged for Articles 10 and 11.

On (b), in addition to the interim compliance statements one month after Article 26 comes into force (by 2 March 2017) and by 1 November 2017 for Article 27, Part 6 compliance reports on the remainder of Part 6 (and Article 26) should be submitted on 1 February 2018 and annually thereafter.

Article 52 – Obligation to submit Compliance Reports in compliance with Part 8

122. One provider said that in relation to Article 52.1.1(c), we should instead require providers to submit the interim Compliance Report three months after Part 8 comes into force to allow providers time to extract relevant data from their systems and that this would be consistent with paragraph 90 of the draft Explanatory Note allowing providers to measure the accuracy of the tool over an initial three month period once the tools are operational.

CMA response: Paragraph 90 of the draft Explanatory Note (now paragraph 112 in the Explanatory Note) relates to Part 9 where we are allowing an additional 3 month period once the tools are operational (to comply with Article 33.3 implementing use of confidence ranges for the tool). However, we can see that providers may need additional time to extract relevant data from their systems before being in a position to submit a compliance report in relation to Part 8 and so we have amended the Order to make clear that providers must submit a Part 8 compliance report within four months of Part 8 coming into force and thereafter, annually, by the first working day after 31 January.

Article 53 – Obligation to submit Compliance Reports in compliance with Part 9

123. In relation to Article 53, providers made the following points:

- it was unclear when Article 34 (which falls under Part 9) comes into effect and, therefore, it is unclear as to whether an interim Compliance Report is needed;
- Article 53.1.1(b) should first apply five months after Part 9 enters into force, to allow for the initial three month period for measuring the accuracy of the tool, and a further period to allow providers time to extract relevant data from their systems;
- there was currently no requirement under Article 53 to report on the accuracy of how the eligibility percentages could be effectively monitored against credit acceptance/rejection decisions.

CMA response: The Order makes it clear when Article 34 comes into effect and, therefore, whether an interim Compliance Report is needed. Articles 2.8 and 34.2 set out the occasions when Article 34 (in Part 9) comes into force. We agree that providers may need additional time to measure the accuracy of the tool and extract relevant data from their systems. Therefore, we have amended the Order to state that providers must submit a Part 9 Compliance Report within four months of Article 33 coming into effect (excluding Article 33.3) and by the first working day after 31 January each year thereafter. For Articles 33.3 and 34, the Compliance Report is due one month after Articles 33.3 and 34 coming into effect and by the first working day after 31 January each year thereafter. We have included a requirement under Article 53 to report on the accuracy of indications of likelihood of being eligible for a given product at the requested credit limit pursuant to Article 33.2.1(a).

Article 54 – Obligation to submit Compliance Reports in compliance with Part 10

124. One provider noted that it was not clear as to when Articles 40 and 41 of Part 10 come into effect as they depend on factors which are outside the CMA's control (and therefore it was unclear when an interim Compliance Report could be due for those Articles).
125. Another provider noted that with regard to Article 54.1.1(b), (c) and (d) relating to the Finance Platforms and comparison tools on which providers products are listed, providers will not know on which Finance Platforms and comparison tools its products are listed and, even if they did, this information is subject to change and that those Articles should be deleted.
126. The same provider stated that it was unclear under Article 54.1 whether further compliance reporting on articles that come into force between March 2017 and 1 February 2019 would be due within one month or whether they are due on 1 February 2018.

CMA response: With regard to the points made about it being unclear when a Compliance Report would be due, we have clarified this in Article 54 making clear that an interim Compliance Report is due within one month of each of the Articles coming into effect and thereafter, annually, on the first Working Day after 31 January. We have made clear in Schedule 4 to the Explanatory Notes when interim Compliance Reports are due for Articles 36, 39, 40 and 41. We do not agree that Articles 54.1(b) and (c) should be deleted. It is entirely appropriate for there to be a monitoring requirement linked to Articles 39.1 and 40.1.

Article 56 – Additional compliance report requirements

127. Similarly, several providers noted that it would be administratively onerous to require that all compliance reports be signed off by a Bank Board Director and a Non-Executive Director under Article 56.1.2 given that the submission of regulatory and compliance reporting is an executive, not non-executive, responsibility. They suggest that it would be more proportionate for compliance reports to be signed off by a senior executive of the relevant business division and note that this would align with the sign off requirements for similar compliance reporting submitted to other regulators.

CMA response: We agree with this proposal and have amended the Order accordingly.

Other comments

128. In relation to the templates for compliance documents and the single compliance report in February of each year to be made by way of an online form pursuant to paragraph 133 of the Explanatory Note, one provider noted that it would be a useful and valuable exercise if the CMA would consult on the draft templates and online form. They considered it to be particularly important that providers are given the opportunity to comment on the templates for the interim compliance reports, as they are required within one month of the relevant provisions coming into force.
129. One provider recommended that the CMA amends the compliance report submission date to 1 March so that providers have sufficient time to publish the service quality indicators, to the extent that the CMA does not extend the period for publishing the indicators to three months under Article 15.4.

CMA response: Schedule 4 of the Explanatory Note contains a proposed Compliance reporting template. It is not a requirement to use the template although doing so may be more efficient. We will develop an online template in due course and will seek providers' views in advance of finalising this.

130. One provider requested that the CMA states its suggestion that annual compliance reports can be consolidated in a single compliance report explicitly in the final Order to ensure that the process for compliance is as streamlined as possible.

CMA response: We have sought to make the reporting as streamlined as possible. See Schedule 4 of the Explanatory Note.

Appendix 1: Respondents to the consultation on the Draft Order and Draft Explanatory Note

1. The CMA received 24 non-confidential responses. These were from:
 - (a) Barclays Bank PLC;
 - (b) BBA;
 - (c) Business Finance Compared;
 - (d) Christians Against Poverty;
 - (e) Danske Bank;
 - (f) Investnet Yodlee;
 - (g) figo GmbH;
 - (h) Financial Data and Technology Association;
 - (i) First Trust Bank;
 - (j) Funding Options;
 - (k) HSBC;
 - (l) Information Commissioner's Office;
 - (m) Lloyds Banking Group plc;
 - (n) Money and Mental Health Policy Institute;
 - (o) MoneySuperMarket;
 - (p) Nationwide Building Society;
 - (q) ObjectTech Group Ltd;
 - (r) Royal Bank of Scotland Group plc;
 - (s) Santander UK plc;
 - (t) Tesco Bank;
 - (u) The Institute of Customer Service;
 - (v) TSB Bank plc;

(w) Virgin Money;

(x) Which?

2. Non-confidential versions of these responses can be found on the [retail banking market investigation case page](#).
3. The CMA received two confidential responses.