

## **Directions to the Co-operative Bank issued under the Retail Banking Market Investigation Order 2017**

1. On 6 November 2014, the Competition and Markets Authority (CMA) board, in exercise of its power under sections 131 and 133 of the Enterprise Act 2002 (the Act) made a reference for a market investigation into the supply of retail banking services to personal current account customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation).
2. On 9 August 2016, the CMA published its report on the market investigation, entitled [Retail Banking market investigation: Final report](#) (the Final Report), in which it concluded that:
  - (a) there are three separate AECs (which, in certain circumstances, act in combination) in each of Great Britain and Northern Ireland in relation to PCAs, BCAs and SME lending;
  - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;
  - (c) in order to address the AECs and resulting customer detriment, an integrated package of remedies should be imposed.
3. The integrated package of remedies contains, amongst others, a set of measures aimed at PCA overdraft users. This includes a requirement to specify the maximum total charge that a customer could incur in any given month as a result of exceeding or attempting to exceed a pre-agreed credit limit. This is referred to as a Monthly Maximum Charge or MMC.
4. On 2 February 2017 the CMA made the Retail Banking Market Investigation Order 2017 (the Order).<sup>1</sup> For the purpose of these directions all terms unless expressly stated otherwise shall be as defined in the Order.

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<sup>1</sup> The Order was made in performance of the CMA's duty under section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the Final Report.

5. Part 7 of the Order provides for an MMC. Specifically, that all providers of PCAs in Great Britain and Northern Ireland must specify for each PCA product they offer the maximum Relevant Charges that could accrue in relation to that PCA in any month as a result of exceeding or attempting to exceed a Pre-agreed credit limit on the PCA.<sup>2</sup> 'Relevant Charges' is defined in Article 28.5 of the Order and essentially means all charges that could accrue to an account as a result of exceeding or attempting to exceed a Pre-agreed credit limit.
6. Pursuant to Article 2.5 of the Order Part 7 comes into force 6 months after the day on which the Order is made. That is 2 August 2017.
7. On 20 March 2017 the Co-operative Bank informed the CMA that it would not be compliant with Part 7 of the Order from the date it comes into force ie 2 August 2017.
8. On the 26 May 2017, following discussions with the CMA, the Co-operative Bank wrote to the CMA setting out why it would not be compliant with Part 7 of the Order by 2 August 2017. A 'unique combination of issues' were identified and set out in the letter:
  - (a) **The change is more significant for The Co-operative Bank than for other banks.** The Co-operative Bank currently applies a quarterly maximum charge and, therefore, does not have an overdraft charging model or system configuration that would allow it to achieve a swift roll out of a move to the MMC model. Moreover, to avoid any unnecessary confusion and complexity, any changes to the charging model should be coordinated with the end of a quarterly charging period.
  - (b) **The Co-operative Bank has to follow time-consuming practical steps that other banks may not face.** Because of the significant nature of the change to The Co-operative Bank's overdraft charging model, at least one notice of variation to customer current account terms and conditions is inevitable. In line with current account terms and conditions and regulation, providers are obliged to provide 60 days' notice to customers of any detrimental change to their account. Those banks that already have monthly overdraft charging models may not have to complete this exercise.
  - (c) **IT/Delivery challenges.** The Co-operative Bank's banking system that runs the overdraft charging model is based on historic technology. As a consequence, any change takes significant time to design, build and test

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<sup>2</sup> Article 28.1 of the Order.

to ensure there are no downstream impacts or unintended consequences to customers. This is a lengthy and costly process involving multiple 3rd party providers.

9. The 26 May 2017 letter provided details about the steps the Co-operative Bank would take to comply with Part 7 of the Order by 5 October 2017 and the provision of compensation to any of their customers who suffer detriment as a result of the Co-operative Banks failure to comply with Part 7 of the Order by 2 August 2017.
10. On 25 July, following discussions with the CMA on 20 July, the Co-operative Bank wrote to the CMA setting out how, following successful completion of the Design and Build stages of the project, the Co-operative Bank have identified the need for an extended period of testing given the scale of changes to the Bank's banking IT system. As a result the Co-operative Bank will now seek to comply with Part 7 of the Order from 5 January 2018.
11. Having taken into consideration the potential detriment arising from non-compliance with the Order alongside the Co-operative Bank's:
  - (a) explanation for why it was not in a position to comply;
  - (b) its engagement with the CMA to develop an appropriate delivery plan; and
  - (c) its acceptance of the need to compensate customers for any detriment they suffer as a result,

the CMA has decided to give directions to the Co-operative Bank (the 'Directions').

12. The requirements imposed on the Co-operative Bank by the Directions are, in summary:
  - (a) to carry out the activities set out in paragraph 3 of the Directions to ensure compliance with Part 7 of the Order by 5 January 2018;
  - (b) to carry out the activities set out in paragraph 4 of the Directions to ensure that any customer that is adversely impacted by the Co-operative Bank's non-compliance with the Order does not experience any detriment; and
  - (c) to provide monitoring reports, set out in paragraph 5, to the CMA to allow compliance to be checked.

13. On 7 July 2017 the CMA provided the Co-Operative Bank with draft directions specifying and describing the steps to be taken by the Co-operative Bank for the purpose of securing future compliance with the Order.

## Directions issued under the Retail Banking Market Investigation Order 2017

The CMA makes these directions ('Directions') to The Co-operative Bank Plc, 1 Balloon Street, Manchester M60 4EP, registered in England and Wales No. 00990937 (the 'Co-operative Bank'), under Articles 57 and 58 of the Retail Banking Market Investigation Order 2017 ('the Order').

### 1. Commencement

- 1.1 The Directions come into force on 2 August 2017.
- 1.2 Once in force these Directions will continue to be in force until such time as they are varied or revoked by the CMA under the Order. The variation or revocation of these Directions does not affect the validity or enforceability of any right or obligations that arose prior to such variation or revocation.

### 2. Interpretation

- 2.1 In these Directions terms have the same meaning as in the Order, unless stated otherwise.
- 2.2 For the purposes of these Directions:
  - (a) '**customer**' means any individual who holds a PCA provided by the Co-operative Bank in which there is a charge or cost for exceeding or attempting to exceed a Pre-agreed credit limit.
  - (b) '**MMC solution**' means the solution (including, but not limited to, all necessary system changes and customer notifications) which, when put in place will allow for the Co-operative Bank to comply with Part 7 of the Order.
  - (c) '**Additional Charge**' is a sum of money which is the difference between the Relevant Charge<sup>3</sup> actually incurred by a customer and the Relevant Charge that such a customer would have incurred had the MMC solution been in place on the 2 August 2017.
- 2.3 The headings used in these Directions are for convenience and have no legal effect.

### 3. Actions specified with respect to achieving compliance with Part 7 of the Order by 5 January 2018

- 3.1 The Co-operative Bank must;

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<sup>3</sup> This is defined in Article 28.5.2 of the Order.

- (a) by the date on which these Directions come into force, have designed and built a system which, subject to testing, will provide the technical ability to implement the MMC solution;
- (b) by 7 November 2017, have communicated, to all customers, the change of terms and conditions required to make the MMC solution operational;
- (c) by 29 September 2017, have completed system testing required to make the MMC solution operational;
- (d) by 14 December 2017, have completed end to end testing (operational, user and performance testing) of the MMC solution;
- (e) by 4 January 2018, achieved all necessary internal approvals that will allow the MMC solution to become operational by 5 January 2018; and
- (f) by 5 January 2018 comply fully with Part 7 of the Order.

3.2 The Co-operative Bank will continue to update the CMA at appropriate points as to the testing and delivery of the MMC, and will advise the CMA at the earliest opportunity if an event arises that could delay the 5 January 2018 delivery so that both parties can look to amend the directions as necessary.

#### **4. Actions specified with respect to compensating customers**

4.1 Any customer who is negatively impacted by the delay in complying with Part 7 of the Order will be compensated accordingly once the MMC has been implemented on 5 January 2018.

4.2 The Co-operative Bank must, in accordance with the Approved Plan, identify all customers who incurred an Additional Charge and calculated what that Additional Charge is;

4.3 By 19 March 2018 the Co-operative Bank must, in accordance with the Approved Remediation Plan in Schedule 1:

- (a) have paid a sum equal to the Additional Charge to every customer who incurred an Additional Charge; and
- (b) paid any further compensation necessary to ensure that any customer who incurred an Additional Charge does not suffer any detriment for having done so, the precise formulation of which is to be approved by the CMA by 5 January 2018.

#### **5. Monitoring and compliance**

5.1 The Co-operative Bank must submit to the CMA Additional Compliance Reports on the following date:

- (a) 15 August 2017 (with respect to the requirements set out in paragraph 3.1 (a) of the Directions);
  - (b) 29 September 2017 (with respect to the requirements set out in paragraph 3.1(c));
  - (c) 14 November 2017 (with respect to the requirements set out in paragraph 3.1(b)); and
  - (d) 21 December 2017 (with respect to the requirements set out in paragraphs 3.1(d)); and
  - (e) 12 January 2018 (with respect to the requirements set out in paragraphs 3.1 (e) and (f)); and
  - (f) 19 March 2018 (with respect to the requirements set out in paragraph 4.3 (a) and (b).
- 5.2 The Co-operative Bank must ensure that each Additional Compliance Report is signed by two directors in accordance with Article 56.1 of the Order.
- 5.3 An Additional Compliance Report is a statement to be provided by the Co-operative Bank to the CMA, in addition to the Part 7 Compliance Report referred to in Article 51 of the Order.

Adam Land  
Senior Director  
Signed by authority of the CMA Board  
2 August 2017

## **Schedule 1 – Approved Remediation Plan**

The Bank is committed to fully compensating any customers adversely impacted by the delay in delivering the MMC to comply with Part 7 of the Order.

The Bank will ensure that any customers that are adversely impacted by the delay will be appropriately compensated to ensure they do not experience any detriment. , The precise formulation of this is subject to the CMA's approval to be gained before 5 January 2018. Following the implementation of the monthly cap on 5 January 2018, we will identify and contact customers who incurred unarranged overdraft charges in excess of the Bank's £60 MMC between 2 August 2017 2017 and 4 January 2018.

Overdraft charges relating to the quarterly charging period of 5 July 2017 to 4 October 2017 will be applied to customer accounts on 20 October 2017.

Overdraft charges relating to the quarterly charging period of 5 October 2017 to 4 January 2018 will be applied to customer accounts on 22 January 2018.

Following the application of charges to customer accounts on 22 January 2018 the Bank will identify any customer that has been charged more than the Bank's MMC value in any charging period between 2 August 2017 and 4 January 2018.

Based on 2016 customer behaviour we anticipate we will compensate c.1,300 customers.

These customers will receive an appropriate remediation credit to their account by 19 March 2018.