

Decision to launch a review of the Payment Protection Insurance Market Investigation Order 2011

6 September 2018

Introduction

1. The CMA is launching a targeted review of one aspect of the Payment Protection Insurance Market Investigation Order 2011 (the Order) in response to the introduction of the Insurance Distribution Directive (IDD).¹
2. The Order requires, as part of an interlocking package of remedies, that PPI providers must provide policy holders with a policy summary which summarises the PPI policy in a prescribed format. The IDD, when transposed into UK law, will mandate that PPI providers must provide policy holders with an Insurance Product Information Document (IPID). The policy summary and the IPID contain very similar information.
3. The CMA is reviewing the Order to assess whether the information requirements of the Order remain appropriate in light of the requirements of the IDD. The purpose of the review is to ensure consumers continue to receive appropriate information and that suppliers of PPI have clear and consistent obligations for the information they need to provide to consumers. This review will focus exclusively on this matter and the CMA will not carry out a full review of the Order at this time.
4. The CMA invites comments from parties affected by the Order on whether or not it is appropriate to make substantive changes to the Order by reason of a change of circumstances.

¹ DIR (EU) 201697.

Legal framework

5. The CMA has a statutory duty to keep under review undertakings and orders.² From time to time, the CMA must consider whether, by reason of any change in circumstances:
 - (a) undertakings are no longer appropriate and need to be varied, superseded or released; or
 - (b) an order is no longer appropriate and needs to be varied or revoked.
6. Responsibility for deciding on such variation or termination of undertakings or orders lies with the CMA.

Background

The Order

7. Article 4.10(b) of the Order requires PPI providers to send to their policyholders an annual review (a document which reminds customers of their ability to cancel or switch and summarises information relating to their PPI policy for the preceding 12 calendar months) together with a policy summary.
8. Article 4.14 of the Order defines the policy summary as:

*“a document containing a summary of the PPI policy in the format and containing the information in the Financial Conduct Authority’s Insurance Code Of Business Sourcebook (ICOBS) 6 Annex 2”.*³
9. This obligation extends to all PPI policies currently in force, including run-off policies.⁴ This means that all PPI policyholders should get an annual review and policy summary for each PPI policy held.
10. The IDD, in Article 20, specifies that prior to the conclusion of a general insurance contract, which includes PPI, the customer must be provided with certain relevant information about the insurance product in the form of an

² Section 162 Enterprise Act 2002

³ The relevant information requirements are provided in [The Payment Protection Insurance Market Investigation Order 2011](#).

The Financial Conduct Authority’s (FCA) ICOBS rules for regulating general and protection insurance products sales can be found on the FCA’s website <https://www.handbook.fca.org.uk/handbook/ICOBS/6/Annex2.html?date=2015-09-01>.

⁴ Run-off is a description of the remaining policies of a PPI provider which has stopped selling new PPI policies.

IPID. This includes when a contract is concluded at renewal. This requirement will apply from 1 October 2018.

11. Following the implementation of the IDD, the format for the IPID can be found at ICOBS 6 Annex 3.

Invitation to comment

12. On 2 August 2018 the CMA published an [Invitation to Comment](#) on its proposal to launch a review of the Order and invited comment on two possible options for aligning the information requirements of the PPI Order to take account of the introduction of the IPID under the Insurance Distribution Directive. These options, which are described in paragraphs 20 to 25 below, and which are without prejudice to the outcome of this review, would aim to provide customers with consistent information on their PPI policies; and ensure that PPI providers can continue to comply with the requirements of the IDD and the Order without the unnecessary burden of having to produce both IPIDs and policy summaries. The consultation closed on 23 August 2018, and the CMA received five responses: one from an industry association and four from PPI providers.
13. All the respondents supported the CMA's proposal to carry out a limited review of the Order. In terms of the potential options indicated in the CMA's Invitation to Comment, three respondents expressed a preference for option one and two preferred option two. In addition, it was noted that, in order to meet the FCA's policy statement (PS17/27) of December 2017, some PPI providers have already taken steps in preparation for implementing what is, in effect, option one from 1 October 2018.
14. The arguments presented in favour of option one were:
 - it would ensure that all PPI customers get the same type of information in the IPID format, at every relevant stage of their contract
 - it limits the risk of inconsistency and confusion for customers
 - it would be less burdensome and reduce the potential for administrative duplication for providers
 - the presentational format of the IPID is consistent, engaging and facilitates customers' ability to shop around

15. The arguments presented in favour of option two were:
- it would ensure that PPI customers continue to get consistent information on their existing PPI policies, while ensuring that PPI providers can continue to comply with the applicable regulatory requirements without the unnecessary burden of having to produce all new IPIDs for existing PPI providers of run-off policies. This would avoid an outcome which increases the cost for providers whilst presenting no benefit for consumers; and
 - it would be consistent with the intention of the FCA's modified rules in ICOBS where an IPID is required prior to the conclusion of a contract.
16. While respondents indicated a preference for one option or the other, none argued that the alternative option was unworkable. However, some practical considerations were raised in relation to option one. More than one stakeholder suggested a variation on these options which would enable PPI providers of run-off policies to choose whether to adopt IPIDs for those run-off policies.

Possible change of circumstances

17. The CMA considers that there is a realistic prospect that the implementation of the IDD represents a change of circumstances relevant to the Order.⁵ The possible change of circumstances is that, in the absence of a review and a variation of the Order, the introduction of the IPID will mean that consumers will receive two policy documents – in different formats at different stages of their contract - containing substantially the same information. This could be confusing for consumers and unnecessarily burdensome for PPI providers.

Potential variation to the Order under consideration

18. If this review confirms the above as a change of circumstances such that this aspect of the Order is no longer appropriate and it is therefore necessary to vary the Order, the CMA would need to consider the nature of such a variation.
19. In response to comments received during the invitation to comment, the CMA has identified a further option (option three), that it will consider in addition to the two options in the invitation to comment as described in paragraph 12

⁵ CMA11 Remedies: Guidance on the CMA's Approach to the Variation and Termination of Merger, Monopoly and Market Undertakings and Orders, paragraph 3.10.

above, which provides a revised method by which account could be taken of PPI providers of run-off policies. These three options are described below.

Option one

20. Option one involves a simple replacement of text. It would replace references to the policy summary in the Order with references to IPID. The result of such a change would be that all new, renewable and existing PPI policies will require an information document in the format of the IPID⁶ to be sent to policy holders on an annual basis in accordance with Article 4.10(b), and all PPI providers will be required by the Order to provide information to customers in the IPID format annually.
21. If the CMA were to decide to implement this option as a result of its review, this could potentially be achieved by making the following amendment to Article 4.14(d) of the Order:

Text which currently reads:

“policy summary means a document containing a summary of the PPI policy in the format and containing the information in ICOBS 6 Annex 2”

would be replaced with the following text:

“policy summary means a document containing a summary of the PPI Policy in the format and containing the information in ICOBS 6 Annex 3”

22. The CMA highlights that this option would ensure that every PPI customer would get the same type of information in the IPID format, at all stages of their contract. However, we note that this would require all PPI providers of run-off policies to produce a new document in the new IPID format.

Option two

23. Option two seeks to make a similar change but does not apply this to PPI providers of run-off policies. As above, all new and renewable PPI policies will require an information document in the format of the IPID to be sent to policy holders on an annual basis in accordance with Article 4.10(b). However, PPI

⁶ In the FCA's ICOBS 6 Annex 3.

providers of run-off policies would be expected to continue to send to existing policy holders the information in the existing format.⁷

24. If the CMA were to decide to implement this option, as a result of its review, this could potentially be achieved by making the following amendment to Article 4.14(d) of the Order:

Text which currently reads:

“policy summary means a document containing a summary of the PPI policy in the format and containing the information in ICOBS 6 Annex 2”

would be replaced with the following text:

“policy summary means a document containing a summary of the PPI Policy in the format and containing the information in ICOBS 6 Annex 3, except for PPI providers of run-off policies that will continue to provide information in the ICOBS 6 Annex 2 policy summary format”.

25. The CMA notes that the existing policy summary format and the IPID format are similar in the types of information required and this option may limit the burden on PPI providers of run-off policies. However, using two similar formats could create some inconsistencies in the way information is provided to consumers where run-off policies were compared to new or renewable policies. Following comments received in response to its Invitation to Comment, the CMA has developed option three, which takes account of the burden on PPI providers of run-off policies, while seeking to minimise the scope of any inconsistency in the information presented.

Option three

26. Option three is similar to option two in that it seeks to make allowances for PPI providers of run-off policies. However, this option would expect PPI providers of run-off policies with more than a specific number of policies to provide information to their customers in the new ICOBS 6 Annex 3 format, with smaller providers able to provide information in either the new ICOBS 6 Annex 3 format or the existing ICOBS 6 Annex 2 format.

⁷ ICOBS 6 Annex 2 policy summary.

27. If the CMA were to decide to implement this option as a result of its review, this could potentially be achieved by making the following amendment to Article 4.14(d) of the Order:

Text which currently reads:

“policy summary means a document containing a summary of the PPI policy in the format and containing the information in ICOBS 6 Annex 2”

would be replaced with the following text:

“policy summary means a document containing a summary of the PPI Policy in the format and containing the information in ICOBS 6 Annex 3. PPI providers of run-off policies with less than £10 million in Gross Written Premiums in the preceding year (year to 6 April) must select whether to provide information in the new ICOBS 6 Annex 3 format or the previous ICOBS 6 Annex 2 format.”

Information from stakeholders

28. During this review, the CMA would like to hear stakeholders' views on which potential option would be most suitable for the continued delivery of benefits to consumers while minimising the burden on providers, or whether there are other more appropriate changes that could achieve these aims. The CMA highlights that option one is the most straightforward solution offering greater clarity and consistency to customers, although it might involve some additional costs for PPI providers of run-off policies.
29. To address the costs for PPI providers of run-off policies, the CMA has considered option two and option three which make allowance for the cost of compliance with the new format. To the extent that option three allows PPI providers of run-off policies to provide information in the new format, the CMA considers option three to be superior to option two, as the level of discrepancy in the information consumers receive would be reduced under option three compared to option two.
30. In relation to option three, the CMA notes that the cut-off point in gross written premiums is intended to assist smaller PPI providers of run-off policies where the cost of implementing a new information format may be disproportionate. The CMA would welcome comments on the appropriate magnitude of this threshold.

Prioritisation principles

31. In order to make the best use of its resources, the CMA needs to ensure that it makes appropriate decisions about which projects and programmes to undertake across its areas of responsibility. The CMA has assessed the information available and the current circumstances in reaching its decision in the light of its published [prioritisation principles](#) as described below. These principles are impact, strategic significance, risk and resources. We consider each of these in turn below.

(a) Concerning the impact of reviewing this Order, the CMA aims to:

- (i) make sure consumers continue to receive valuable information in a consistent format by PPI providers, and
- (ii) minimise unnecessary regulatory burdens on business, by keeping our remedies up to date with regulatory changes and ensuring they are simple to follow and clear for providers on their obligations through aligning the PPI providers' obligation under the Order to provide information to policyholders with very similar responsibilities under the IDD.

(b) The CMA considers this review to represent a strategic priority, as part of its overall obligation to keep remedies under review. In addition, the PPI sector remains a significant market for UK consumers in which serious concerns have arisen and the CMA considers the retention and updating of the Order to be necessary in delivering benefits for consumers.

(c) The CMA considers that this targeted review involves a modest amount of resource and represents an efficient way to establish whether there is a need to vary the terms of the Order and if so, to clarify the obligations for suppliers of PPI, while maintaining the information provision for consumers.

Conclusion

32. The CMA has decided to launch a targeted review of the Order on the basis set out above. In reaching this decision, the CMA has obtained sufficient evidence, through its own research and from responses to its Invitation to Comment of 2 August 2018, to have established a realistic prospect of finding a change of circumstances such that a variation to the Order may be appropriate. Moreover, the CMA has assessed this review against its published prioritisation criteria and found the review to be consistent with those criteria.

Stakeholder views

33. The CMA is seeking views from interested parties as to whether or not there is a case for varying the Order, whether one of the three proposed options for variation are appropriate or whether there are other changes that should be made to the Order to ensure it remains appropriate overall.
34. Those responding should provide their views, supported with relevant evidence where possible, in writing to the CMA either by email or by post as set out below:

PPI Remedy Review
Competition and Markets Authority
RBFA - 6th Floor North East
Victoria House
37 Southampton Row
London WC1B 4AD

Email: remedies.reviews@cma.gov.uk

35. Responses should be received by the CMA by 5pm on **21 September 2018**.