

## **Directions to Nationwide Building Society issued under the Retail Banking Market Investigation Order 2017**

1. The CMA is issuing Directions to Nationwide Building Society (Nationwide) concerning a number of breaches under Part 6 of the Retail Banking Market Investigation Order 2017 (the Order).
2. The CMA considers Nationwide's (a) failure to provide its customers with an Alert and/or (b) failure to provide its customers with an Alert which complied with Article 25 to be a serious breach of the Order particularly in circumstances where those customers received charges in relation to exceeding pre-agreed credit limits (i.e. incurring unarranged overdraft borrowing fees and charges) or attempting to do so because it affects customers' ability to avoid charges. In total, the breaches affected 320,971 customers. Some of the breaches had been in place since the Order came into force in February 2018.

### **Background**

3. 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 (PCA) customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation).
4. 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 (and, in certain circumstances, in combination) Adverse Effects on Competition (AECs) 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.

5. On 2 February 2017 the CMA made the [Retail Banking Market Investigation Order 2017](#) (the Order).<sup>1</sup> For the purposes of these Directions all terms unless expressly stated otherwise shall be as defined in the Order.
6. The integrated package of remedies in the Order contains, amongst others, a requirement for all providers of PCAs in GB and NI to enrol customers in a Programme of Alerts (the Alerts Remedy).
7. Part 6 came into force on 2 February 2018. It requires PCA providers to use reasonable endeavours to ensure that Alerts<sup>2</sup> are capable of being received by customers as soon as possible after an Alert Trigger<sup>3</sup> relating to a pre-agreed credit limit. The purpose of the Alerts is to give warning to customers that they are likely to incur charges relating to pre-agreed credit limits unless they take action.

## **The breaches**

8. On 7 September 2018 Nationwide informed the CMA of a breach relating to Part 6 of the Order. On 29 January 2019 Nationwide informed the CMA about another seven breaches. On 1 February 2019 Nationwide informed the CMA of two further breaches of Part 6 of the Order. On 10 May 2019 Nationwide informed the CMA about a further eight breaches of the Order. On 14 May 2019 Nationwide informed the CMA about one further breach of the Order. Nationwide informed the CMA on 11 June 2019 that it considered all of these to be breaches of Part 6 of the Order. On 27 June 2019 Nationwide informed the CMA about one further breach of the Order. These breaches are summarised at Annex 1.
9. The CMA engaged with Nationwide on details of the breaches and to obtain an explanation for the breaches between 7 September 2018 and 9 July 2019. The CMA wrote to Nationwide on 24 April 2019 to confirm that it was minded to issue Directions. The letter requested representations from Nationwide.
10. On 10 May 2019 Nationwide informed the CMA that, to ensure future compliance with the Order to the best of its abilities, it would:

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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.

<sup>2</sup> For the purposes of the Order, 'an 'Alert' means either a text message sent to a mobile phone or a push alert from a mobile banking application including the contents required by Article 25' (Article 24.7.1)

<sup>3</sup> As defined in Article 24.2 of the Order.

- introduce processes to ensure the CMA is informed of any future breaches consistent with Article 56.2 of the Order
  - implement a daily process for checking the alert run to ensure that Alert-sending processes are functioning correctly
  - implement an automated data collection, monitoring and reporting solution to provide monthly compliance reporting on Alerts
  - implement a review of Alerts sent in different circumstances to ensure each Alert type is compliant with the Order
  - appoint a third party to conduct a comprehensive review on compliance to date
  - work with the CMA on a communication to its managers about systems outages and compliance with the Order.
11. Nationwide confirmed, in its letter of 10 May 2019, that it would refund all customers who received charges related to exceeding a pre-agreed credit limit or attempting to do so (i.e. who incurred unarranged overdraft fees and charges), where those customers did not receive an Alert required by the Order in relation to the charge, and who did not receive any other compliant alert giving them an opportunity to avoid that charge. On 09 July 2019 Nationwide wrote to the CMA setting out their remediation proposal for refunding customers affected by their breaches of Order. Nationwide wrote that by November 2019 they intended to “[c]ommence refunds and communications. The bulk of the refunds will occur before mid-December, although the manual processes for the closed accounts may take a little longer.” Nationwide has also confirmed that it will refund customers affected by the breach notified to the CMA on 27 June on the same basis.
12. Nationwide recently announced that from 11 November 2019 it will no longer charge unarranged overdraft fees (including paid and unpaid item fees).

### **The CMA’s decision**

13. The CMA has taken into consideration the information and representations provided by Nationwide between 7 September 2018 and 23 July 2019 and the fact that the CMA requires a range of compliance actions to be implemented by Nationwide. As the CMA takes the view that only enforcement through directions will ensure that the necessary actions will be carried out effectively, the CMA has decided to issue directions to Nationwide (the Directions).
14. In particular, the CMA considered:

- The representations made by Nationwide with regard to the breaches.
  - The severity of the breaches, including: their duration; the number of customers affected; the harm caused to those customers. The CMA notes that in total 320,971 customers were affected by these incidents. The charges totalled £6,070,657. Some breaches had been in place since Part 6 of the Order came into force.
  - The CMA notes that in over 80% of the incidents identified the customer concerned received a text alert from Nationwide in relation to the risk of a payment not being paid which, if acted upon, would have resulted in the customer avoiding the charge. However, these texts were not compliant with the Order as they failed to make clear to customers that they could incur charges by failing to take action, which is an important part of the Order.
  - The actions taken by the business to address the breach, including: the extent to which the provider has engaged positively with the CMA about the breach and about addressing it. Nationwide has engaged positively with the CMA about fixing the breaches.
  - Previous conduct, including: whether the business has breached the remedy previously; and whether it is subject to a heightened compliance regime. We are unaware of any breaches of the Order previous to the 20 referred to here.
  - Need for future action, including: whether there is a need for formal action to address the risk of future breaches. The CMA considers that formal action is necessary, on the basis that not only has Nationwide breached the Order 20 times, but it did not appear to have understood what was necessary to comply with the Order. For example, Nationwide failed to provide Alerts to customers on 15-16 April 2018 due to a *planned* outage, but did not inform the CMA about this breach until 29 January 2019. If Nationwide had in place more robust procedures for understanding and complying with the Order it may have prevented some or all of these breaches.
15. On the basis of this, the CMA has decided to issue the following Directions to Nationwide.

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

The CMA gives these Directions (the Directions) to Nationwide Building Society (Nationwide) with company number 355B and registered address at Nationwide House, Pipers Way, Swindon SN38 1NW under Article 57 of the Retail Banking Market Investigation Order 2017 (the Order).

### **1. Commencement and Duration**

- 1.1 The Directions come into force on 8 August 2019.
- 1.2 The Directions continue to remain 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 rights or obligations that arose prior to such variation or revocation.

### **2. Interpretation**

- 2.1 In the Directions terms have the same meaning as in the Order, unless stated otherwise.
- 2.2 'Potential breach' for the purposes of these Directions, means any incident which Nationwide reasonably believes may breach the Order.

### **3. Actions specified with regard to one-off audit**

- 3.1 Nationwide is directed to appoint independent assurance (ie a body not part of the corporate group/company) to conduct a one-off audit of the procedures, processes and outcomes which constitute compliance with Part 6 of the Order, and to
  - submit to the CMA a report produced by that independent body of those procedures, processes and outcomes;
  - submit to the CMA a description of the scope of the independent assurance (which will form part of the contract with the independent body);
  - confirm the appointment of the independent body to the CMA;

- submit the report by the independent body to the CMA within 30 calendar days of the report being completed. The report must confirm the level of compliance with these Directions; and
- ensure that the report is accompanied by a statement on actions that Nationwide intends to carry out related to findings in the report, which shall take into account Nationwide's intention to cease charging for unarranged borrowing. This statement must be signed by a Director responsible for PCA products and the Director of Risk.

#### **4. Actions specified with regard to refunds, training and Action Plan**

- 4.1 Nationwide shall provide the CMA, on a fortnightly basis, with a report demonstrating progress towards refunding the customers affected by the breaches referred to in the Annex.
- 4.2 Nationwide shall create a training programme on the key requirements of Part 6 of the Order. The training should include an evaluation element, and the evaluation should demonstrate whether relevant Nationwide staff clearly understand the requirements of Part 6 of the Order. Relevant staff to include all staff who are responsible for or take actions in connection with the alerts which could result in charges for exceeding or attempting to exceed pre-agreed credit limits being wrongly applied. This programme should be carried out on an annual basis. The creation of the training programme should a) only start in February 2020 and b) only needs to start if Nationwide offers unarranged overdraft charges at that date. If the training is required it should be fully rolled out by May 2020.
- 4.3 Nationwide shall:
  - abide by the action plan approved by the CMA (Action Plan), a non-confidential version of which is at Annex 2 to these Directions. The Action Plan contains details (including milestones where relevant) on how Nationwide shall deliver the requirements of the one-off audit referred to above, including dates for delivery;
  - if required to create and deliver the Training Programme in accordance with 4.2, provide a plan to the CMA (the Training Plan) containing details (including milestones where relevant) on how it shall deliver the requirements of the Training Programme, including dates for delivery. The Training Plan shall be submitted for approval by the CMA by 1 February 2020 and thereafter will be published;
  - update the CMA on progress made in completing the actions set out in the Action Plan and (if applicable) the Training Plan.

4.4 Should Nationwide propose to make amendments to the published Action Plan or (if applicable) the Training Plan:

- all such proposed amendments need to be notified to and approved by the CMA; and
- the CMA will publish a non-confidential version of the amended Action Plan or the Training Plan (as appropriate).

## **5. Actions specified with regard to review of procedures**

- 5.1 Nationwide shall carry out, on an annual basis, a review of the procedures, processes and outcomes which constitute compliance with Part 6 of the Order as put in place as a result of the independent review referred to above, to ensure they are still relevant and are still being complied with. The first of these annual reviews is to be carried out in the year after the review by the independent body. For the avoidance of doubt, these annual reviews can be carried out by a unit within Nationwide, ie 1st Line Risk Compliance.
- 5.2 Nationwide shall provide the CMA with a report of the annual review referred to above within 30 days of the reviews' completion. This shall be accompanied by a statement explaining the changes it plans to make to its procedures and processes.
- 5.3 The training programme referred to at Direction 4.2 shall be run on an annual basis to ensure new relevant staff receive the full training course (and evaluation). Existing staff should be provided with refresher training on an annual basis.
- 5.4 In the event that Nationwide no longer charges for unarranged overdrafts, for all PCA customers, then from the date that these charges cease the requirements of 5.1 to 5.3 of these Directions will be suspended until such time as it starts offering them again.

## **6. Actions specified with regard to notification and reporting**

- 6.1 Nationwide shall notify the CMA of any breaches or potential breaches within 14 calendar days of identifying a breach or potential breach. Nationwide shall take all necessary steps to ensure its internal systems are capable of meeting this requirement.
- 6.2 Should Nationwide propose to make any significant changes to its compliance systems or controls relating to compliance with Part 6 of the Order which have not yet been notified to the CMA, proposed amendments shall be approved by the CMA and notified to the CMA in advance of implementation.

Adam Land  
Senior Director  
Signed by authority of the CMA Board  
8 August 2019



## ANNEX 1 - LIST OF BREACHES BY NATIONWIDE BUILDING SOCIETY

Breach	Date of breach (all 2018)	Summary of how customers were affected	Total value of unarranged overdraft/paid/unpaid item charges to be refunded	Remediation to be provided	Date breach notified to CMA
1	2 Feb - 12 Jun 2018	Coding error. Initial scheduled payment alert not sent and subsequent retry alert sent failed to highlight the risk of charges.	£2,125,613	Yes	7 Sep 2018
2	15 - 16 Apr 2018	Planned maintenance. No alerts sent	£78,733	Yes	29 Jan 2019
3	25 - 26 Apr 2018	Unplanned IT outage. No alerts sent	£80,317	Yes	29 Jan 2019
4	16 May 2018	Unplanned IT outage. Some alerts not sent	£20,634	Yes	29 Jan 2019
5	29 Jun - 2 July 2018	Planned maintenance. Some alerts not sent	£115,140	Yes	29 Jan 2019
6	2 Sep 2018	Unplanned IT outage. No alerts sent	£192,145	Yes	29 Jan 2019
7	14 Oct 2018	Unplanned IT outage. Some alerts not sent	£39,565	Yes	29 Jan 2019
8	2 Feb - 7 Jun 2018	Data deletion. No alerts sent to some members	£6,415	Yes	29 Jan 2019
9	2 Feb 2018 to date	System error reading certain accounts. No alerts sent to some members	£4,852	Yes	1 Feb 2019
10	4 Dec 2018	Unplanned IT outage. Some alerts not sent	£0	n/a	1 Feb 2019
11	10 Feb 2019	Planned maintenance. No alerts sent	£79,127	Yes	10 May 2019
12	2 Feb 2018 to date	Retry alerts sent after 10am deadline on peak processing days	£263,745	Yes	10 May 2019
13	5 - 7 Feb 2019	Unplanned IT outage. Some alerts not sent	£44,221	Yes	10 May 2019
14	26 Apr 2019	Unplanned IT outage. Some alerts not sent	£11,780	Yes	10 May 2019
15	2 Feb 2018 to date	No alert sent re unpaid transaction fees for paper cheques	£92,370	No (customer would not have been able to avoid charge)	10 May 2019
16	26 Jun - 25 Nov 2018	No compliant alert sent for unpaid transaction fees incurred for image cheque processing	£57,320	Yes	10 May 2019
17	2 Feb - 25 Nov 2018	Initial scheduled payment alert not sent as balance was sufficient. Retry alert sent after balance reduced to be insufficient to cover scheduled	£2,261,180	Yes	10 May 2019

		payments failed to highlight the risk of charges.			
18	2 Feb - 25 Nov 2018	Member received a scheduled payment alert and credited account by insufficient amount and the subsequent retry alert failed to highlight the risk of charges.	£601,410	Yes	10 May 2019
19	12 May 2019	Planned maintenance. Some alerts not sent	£17,630	Yes	14 May 2019
20	2 Feb 2018 to date	Data congruency error. Alerts were sent to a member's previous or alternative mobile number	£70,830	Yes	27 June 2019