

Directions to Santander UK plc (Santander) issued under the Payment Protection Insurance Market Investigation Order 2011

Introduction

1. Article 4 of the [Payment Protection Insurance Market Investigation Order 2011](#) (the Order) requires payment protection insurance (PPI) providers to send Annual Reviews¹ to customers. The purpose of Annual Reviews is to provide customers with information about their PPI policies and prompt them to consider the suitability of their policies.
2. The Competition and Markets Authority (CMA) is issuing Directions to Santander UK plc (Santander) concerning a breach under Article 4 of the Order. The breach relates to incorrect data in Annual Reviews.

Background

3. On 5 February 2007 the Office of Fair Trading (OFT), in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred the supply of all PPI, except store card PPI, to non-business customers in the UK to the Competition Commission (CC) for investigation and report (the Market Investigation).
4. The CC investigated the matters referred to it in accordance with section 131 of the Act and concluded, in accordance with section 134(1), that there were features of the market, either alone or in combination, which prevented, restricted or distorted competition within the relevant market, and in accordance with section 134(2) that an adverse effect on competition existed. The CC published its findings in a report under section 136 of the Act entitled [Payment Protection Insurance market investigation: remittal of the point-of-sale prohibition remedy by the Competition Appeal Tribunal](#) on 14 October 2010 (the Report).
5. On 6 April 2011 the CC made the Order, in performance of its duty under

¹ As defined in Article 2 of the PPI Order - Annual Review means a document required by Article 4 and completed in accordance with the instructions and in the format set out in Schedule 3 that summarizes information relating to a PPI policy for the preceding 12 calendar months.

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 report.

6. Article 4 of the Order requires PPI providers to send Annual Reviews to PPI customers. The purpose of Annual Reviews is to provide customers with information about their PPI policies and prompt them to consider the suitability of their policies.

7. The relevant part of the Order is Article 4 (which commenced on 6 April 2012). Among other things, Article 4.1 states:

“ . . . a PPI Provider or Administrator must, subject to Article 4.7, send an Annual Review to a Policyholder

8. Pursuant to Article 2.1 of the Order, the Annual Review must be completed in the format set out in Schedule 3 to the Order.

9. Article 4.7 states:

“The obligations in Article 4.1 and Article 4.4 do not apply, if in the 12 months preceding the date when the Annual Review would have been sent either:

(a) the PPI Policyholder has:

(i) not paid nor been required to pay any PPI Premium;

(ii) cancelled the PPI policy; or

(iii) permitted the PPI policy to lapse; or

(b) the PPI Provider has:

(i) cancelled the PPI policy in accordance with contractual rights;

(ii) received notice of the death of the Policyholder; or

(iii) received notice that the Policyholder has left the current address and no notice of the Policyholder’s new address has been received by the PPI Provider.”

10. On 1 April 2014, the relevant functions of the OFT and the CC were transferred to the CMA under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014.

Current breach

11. Santander informed the CMA on 15 October 2018 that between 2012 and 2017 it had provided incorrect information to a total of 3,433 customers of some mortgage PPI policies in Annual Reviews, where the mortgage was in arrears on one particular mortgage platform. The incorrect information was supplementary information relating to the balance of the customer's outstanding mortgage.
12. The CMA considers the provision of incorrect information to customers to be a serious breach of the Order. In particular, the CMA notes that 311 of the total customers were provided with the wrong information for six years before the error was identified.
13. As part of Santander's pre-mailing verification checks in advance of sending out its 2018 Annual Reviews, Santander identified that there was a discrepancy in the supplementary mortgage data value provided in relation to the customer's 'Total Outstanding Loan' for customers in arrears on a specific Santander mortgage data platform. The discrepancy had been present since 2012. This had the effect of providing affected customers with incorrect information relating to both the value of their 'Total Outstanding Loan' (which provides the customer with a value of what is left to pay on their mortgage) and, reflecting the inaccuracy of the above, 'Total Outstanding Amount you must pay back including the amount borrowed' (which provides customers with the sum of the Total Outstanding Loan and the Estimated Total Remaining Charge for Loan).
14. Both figures failed to take into account any amount that a customer was in arrears for their mortgage, and so affected 3,433 customers on that specific platform whose mortgage was in arrears. Affected customers were provided with incorrect information about how much money they owed, some being as much as £10,000 under reported. However, Santander explained that customers would have seen a value under reported by the amount that they were in arrears.

15. Santander reported that this incorrect information did not relate to or affect the actual mortgage payments or cost of cover. Santander explained this is because all key Annual Review information (namely type of cover, level of benefit and cost of cover), was at all times shown correctly on the Annual Review. In addition, customers were charged the correct amounts for mortgage payments and the correct value for 'Total Outstanding Loan' was provided to affected customers via their Annual Mortgage Statement and Mortgage Conduct of Business contacts for customers in arrears.
16. Santander resolved the problem in time for the 2018 mailing. Santander explained that 3,433 customers had been impacted over the period 2012 – 2017 and that half of these customers had only received one incorrect statement over the period.
17. Santander was proactive in identifying the issue and has engaged positively throughout with the CMA. The CMA engaged with Santander on details of the reported breach and to obtain an explanation for the breaches between the period of 15 October 2018 to 14 August 2019. The CMA wrote to Santander in December 2018, to inform Santander that the CMA was considering issuing Directions.
18. On 9 January 2019, Santander responded with its representations.
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
19. Having considered Santander's representations, the CMA considers that in view of the duration of the breach and Santander's previous breaches of the Order, this matter merits enforcement through Directions to ensure

that the necessary actions will be carried out effectively, and the CMA has decided to issue directions to Santander (the Directions).

20. In coming to a decision, the CMA has taken into consideration the information provided by Santander on 2 November and 8 November 2018 in response to CMA questions and Santander's representations dated 9 January 2019 and 24 April 2019. The CMA has also taken into account the fact that the CMA requires a range of compliance actions to be implemented by Santander. The CMA therefore takes the view that only enforcement through directions will ensure that the necessary actions will be carried out effectively.

Previous breaches

21. Santander has breached the Order four times previously, including three times in 2017 (notified concurrently) where incorrect information relating to the supplemental mortgage data at the base of the Annual Reviews was provided to customers in the Annual Reviews. The CMA published a [breach letter in December 2016](#) and wrote privately to Santander in December 2017.

CMA decision

22. In taking decisions about what actions to take in response to a breach of its remedies, the CMA takes a number of factors into account, including the severity of the breach; the actions taken by the business to address the breach; the previous conduct of the business; and the need for future action by the CMA.
23. When considering the severity of the breach, the CMA considers issues which include its duration; the number of customers affected; and the harm caused to those customers. The CMA notes that although incorrect information was supplied to 3,433 customers, this did not relate to or affect the key purpose of the Annual Review (as it did not relate to type of cover, level of benefit and cost of cover). Accurate information was also made available to the affected customers by a different document, and the actual value of the mortgage was at all times correct. The CMA however notes that this breach lasted five years before it was uncovered, and that it affected 3,433 customers over the period 2012 – 2017. The CMA considers that it could have been identified at a much earlier stage had Santander been carrying out more thorough compliance checks in previous years.

24. When considering the actions taken by the business to address the breach, the CMA considers issues which include the extent to which the provider has engaged positively with the CMA about the breach and about addressing it. Santander has engaged positively with the CMA throughout this process. Following breaches by Santander in 2017, Santander implemented a set of enhanced controls to cover the full life cycle of the production to mailing of Annual Reviews. Santander ran its enhanced controls for the first time in 2018. Santander reported that the use of its enhanced controls identified the recent breach. Santander also reported that in time for the 2018 mailing round it had fixed the error of incorrect information entered into the data field 'Total Outstanding Loan' and 'Total Outstanding Amount you must pay back including the amount borrowed' in Annual Reviews.
25. When considering previous conduct, the CMA considers issues which include whether the business has breached the Order previously; and whether it is subject to a heightened compliance regime. Santander has previously breached the Order four times, including three times in 2017 (notified concurrently) where incorrect information was provided to customers in Annual Reviews. The CMA published a [breach letter in December 2016](#) and wrote privately to Santander in December 2017. It is acknowledged that following its 2017 breach Santander enhanced its Annual Review compliance controls. Santander reported that these enhanced controls were the catalyst for discovering the historic issue which is the subject of these Directions.
26. When considering the need for future action, the CMA considers whether there is a need for formal action to address the risk of future breaches. The CMA considers that formal action, through the issuing of Directions to Santander is necessary to ensure the actions will be carried out effectively, primarily on the basis of the repeated nature of the breaches.

Directions to Santander UK plc (Santander) issued under the Payment Protection Insurance Market Investigation Order 2011

The CMA gives these Directions (the Directions) to Santander UK plc (Santander) with company number 2294747 and registered address at 2 Triton Square, Regent's Place, London, NW1 3AN, under Article 16 of the Payment Protection Insurance Market Investigation Order 2011 (the Order).

1. Commencement and Duration

- 1.1 The Directions come into force on 23 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 identified which is likely to impact on compliance with the Order.
- 2.3 Assurance Audit - a process by which the Independent Body or independent internal assurance function checks compliance with the Order and must include the scope in Directions 3.3.
- 2.4 Action Plan - Santander's document containing all actions to be conducted with timeframes to address the breaches by Santander.
- 2.5 Independent Body - a body capable of carrying out an audit of processes, procedures and outcomes, and not part of the corporate group/company, and without conflicts of interest.

3. Directions

- 3.1 The CMA gives the following Directions to Santander.
- 3.2 Santander is directed to

- (a) maintain its existing control mechanisms, manual checks and automatic controls and the enhanced level control report: this annual control report provides information on the reason why any Annual Reviews are not produced
 - (b) maintain the targeted checking of the control report: this targeted checking will be completed for each Annual Review cycle, and ensure that there is a valid reason for any Annual Reviews which are not sent to customers
- 3.3 Santander is directed to appoint an Independent Body to carry out Assurance Audits of the procedures, processes and outcomes which constitute compliance with the Order, and submit to the CMA a report produced by that Independent Body of those procedures, processes and outcomes. The due date for the initial independent Assurance Audit report must be at the same time as submitting its PPI Annual Compliance Report in April 2020. Subsequent Assurance Audit reports must also be submitted to the CMA annually at the same time as the PPI Annual Compliance Report. The scope of the Assurance Audit will include:
 - (a) the policies, practices and procedures (including those related to training) which Santander has in place to secure compliance with the Order
 - (b) other evidence suggesting the presence or absence of actual or suspected non-compliance with the Order
- 3.4 Santander must submit to the CMA a description of the scope of the Assurance Audit to be carried out by the Independent Body (and which will form part of the contract with the Independent Body) in accordance with the timing set out in its Action Plan.
- 3.5 Santander must confirm the appointment of the Independent Body to the CMA in accordance with the timing set out in its Action Plan.
- 3.6 Santander must submit the report by the Independent Body to the CMA within 30 calendar days of the report being completed. At the same time, Santander will provide to the CMA a statement on any actions that Santander is required to carry out related to any recommendations arising in this report, and the timings of any such actions. This statement must be signed by a Director responsible for PPI products.
- 3.7 Subsequent Assurance Audits must be carried out by an Independent Body until Santander has completed all relevant actions to address all the

recommendations from the initial independent Assurance Audit carried out in year 2020.

- 3.8 Santander must provide written confirmation to the CMA that all relevant actions to address the recommendations identified by the Independent Body from the initial independent Assurance Audit carried out in year 2020 have been satisfactorily completed. This confirmation should be provided to the CMA within 14 days of their completion.
- 3.9 On receipt of written confirmation from the CMA pursuant to Direction 3.8 that any relevant actions to address all the recommendations from the initial independent Assurance Audit carried out in year 2020 have been satisfactorily completed, Santander may then appoint its internal audit function (as long as the internal audit function is independent of the systems used by Santander to comply with the Order) to carry out subsequent Assurance Audits. The scope of any subsequent Assurance Audits if conducted by Santander's internal independent audit function must be identical to those carried out by the Independent Body and overseen by a Director of that independent internal assurance function.
- 3.10 For each subsequent independent Assurance Audit, and where Santander is continuing to use an Independent Body to provide this, Santander does not have to use the same Independent Body each year.
- 3.11 Any proposed amendment by Santander to the scope of the Assurance Audit must first be agreed with the CMA in writing.
- 3.12 Santander has provided the CMA with an Action Plan (a non-confidential version is published with these Directions). The Action Plan contains a plan (including milestones where relevant) on how Santander will:
 - ensure the control mechanisms, manual checks and automatic controls referred to in Direction 3.2 are formalised, so they can be reviewed by the Independent Body
 - deliver the actions to be carried as part of the Assurance Audit by the Independent Body
 - update the CMA on progress made in completing the actions set out in the Action Plan

3.13 Any proposed amendments by Santander to its Action Plan must be notified by Santander and approved in writing by the CMA and the CMA will publish a non-confidential version of the amended Action Plan.

4. *Monitoring and Compliance*

4.1 A non-confidential summary of how these actions are to be completed, with timescales for completion, is contained in Santander's Action Plan at Annex A.

4.2 Santander is directed to notify the CMA of any breaches or potential breaches within 14 calendar days of identifying a breach or potential breach. Santander is directed to take all necessary steps to ensure its internal systems are capable of meeting this requirement.

4.3 Should Santander propose to make any material changes to its compliance systems or controls relating to compliance with the PPI Order, proposed amendments:

- need to be approved by the CMA
- must be notified to the CMA in Santander's annual PPI Compliance Report

4.4 "Material" for the purposes of paragraph 4.3 relates to significant and/or systemic changes made to compliance systems or controls rather than minor technical or operational related changes.

Adam Land

Senior Director

Signed by authority of the CMA Board

23 August 2019