CMA RETAIL BANKING MARKET INVESTIGATION ORDER 2017

RBS RESPONSE TO REVIEW OF PART 6

22 JULY 2019

RBS welcomes the CMA's decision to open a review of Part 6 of the Retail Banking Market Investigation Order 2017 (the "**Order**") and is grateful for the chance to comment.

RBS has always expressed its support of the aims and objectives of Part 6 of the Order. Having had an auto-enrol alerts service in place for a number of years prior to the implementation of the Order, we welcomed the introduction of a robust and comprehensive regulatory framework to ensure consistency across retail banking in delivering a vital service to promote engagement with and awareness of unarranged overdraft usage and unpaid transaction charges. Our internal analysis of the effectiveness of these communications continues to validate how important they for our customers, so we welcome the further work the FCA has undertaken here and we are in the process of implementing these requirements.

In December 2018, in response to the CMA's recommendation to undertake further work to identify, research, test and ultimately implement measures to increase customer engagement with their overdraft usage, the FCA published rules (BCOBS 8.4R), which are due to come into effect from 18 December 2019. These rules will essentially duplicate the existing requirements of Part 6 of the Order to send customers alerts when they have or are about to go into unarranged overdraft or have a payment rejected. Those rules build on the existing Part 6 requirements and will extend the scope to cover arranged overdraft alerts in addition to the existing mandatory alerts services.

RBS fully supports the full revocation of Part 6 of the Order and associated requirements regarding compliance reporting. We believe it is important to revoke Part 6 to avoid regulatory duplication and the potential downstream risk when it comes to firms understanding their obligations in respect of alerts where there are inconsistencies between the two rule sets. We agree that revoking Part 6 would also fit with the CMA's prioritisation principles and have a positive impact on businesses and still ensure customers receive the benefit of overdraft alerts.

Our response provides an overview of the FCA's proposals and why these amount to a change of circumstances meaning that it seems appropriate for the CMA to now revoke the Part 6 requirements. We also outline in this response why we think it is appropriate for the CMA to also consider launching a similar review of the requirements of Part 7 of the Order regarding the Maximum Monthly Charge ("**MMC**"), in light of the reforms the FCA has put forward with regards to how banks charge for overdrafts.

We would be happy to discuss with the CMA any aspects of our response if helpful.

1. THE FCA PROPOSALS

As the CMA will be aware the FCA's new rules on alerts, contained in BCOBS 8.4R, will come into force from December 2019 and will require banks and building societies to automatically enrol their PCA customers into a set of overdraft alerts. These rules will bring the alerts already mandated under Part 6 of the Order into the FCA's Handbook by duplicating, as far as possible, the content of

the existing Part 6 Order requirements. Further, the new Handbook rules extend the scope of banking brands caught by the rules by requiring any bank or building society brand (excluding private banks) with 70,000 or more PCAs to automatically enrol their in scope customers into overdraft alerts.

Aside from extending the scope through a reduced threshold for application which covers a wider cross-section of brands, the new rules also build on the existing CMA alerts by:

- Introducing requirements around a new category of alerts that will be triggered in the event that a PCA customers enters into a pre-arranged overdraft facility;
- Building in robust information requirements around alerts, to be communicated as part of account opening and in order to build customer awareness; and
- Strengthening the obligations on firms to obtain a mobile number from a customer when they don't have them or they are put on notice that they no longer have the correct mobile number for that customer.

The FCA has indicated an expectation that the Order would be reviewed by the CMA in light of these new rules, and we would support the view that the implementation of the High Cost of Credit remedies package as a whole would make the FCA the natural home for monitoring alerts compliance and effectiveness within the new regulatory framework that will apply to personal overdrafts.

2. CHANGE OF CIRCUMSTANCES

We agree with the CMA's initial view that there is a "*realistic prospect of finding a change of circumstances relevant to Part 6 of the Order*".[1] As we explain above, there is a clear overlap with the FCA's proposals and the Part 6 requirements. The development of the FCA proposals means that there has been a change of circumstances from when the Part 6 requirements came into force in February 2018. This change of circumstances means that it is no longer appropriate to have both the CMA and FCA enforce similar rules and requirements when it comes to overdraft alerts.

The FCA taking over the overall regulatory responsibility when it comes to overdraft alerts will preserve, and build on, the benefit for customers the Part 6 requirements have brought. We also consider that the FCA acting as the single point of regulatory oversight will bring benefits when, in due course, any holistic review is undertaken to understand what benefits overdraft alerts (both arranged and unarranged) have brought to customers. This is since the FCA will be able to more broadly assess their impact (e.g. as they will also be able to consider both arranged and unarranged overdraft alerts) than the CMA would be able to given the scope of the Part 6 requirements.

We believe it is disproportionate and duplicative to have two sets of obligations, which look to achieve the same objectives. The revocation of Part 6 of the Order would also remove burdens and constraints on banks when it comes to reporting compliance for these provisions and the underlying assurance activities that go with that reporting, avoiding the requirement to assure against two set of similar but nuanced regulatory frameworks. We would therefore also support the CMA removing the requirement to report on Part 6 compliance as part of CMA Order annual compliance reporting.

[1] Paragraph 21, https://assets.publishing.service.gov.uk/media/5d162a51e5274a0662da52eb/Review_of_the_Retail_Banking_Order_-.pdf

3. REVIEW OF PART 7 OF THE ORDER

We also encourage the CMA to consider opening a similar review of the MMC requirements within Part 7 of the Order in light of the FCA's High Cost of Credit proposals.

Specifically, the proposed pricing interventions by the FCA are expected, in their view, to benefit a wider group of customers than those impacted by MMC (typically the highest users of unarranged overdrafts).[2] As with the changes for overdraft alerts, the FCA's High Cost of Credit proposals will build on and would potentially supersede the Part 7 requirements.

This is on the basis that the new FCA rules will eradicate the distinction between unarranged and arranged overdraft pricing. The new pricing rules (covered under CONC 5C R) will come into effect from 6 April 2020 and will (i) preclude firms from charging more for unarranged overdrafts than arranged overdrafts, (ii) ban fixed fees for having or using an overdrafts and (iii) restrict firms to applying a single interest rate (i.e. no tiering depending on level of usage). In addition, the FCA introduced guidance with immediate effect from 7 June 2019, which ensures that fees for refusing payments are set at a level that is truly reflective of costs to the firm of returning items unpaid.

Furthermore, the FCA will be introducing rules from December 2019 that will drive further awareness of the costs and risks associated with overdraft borrowing, mandating specific information about arranged and unarranged overdrafts that will need to be disclosed to customers in one place as part of any direct offer financial promotion for a PCA and through the account opening process.

The CMA's Retail Banking Market Investigation identified concerns about the cumulative costs of heavier unarranged overdraft users (and in particular their understanding of those costs), but we consider that the FCA's new rules will address these concerns and will arguably make an MMC that's squarely focussed on unarranged borrowing irrelevant and a potentially confusing focus for customers.

We also consider further consumer benefits, when it comes to pricing transparency, will result from the FCA's new guidance on fees for refused payments, which is notably prescriptive in terms of the legitimate costs that can be allocated for the purposes of calculating the level of any fee. The addition of such guidance along with the FCA's new rules on overdraft charges will appear to amount to a change of circumstances from when the requirements of Part 7 of the Order first came into force in August 2017.

Therefore we would welcome the CMA to consider as well if Part 7 needs to be reviewed in a similar manner to this Part 6 review. We would suggest that this review should:

- Consider whether the MMC will still drive value for customers in terms of transparency around charges or whether it would be appropriate to revoke Part 7 in full to reflect the significant change in the regulatory context brought about by the FCA's High Cost of Credit remedies package; and
- If the CMA considers the MMC to still be relevant and effective in addressing residual issues around transparency of pricing, consideration should be given as to what amendments

[2] See paragraph 44 of the cost benefit analysis in FCA's CP18/42

would need to be made to Part 7 of the Order to make it fit for purpose in the context of CONC 5C R. In particular, what changes would need to be made to the definition of "Relevant Charges" and the standardised term and definition that firms are required to publish under Article 29.2 of the Order in order to reflect the FCA's banning of fixed fees in relation to overdrafts.

As noted above, the FCA's pricing rules will take effect from 7 April 2020 and we would encourage consideration of Part 7 in line with that timeline and in good time to allow firms to make the appropriate changes to MMC disclosures ahead of the FCA's rules coming into force, especially given implementation of these rules is currently ongoing.