

CMA Review of Part 6 of the Retail Banking Market Investigation Order 2017

Date: 15th July 2019

Address: Retail Banking Order review team
Competition and Markets Authority
Victoria House
Southampton Row
London, WC1B 4AD

Sent to: remedies.reviews@cma.gsi.gov.uk

1. UK Finance is the collective voice for the banking and finance industry.
2. Representing more than 250 firms across the industry, we act to enhance competitiveness, support customers and facilitate innovation.

Part 6 – Automatic enrolment into a programme of alerts

3. We support the proposal to revoke Part 6 of the Retail Banking Market Investigation Order 2017 (The Order)
4. The CMA's Final Report expressly recommended that the FCA should conduct further work in relation to overdrafts¹. When the Order was published, the CMA identified that the subsequent implementation of rules by the FCA could render provisions under the Order unnecessary and subject to review under section 162 of the Enterprise Act². Our support for the revocation of Part 6 is based upon:
 - a. Remove duplication: The FCA rules published in December 2018 within CP18/42 (BCOBS 8.4) and due to come into effect on 18th December 2019 will duplicate the requirements of The Order. The FCA rules extend the requirements to further enhance consumer outcomes by requiring arranged overdraft alerts in addition to unarranged overdraft alerts.
 - b. Compliance Monitoring: One set of policy requirements will make it more straight forward for PCA providers to identify and understand their obligations, and will improve the efficiency of compliance monitoring by firms. The CMA should confirm the revocation of the appropriate compliance statement requirements relating to Part 6 of the Order as set out in Article 50.

¹ See Figures 15.1 and 15.2 and paragraph 193 (c) amongst others

² See Paragraph 8 of the Explanatory Notes to The Order

Part 7 – Monthly Maximum Charge (MMC)

5. The CMA should also take the opportunity to review the requirements within Part 7 – the Monthly Maximum Charge (MMC). The FCA is introducing new rules in April 2020 regarding the pricing structure of PCAs and we advocate that the maximum Relevant Charges that apply to an account (28.5.2) should be reviewed and reassessed against the original objective of introducing a MMC.
6. The CMAs' extensive Retail Banking Market Investigation identified concerns around the elevated costs over and above the costs of arranged overdraft borrowing that a consumer might incur if they entered or attempted to enter an unarranged overdraft position (which includes exceeding a pre-agreed credit limit).
7. Subsequent to the publication of the Order, the FCA has published rules relating to the pricing structure of PCAs which will be implemented by 6th April 2020 (PS19/16). The proposed rules within The FCA Consumer Credit Sourcebook (CONC 5C) include:
 - a. Stopping firms from charging higher prices for unarranged overdrafts than for arranged overdrafts.
 - i. The banning of differentiated pricing between arranged and unarranged overdrafts will address the issue identified in the CMA's Explanatory Note, whereby a daily charge of 50p could become a daily charge of £5 when a pre-agreed credit limit is exceeded³. It also has the effect of prohibiting an arranged overdraft interest rate being increased where the customer is in excess of a pre-agreed limit.
 - b. Banning fixed fees for borrowing through an overdraft
 - i. This rule prohibits the charging of monthly usage fees or allowed payment fees. The rule also prohibits the charging of fees levied for arranging or maintaining overdraft facilities up to £10,000.
 - c. Introduction of pricing by way of a single interest rate.
 - i. This prohibits tiered interest pricing within the PCA product (unless one of the tiers is a zero-interest rate)
 - ii. The banning of fixed fees and the introduction of a single interest rate will mean that the costs of overdraft borrowing will be directly correlated to the amount of customer borrowing.
 - iii. The interest cost of borrowing through an unarranged overdraft cannot be higher than the cost of borrowing by way of an arranged overdraft (interest free limits excluded). An unarranged overdraft could be priced at a lower rate than an arranged overdraft.
 - d. Refused payment fees can continue to be charged. Refused payment fees cannot be set at a level to derive a profit and the FCA has now published finalised guidance on the costs that can be considered to be reasonable when setting a refused payment fee. These must correspond to the costs of returning an item unpaid, when setting their refused payment fee.

³ Paragraph 76 in relation to Part 6

8. The rules being introduced by the FCA will introduce simplicity and transparency to the customer in the cost of overdraft borrowing.
 - a. Interest Charge – The cost of borrowing by way of an unarranged overdraft will not be higher than an arranged overdraft (interest free buffers excluded).
 - b. Fees – No fixed fees can be charged for using, operating or maintaining an overdraft facility.
 - c. Refused Payment Fees – are permitted with the charge levied to meet the FCA guidelines on costs that can be recovered.
9. Whilst a consumer could be charged interest on the amount that is borrowed beyond a pre-agreed credit limit, there cannot be a step-change increase in the interest rate applicable for unarranged overdraft borrowing or any additional fixed fees.
10. As the unarranged overdraft interest cost will no longer be at a rate that is higher than borrowing within a pre-agreed limit, we do not consider provision of a breakdown of the two separate interest charges would be useful for the consumer and therefore question whether the unarranged interest costs should be included within the Monthly Maximum Charge.
11. The FCA has also introduced new rules that requires firms to document and implement a strategy to support customers who might exhibit repeat overdraft use. Consumers who enter into an unarranged overdraft will therefore potentially be subject to a number of policy interventions to 'alert' them to their unarranged position and also engaged where 'repeat use' is a feature.
12. We would therefore advocate that Part 7 of the Order (and the associated compliance reporting) is amended to reflect the permitted PCA pricing structures. We would also welcome engagement with the CMA to discuss the objective and ongoing benefit of the MMC, given the unarranged interest rate being effectively capped at the arranged overdraft rate, and refused payment fees being capped at a cost recovery rate.
13. Changes to the definition of the Monthly Maximum Charge should also be reflected within the requirements for the communication of the MMC. The prescribed wording in Schedule 2 should be amended.
14. We would propose the existing wording of the Order is
 - a. revoked and replaced with a succinct Short Form statement only
 - b. The MMC should not be required to be communicated as part of an alert, although the potential for the consumer to incur a Charge would be communicated (as appropriate).
15. The implementation of the Payment Services Regulations requires firms to provide consumers annually with a Statement of Fees (SoF). The SoF is a prescribed template that requires the details of the debit interest on the account to be shown separately from any fees on the account.

16. In a scenario where the aggregate charge of refused payment fees and unarranged overdraft interest exceeded the firms published Monthly Maximum Charge, the firm would need to reduce one or either of the charges. The pro-rating of the interest and fees can introduce complexity for a firm where it will subsequently need to report these two costs separately on the SoF.
17. In reviewing the objective of the Monthly Maximum Charge, a streamlining of the charges covered (for example if the MMC should only relate to refused payment fees) will avoid this unnecessary complexity for firms. It will however continue to provide a consistent point of cost comparability between PCA providers to help inform consumers.

If you have any questions relating to this response, or wish to arrange a further discussion on the requirements of Part 7 of The Order, please contact Ian Fiddeman, Principal Consumer Credit (ian.fiddeman@ukfinance.org.uk)

Ian Fiddeman

Principal, Personal Credit Policy