

Directions to Paymentsshield Limited 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 Paymentsshield Limited (Paymentsshield) concerning two breaches under Article 4 of the Order. Both breaches relate to failure to send 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 section 138 of the Act for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers

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.

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 breaches

11. On 20 August 2019 Paymentsshield notified the CMA of two issues that it had become aware of. The CMA determined that these issues represent breaches of the Order:
 - Breach One: Paymentsshield did not issue 604 customers with Mortgage PPI or Income Protection PPI Annual Reviews from April 2013 to 19 August 2019 (or to when affected customers cancelled their policy) due to an internal IT failure in Paymentsshield which caused it to not generate an Annual Review in each year.
 - Breach Two: For 22 policies, Paymentsshield's system changed the Statement Date by two years, not one each year, and therefore on the following year an Annual Review was not generated. This meant that every other year affected customers did not receive Annual Reviews. This issue lasted from April 2013 to 19 August 2019 (or to when affected customers cancelled their policy).
12. The CMA does not consider that any of the exceptions listed in Article 4 apply here (see above paragraph 9) and considers that because customers did not receive an Annual Review for at least one year, there have been breaches of Article 4.1.
13. The CMA considers that both these issues constitute breaches of Article 4.1 of the Order. This is because Article 4.1 states: "For any PPI policy which starts on or after 6 April 2012 except a Retail PPI policy, a PPI Provider or Administrator must, subject to Article 4.7, send an Annual Review to a Policyholder . . .".
14. The CMA considers these two issues to be serious breaches of the Order. In particular, the CMA notes that some customers did not receive an Annual Review for a period of up to six years before the error was identified.
15. The CMA engaged with Paymentsshield on details of the breaches and to obtain an explanation for the breaches between 20 August 2019 and 16 March 2020. The CMA wrote to Paymentsshield on 12 September 2019 to

confirm that it was minded to issue Directions. The letter invited representations from Paymentsshield.

16. On 3 October 2019 Paymentsshield responded to the CMA's letter summarising the voluntary actions it planned to take to remediate affected customers; bring the breach to an end; and to prevent a recurrence. These comprised:
 - Offering all affected customers the choice of continuing with their policy or cancelling their policy and receiving a refund of premiums from the date of the first missed Annual Review
 - Instigating an independent audit of compliance with the Order
 - Correcting the underlying fault which caused the two breaches
 - Introducing a control report system which would identify whether any PPI annual statements have not been sent at the correct time.
17. As of March 2020, Paymentsshield reported that £387,328 has been refunded to some affected customers and a further £170,000 of refunds are to be expected.

Previous breaches

18. In December 2016, Paymentsshield notified the CMA of a breach of the Order.
19. Paymentsshield told the CMA that 3,067 customers had not received one or more Annual Reviews since 2012, resulting in 5,395 Annual Reviews not being issued in total.
20. In 2018, Paymentsshield confirmed that affected customers with live and cancelled policies were taken account in the remediation process, i.e. received apology letters asking customers to contact Paymentsshield to discuss eligibility for refunds. Around £52,000 was refunded to affected customers.
21. A [letter](#) from the CMA to Paymentsshield was published on the CMA's website in September 2017 relating to this breach.

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; the harm caused to those customers. The CMA considers that both breaches are of significant duration (around 6 years) and that the number of customers affected is significant, at 626. It is likely that there may have been significant detriment to customers who may have wished to cancel their PPI, and for those customers with cancelled/expired policies who might have cancelled earlier, had they received an Annual Review.
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. Paymentsshield has provided a thorough breach report, and helpful proposals for both remediating and preventing further breaches. In addition, it has acted relatively promptly (it became aware of the breach in June 2019).
25. When considering previous conduct, the CMA considers issues which include whether the business has breached the remedy previously and whether it is subject to a heightened compliance regime. Paymentsshield has breached the remedy previously by failing to send Annual Reviews, and the CMA published a [letter](#) to it in relation to the previous breach (see paragraphs 20 to 23). The CMA is concerned that Paymentsshield's compliance processes are not sufficiently robust to ensure future compliance.
26. When considering the need for future action, the CMA considers issues which include whether there is a need for formal action to address the risk of future breaches. The CMA has taken account of the actions taken and proposed by Paymentsshield. However, the CMA considers there is a need for it to take formal action and impose further measures on Paymentsshield to ensure Paymentsshield puts in place appropriate measures to generate compliance now and in the future, given this recidivism and the significance of its breaches of the Order.
27. In coming to this decision the CMA has taken into consideration the information provided by Paymentsshield between 20 August 2019 and 16 March 2020 in response to the CMA's questions and Paymentsshield's

representations dated 3 October 2019 and 26 February 2020. The CMA has also taken into account the fact that it requires a range of compliance actions to be implemented by Paymentsshield. The CMA therefore takes the view that only enforcement through directions will ensure that the necessary actions will be carried out effectively, and consequently the CMA has decided to issue directions to Paymentsshield (the Directions).

Directions to Paymentsshield Limited (Paymentsshield) issued under the Payment Protection Insurance Market Investigation Order 2011

The CMA gives these Directions (the Directions) to Paymentsshield Limited (Paymentsshield) with company number 02728936 and registered address at Paymentsshield House, Southport Business Park, Wight Moss Way, Southport, PR8 4HQ 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 19 March 2020.
- 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 Audits' – an annual process by which the Independent Body or independent internal assurance function checks compliance with the Order and must include the scope in Direction 3.4.
- 2.4 'Action Plan' – Paymentsshield's document containing all actions to be conducted with timeframes to address the breaches by Paymentsshield.
- 2.5 'Independent Body' - a body capable of carrying out an audit of processes, procedures and outcomes, not part of the corporate group/company, and without conflicts of interest.

- 2.6 'Internal Audit' – Paymentsshield's review of its processes and procedures for compliance. This review was conducted in December 2019 by the Ardonagh Group.
- 2.7 '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.

3. Directions

- 3.1 The CMA gives the following Directions to Paymentsshield:

Internal audit

- 3.2 Paymentsshield is directed to implement all recommendations and actions that arise from its internal audit dated December 2019 of its procedures and processes that amount to compliance with the Order. In particular, Paymentsshield shall, by the following timeframes:
- Implement risk-based assurance procedures for system-generated Annual Reviews. These procedures will include the requirement to test the accuracy of Annual Review contents. Target date: 31 March 2020;
 - Perform quality assurance on Annual Review content as part of first line controls with oversight provided by second line. Results from these assurance procedures will be summarised in the Customer Director's assurance activity reports into the Executive Committee. Target date: 31 March 2020;
 - Review its previously administered books of MPPI business, taking all reasonable steps to identify non-compliance and if non-compliance is identified, notifying the book owners and taking appropriate corrective action to remediate. Include in the required scope and delivery of the due diligence any future acquisition of MPPI books, and scrutiny over the relevant business' current and historic compliance with the Order. Upon any MPPI book acquisition, include as a priority within the integration plan the controls over compliance with the Order, such that Paymentsshield's effective control is implemented quickly over the acquired book of the business. Post-acquisition and integration, management will also undertake sufficient testing and monitoring to provide confirmatory

assurance of compliance with the Order for both the acquired and existing book. Target date: 31 March 2020

- Review and consolidate its Policy/Guidance documentation to set out in one place its required approach towards compliance with the Order and communicate it to relevant members of staff. Target date: 31 March 2020
- Embed its approach to Root Cause analysis and rectification into the current reporting and governance arrangements. Target date: 31 March 2020
- Conduct a further assurance audit once the customer contact activity has been completed to confirm customer outcomes are fair. Also, to assess risks relating to IT change control and potential impact of changes on regulatory disclosures, to determine whether these areas should be included in the scope of further audit. Target date: 31 July 2020

Independent Assurance Audit for 2020/2021 and on-going annual Assurance Audits

- 3.3 Paymentsshield is directed to appoint an Independent Body to carry out an Assurance Audit of the procedures, processes and outcomes which constitute compliance with the Order during the 2020/2021 financial year, and submit to the CMA a report produced by that Independent Body of those procedures, processes and outcomes. The due date for the Independent Assurance Audit report must be submitted by the last working day in April 2021 and annually by the last working day in April thereafter.
- 3.4 The scope of the Assurance Audit must include:
- (a) the policies, practices and procedures (including those related to training) which Paymentsshield has in place to secure compliance with the Order
 - (b) the actions taken by Paymentsshield in response to the Internal Audit of its compliance procedures with the Order in 2019
 - (c) other evidence suggesting the presence or absence of actual or suspected non-compliance with the Order
 - (d) where appropriate, identifying appropriate ways in which the compliance with the Order can be improved by making

recommendations for changes to processes, procedures and other matters relevant to Paymentsshield's compliance, including:

- whether Annual Reviews are being sent to all relevant customers (Volume)
- whether Annual Reviews are being sent *within 2 weeks before or within 2 weeks after the anniversary of the date on which the first Annual Review was sent* (Timeliness)
- whether the correct information is being populated on the AR statements (Accuracy)
- whether the Annual Review mail out includes the Annual Reviews, covering letter, a summary of the policy and the CMA wording prescribed in the relevant schedules and whether the appropriate schedule is being sent (Accuracy)

(e) Any future acquisition and integration of PPI policies and Paymentsshield's controls over compliance with the Order, to include testing and monitoring to provide confirmatory assurance of compliance with the Order for both the acquired and existing book.

- 3.5 Paymentsshield 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.
- 3.6 Any proposed amendment by Paymentsshield to the scope of the Assurance Audit must be first agreed with the CMA in writing.
- 3.7 Paymentsshield must confirm the appointment of the Independent Body to the CMA in accordance with the timing set out in its Action Plan.
- 3.8 Paymentsshield is required to implement all recommendations and actions that arise from these Assurance Audits. Paymentsshield will provide to the CMA a statement of actions that it will carry out to implement each recommendation in the report, and the timings of such actions. This statement must be signed by a Director responsible for PPI products.
- 3.9 In each year following, Paymentsshield is directed to carry out an Assurance Audit of its compliance procedures with the Order. Subsequent Assurance Audits must be carried out by an Independent Body until Paymentsshield has

completed all relevant actions to address all the recommendations from the initial Independent Assurance Audit carried out in year 2021.

- 3.10 Paymentsshield must provide written confirmation to the CMA on a single occasion once all relevant actions to address the recommendations identified by the Independent Body from the initial independent Assurance Audit carried out in year 2021 have been satisfactorily completed. This confirmation should be provided to the CMA within 14 days of their completion.
- 3.11 Paymentsshield is not required to use the same Independent Body for each subsequent Assurance Audit where this is conducted by an Independent Body.
- 3.12 Subject to receiving written confirmation from the CMA that relevant actions, as per Direction 3.10 to address all the recommendations from the initial independent Assurance Audit carried out in 2021 have been satisfactorily completed, Paymentsshield may appoint its internal audit function (as long as the internal audit function is independent of the systems used by Paymentsshield to comply with the Order) to carry out subsequent Assurance Audits. Unless otherwise directed by the CMA, the scope of any subsequent Assurance Audits carried out by the internal audit function must be identical to those carried out by the Independent Body and overseen by a Director of that independent internal audit function.

Action Plan

- 3.13 Paymentsshield is directed to provide the CMA with an Action Plan (a non-confidential version is published with these Directions). The Action Plan will contain a plan (including milestones where relevant) on how Paymentsshield will:
 - implement all recommendations and actions that arise from both its Internal Audit and the subsequent audits carried out either by an Independent Body, or its internal audit function;
 - include a timeline showing when each action will be implemented and all relevant milestones in achieving these changes;
 - maintain processes and checking procedures to prevent similar future breaches relating to sending Annual Reviews for all relevant PPI products;

- complete customer remediation relating to the current breach, including sending out apology letters
- provide written confirmation to the CMA on a single occasion once all relevant actions to address the recommendations identified by the internal audit carried out in year 2019 have been satisfactorily completed. This confirmation should be provided to the CMA within 14 days of their completion.

3.14 Any proposed amendments by Paymentsshield to its Action Plan must be notified in writing by Paymentsshield and approved in writing by the CMA. 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 Paymentsshield's Action Plan, at Annex A.

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

4.3 Should Paymentsshield propose to make any material changes to its compliance systems or controls relating to compliance with the PPI Order other than those which are in response to the recommendations and actions arising from its Assurance Audits, all such proposed amendments must be submitted to and approved by the CMA in writing advance of implementation by Paymentsshield.

Adam Land
Senior Director
Signed by authority of the CMA Board
19 March 2020