

## **Directions to The Royal Bank Scotland Group plc (RBS) 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 Reviews<sup>1</sup> 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 The Royal Bank of Scotland Group plc (RBS) concerning a breach under Article 4 of the Order. The breach relates 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).

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<sup>1</sup> 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.

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 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

### **Current breach**

11. RBS notified the CMA on 20 April 2018 of a breach. Since 2012, RBS sent some Annual Reviews for mortgage PPI customers to out of date addresses resulting in customers not receiving their Annual Reviews. RBS reported that 10,730 customers were affected by its breach. Some addresses held by RBS for its mortgage PPI customers were different to the addresses for those same customers held by the PPI underwriter. The underwriter holds customer addresses and passes information to RBS to send Annual Reviews to customers.
12. Following an assurance review carried out by RBS, it identified a potential issue in March 2018 concerning a category of mortgage PPI Annual Reviews causing RBS to consider whether Annual Reviews were being sent to the correct customer addresses. RBS' assurance review was initially prompted by RBS receiving a high volume of returned Annual Reviews being marked as 'gone away' (the recipient no longer resides at the address). In looking at that issue, RBS found that it had no process in place to: (a) internally record any Annual Review "gone away" returns; and (b) allow RBS to notify its underwriter of any "gone away" status for the purposes of updating the addresses.
13. RBS continued its investigations into the breach and the numbers of customers affected. The CMA received final numbers of affected customers in December 2018. RBS reported that it had completed the following actions to remedy the breach with the affected customers and in to try to prevent this issue from recurring:

### **Processes**

- implementation of processes concerning data transfer between RBS and its underwriter to ensure Annual Reviews are sent to the correct addresses:
  - RBS has provided to its underwriter a one-off set of different addresses it holds for affected customers - this is to allow its underwriter to check and update latest addresses
  - envelopes containing Annual Reviews now includes its underwriters' address for 'gone away' returns

- RBS created a new process whereby it will send a quarterly file to its underwriter containing any updated mortgage PPI customer addresses
- information on RBS' internal website used for front line staff instructs staff to refer customers to its underwriter in the event that a customer wishes to update their addresses - this action covers all mortgage PPI products
- RBS built a new on-going automated mechanism to allow for regular updates to be provided by RBS to its underwriter with any updated address information received and a second manual data transfer has taken place in December 2018 which included details for any customers who have updated their addresses since June 2018
- testing of the new 'gone away' process between RBS and its underwriter was carried out to ensure that customers continue to receive Annual Reviews at the updated addresses

### ***Controls***

- implementation of controls over the process of producing Annual Reviews, consisting of monitoring and producing six-monthly reports by its underwriter for RBS which will track (i) the number of 'gone aways'; (ii) the percentage change in the number of 'gone aways' year on year; (iii) a comparison of the number of letters sent by RBS and the number which its underwriter would expect to be sent; and (iv) any issues with its systems
- investigations into the wider implications and scope of this breach and whether any further changes to RBS' Annual Review processes are needed, or whether any similar issues might exist requiring action to be taken confirmed that no other similar potential breaches or breaches were identified

### ***Customer remediation***

- apology letters and offers of refunds were sent to those affected customers in March and May 2019
14. The CMA considers that the failure to provide customers with an Annual Review is a serious breach of the Order because it affects customers' ability to re-assess whether they wish to continue paying for that PPI policy for the next year and to shop around for an alternative product if they wish to do so. In this case the breach occurred every year from 2012 and, in total, affected 10,730 customers.

15. The CMA engaged with RBS on details of the reported breach and to obtain an explanation for the breach between 20 April 2018 and 14 August 2019.
16. The CMA sent a letter, dated 19 December 2018, to inform RBS of CMA's consideration to issue Directions. The letter requested representations from RBS. On 9 January 2019, RBS responded with its representations.
  - [REDACTED]
  - [REDACTED]<sup>2</sup>
  - [REDACTED]
  - [REDACTED]
17. In view of the severity of the breach and RBS' failure to identify it for 6 years, the CMA is concerned that RBS' compliance processes in this area are not sufficiently robust to ensure future compliance with the Order in the absence of formal action by the CMA.
18. We have taken into consideration the information provided by RBS on 24 April 2018, 31 May 2018, 4 July 2018, 3 August 2018, 24 August 2018, 31 August 2018, 19 September 2018, 6 November 2018, 30 November 2018, 17 December 2018, 21 March 2019 and 7 June 2019 and the fact that the CMA requires a range of compliance actions to be implemented by RBS, 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 RBS (the Directions).

### **Previous breaches**

19. In 2016, RBS notified the CMA of two breaches.
20. The first breach was a failure to send Annual Reviews to 29 Home Equity Loan PPI customers in 2015. RBS sent apology letters to affected customers with live policies and offered to send copies of the missed Annual Reviews to customers.
21. The second breach related to errors identified in Annual Reviews which affected 65,000 credit card customers between 2015 and 2016. This breach involved a third party provider of the Annual Review data introducing a new platform and, when moving the Annual Review data production to the new

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<sup>2</sup> [REDACTED]

platform an incorrect code was transferred for one field of the Annual Reviews, resulted in the Annual Reviews containing the 'Average outstanding balance in the past year' relating to the credit card balance rather than the 'Average monthly credit card balance amount'. RBS sent in the next covering letter accompanying PPI Annual Reviews to affected customers a notification of the error and offered them the option to request a corrected Annual Review.

22. A private letter from the CMA was sent to RBS in December 2016 relating to these two breaches.

### **CMA decision**

23. 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.
24. 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 notes that a high number of customers did not receive their Annual Reviews and the breach has occurred since 2012. Potentially, customers may not be aware that they have a PPI policy with RBS. RBS had failed to identify and report the breach for six years and the CMA considers that it could have been identified at a much earlier stage had RBS been carrying out appropriate levels of compliance checks.
25. 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. RBS has engaged positively with the CMA throughout this process. However, RBS first reported the breach in April 2018 and was only able to conclude and report to the CMA in December 2018 on its investigation into final numbers of affected customers.
26. 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. RBS has previously breached the Order twice (see paragraphs 19 to 22).
27. 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 considers that formal action is necessary through the issuing of Directions to RBS, on the basis that processes and controls should

be in place for ensuring PPI customers receive their Annual Reviews in accordance with the Order. Where RBS failed to have processes in place with its underwriter to update customer address information, this has resulted in a number of PPI customers not receiving Annual Reviews.

# **Directions to Royal Bank of Scotland Group plc (RBS) issued under the Payment Protection Insurance Market Investigation Order 2011**

The CMA gives these Directions (the Directions) to The Royal Bank of Scotland Group plc (RBS) with company number SC045551 and registered address at 36 St Andrew Square, Edinburgh EH2 2YB 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 Audits – a process by which the Independent Body or independent internal assurance function checks compliance with the Order and must include the scope in Direction 3.2.
- 2.4 Action Plan – RBS' document containing all actions to be conducted with timeframes to address the breaches by RBS.
- 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 RBS.
- 3.2 RBS 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 thereafter at the same time as the PPI Annual Compliance Report.

The scope of the Assurance Audit must include:

- a. the policies, practices and procedures (including those related to training) which RBS 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
- 3.3 RBS 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.
- 3.4 RBS must confirm the appointment of the Independent Body to the CMA in accordance with the timing set out in its Action Plan.
- 3.5 RBS must submit the report by the Independent Body to the CMA within 30 calendar days of the report being completed. At the same time, RBS will provide to the CMA a statement on actions that RBS intends to carry out related to recommendations in this report, and the timings of any such actions. This statement must be signed by a Director responsible for PPI products.
- 3.6 Subsequent Assurance Audits must be carried out by an Independent Body until RBS has completed all relevant actions to address all the recommendations from the initial independent Assurance Audit carried out in year 2020.
- 3.7 RBS 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.
- 3.8 On receipt of written confirmation from the CMA pursuant to Direction 3.7 that any relevant actions to address all the recommendations from the initial independent Assurance Audit carried out in year 2020 have been satisfactorily completed, RBS may then appoint its internal audit function (as long as the internal audit function is independent of the systems used by RBS to comply with the Order) to carry out subsequent Assurance Audits. The scope of any subsequent Assurance Audits if conducted by RBS' 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.

- 3.9 Any proposed amendment by RBS to the scope of the Assurance Audit must be first agreed with the CMA in writing.
- 3.10 For each subsequent independent Assurance Audit, and where RBS is continuing to use an Independent Body to provide this, RBS does not have to use the same Independent Body each year.
- 3.11 RBS 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 RBS will:
- implement and maintain processes and automated 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
  - deliver any actions identified 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
- 3.12 Any proposed amendments by RBS to its Action Plan must be notified in writing by RBS 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 RBS' Action Plan, at Annex A.
- 4.2 RBS is directed to notify the CMA of any breaches or potential breaches within 14 calendar days of identifying a breach or potential breach. RBS is directed to take all necessary steps to ensure its internal systems are capable of meeting this requirement.
- 4.3 Should RBS 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 RBS' 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