

Directions to Santander UK plc issued under the Retail Banking Market Investigation Order 2017

Introduction

1. The Competition and Markets Authority (CMA) is issuing Directions to Santander UK plc (Santander) concerning six breaches of Part 6 of the [Retail Banking Market Investigation Order 2017](#) (the Order).
2. The CMA considers Santander's failure to provide Alerts to customers before those customers received charges in relation to exceeding pre-agreed credit limits (i.e. incurring unarranged overdraft borrowing fees and charges) or attempting to do so as a serious matter. To date, Santander has been unable to provide figures for the numbers of customers affected or the value of refunds to be made for each of the six breaches. However, Santander has confirmed that it has been in breach for all six of these issues since Part 6 of the Order came into force in February 2018.

Background

3. On 6 November 2014, the CMA board, in exercise of its power under sections 131 and 133 of the Enterprise Act 2002 (the Act) made a reference for a market investigation into the supply of retail banking services to personal current account (PCA) customers and to small and medium-sized enterprises (SMEs) in the United Kingdom (the market investigation).
4. On 9 August 2016, the CMA published its report on the market investigation, entitled [Retail banking market investigation: Final report](#) (the Final Report), in which it concluded that:
 - (a) there are three separate (and, in certain circumstances, in combination) Adverse Effects on Competition (AECs) in each of Great Britain and Northern Ireland in relation to PCAs, BCAs and SME lending;
 - (b) the CMA should take action to remedy, mitigate or prevent the AECs and detrimental effects flowing from them;
 - (c) in order to address the AECs and resulting customer detriment, an integrated package of remedies should be imposed.

5. On 2 February 2017 the CMA made the Order.¹ For the purposes of these Directions all terms unless expressly stated otherwise shall be as defined in the Order.
6. The integrated package of remedies in the Order contains, amongst others, a requirement for all providers of PCAs in GB and NI to enrol customers in a Programme of Alerts (the Alerts Remedy).
7. Part 6 came into force on 2 February 2018. It requires PCA providers to use reasonable endeavours to ensure that Alerts² are capable of being received by customers as soon as possible after an Alert Trigger³ relating to a pre-agreed credit limit. The purpose of the Alerts is to give warning to customers that they are likely to incur charges relating to pre-agreed credit limits unless they take action.

Current breaches

8. These Directions relate to six breaches of the Order:
 - Breach One: Santander failed to enrol some customers' mobile phone numbers into its system of Alerts in two specific situations:
 - first, where a customer previously registered for email Alerts has added a mobile phone number for Alerts to be sent to, their mobile phone number has not been registered;
 - second, when a customer updates the mobile phone number registered for Alerts, Santander has de-registered the old number, but has not been registering the new number.
 - As a consequence of Santander not enrolling some of their customers into its system, these customers have not received Alerts when required by the Order.

¹ The Order was made in performance of the CMA's 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 Final Report.

² For the purposes of the Order, 'an 'Alert' means either a text message sent to a mobile phone or a push alert from a mobile banking application including the contents required by Article 25 (Article 24.7.1).

³ As defined in Article 24.2 of the Order.

- Breach Two: Santander failed to issue an Alert to each customer who at the start of the day (10.00) was in an arranged overdraft position at the end of the previous day (22.00) and a direct debit (but no other payment) is processed overnight (between 22:00 and 05:00) that puts them into an unarranged position.
 - Breach Three: Santander failed to provide an Alert where the amount authorised and withheld on an account exactly matches the value of a single direct debit amount being processed and no other payments are made.
 - Breach four: On 72 occasions, Santander failed to send Alerts to customers until later in the day (after 10.00) due to high volumes of overnight batch payment processing.
 - Breach five: Certain of Santander's retail platforms that capture new customer data allow a customer's mobile telephone number to be stored in data fields that are not specific to mobile telephones. This means that such numbers are not enrolled for mobile alerts, because Santander's alerts system only uses numbers stored in the mobile field. As a consequence of Santander not enrolling some of their customers into its system, these customers have not received Alerts when required by the Order.
 - Breach six: There are limited instances where three categories of error message were generated within Santander's alerts system resulting in alerts not being sent.
9. The CMA has decided, based on the information available, that all six are breaches of Part 6 of the Order each time they occur.
10. Breach one constitutes a breach of the following provisions of the Order:
- Article 26.1: "Providers shall use reasonable endeavours to collect each PCA customer's mobile phone number, at a minimum at the time of account opening for new customers and in each instance when a PCA customer updates his contact details . . ." . In this case, customers' mobile phone numbers were not collected accurately or at all when registering for mobile Alerts or updating their contact details. The Explanatory Note to the Order (at paragraph 88) sets out that, "reasonable endeavours"

requires providers actively to record a customer's mobile number when they update their details. By failing to have adequate systems in place for collecting mobile numbers in these instances, Santander was in breach of this Article of the Order.

- Article 24.1 requires providers to, "initiate the sending of an Alert to customers enrolled in the Programme of Alerts in respect of the relevant PCA, following an Alert trigger". As a consequence of not having adequately enrolled customers' mobile phone numbers, Santander also failed to send these customers Alerts as required under Article 24.1 of the Order.

11. Breach two constitutes a breach of the following provisions of the Order:

- Article 24.4 which requires that, "[t]he Provider shall use reasonable endeavours to ensure the Alert is capable of being received as soon as possible after the Alert Trigger". We consider that delays in sending out Alerts after 10.00 is a breach of the requirement of Article 24.4 which requires the provider to have systems in place to ensure that the Alert is sent as soon as possible.
- Article 24.5: "Notwithstanding Article 24.4, where the Alert Trigger is brought about by a Scheduled Payment the sending of the Alert must be initiated by, at a minimum, 10am on the day of the Alert Trigger." In this case Santander sent out batched Alerts, which included scheduled payments such as direct debits around 8 hours after 10.00. Scheduled payments are required to have an Alert sent by 10am on the day of the Alert Trigger.

12. Breach three constitutes a breach of Article 24.1: "Unless instructed otherwise by the FCA in accordance with Article 27, Providers shall, in accordance with Article 24.4, initiate the sending of an Alert to customers enrolled in the Programme of Alerts in respect of the relevant PCA, following an Alert Trigger. . ." . In this case, no Alert was sent following an Alert Trigger and this is therefore a breach of this requirement.

13. Breach four constitutes a breach of the following provisions of the Order:

- Article 24.4 which requires that, "[t]he Provider shall use reasonable endeavours to ensure the Alert is capable of being received as soon as

possible after the Alert Trigger”. We consider that delays in sending out Alerts after 10.00 is a breach of the requirement of Article 24.4 which requires the provider to have systems in place to ensure that the Alert is sent as soon as possible.

- Article 24.5: “Notwithstanding Article 24.4, where the Alert Trigger is brought about by a Scheduled Payment the sending of the Alert must be initiated by, at a minimum, 10am on the day of the Alert Trigger.” In this case Santander sent out batched Alerts, which included scheduled payments such as direct debits around 8 hours after 10.00. As set out in relation to Breach 2 above, scheduled payments are required to have an Alert sent by 10am on the day of the Alert Trigger.

14. Breach five constitutes a breach of the following provisions of the Order:

- Article 26.1: “Providers shall use reasonable endeavours to collect each PCA customer’s mobile phone number, at a minimum at the time of account opening for new customers and in each instance when a PCA customer updates his contact details . . .” . In this case, customers’ mobile phone numbers were not enrolled into the programme of alerts under the Order when stored in data fields that are not specific to mobile telephones. By failing to have adequate systems in place for collecting and storing mobile numbers in these instances, Santander was in breach of this Article of the Order.
- Article 24.1 requires providers to, “initiate the sending of an Alert to customers enrolled in the Programme of Alerts in respect of the relevant PCA, following an Alert trigger”. As a consequence of not having adequately enrolled customers’ mobile phone numbers, Santander also failed to send these customers Alerts as required under Article 24.1 of the Order.

15. Breach six constitutes a breach of Article 24.1, which requires providers to, “initiate the sending of an Alert to customers enrolled in the Programme of Alerts in respect of the relevant PCA, following an Alert trigger”. As a consequence of the error messages that were generated within Santander’s alerts system, Santander failed to send these customers Alerts as required under Article 24.1 of the Order.

16. The CMA engaged with Santander on details of the breaches and to obtain an explanation for the breaches between 25 July 2019 and 27 November 2019. The CMA wrote to Santander on 20 September 2019 to confirm that it was minded to issue Directions. The letter requested representations from Santander.
17. On 11 October 2019 Santander responded to the CMA's letter providing an update on the work it was undertaking to address the breaches, including providing remediation by fully refunding affected customers who received charges without receiving an Alert required by the Order in relation to the charge, and who did not receive any other compliant alert giving them an opportunity to avoid that charge. Santander did not make any representations to the CMA that the issuing of Directions would be unsuitable in this case.

Previous breaches

18. On 1 February 2019, Santander notified the CMA of a breach of the Order as part of its Annual Compliance Report.
19. The underlying cause of this previous breach was that Santander had omitted new account openings for both Everyday Current Accounts and Essentials Current Accounts from the process for auto enrolment into the Alerts programme. This meant that customers who opened either account between 2 February 2018 and 20 February 2019 and who went into unarranged overdraft did not receive an Alert warning them of the possibility of charges.
20. A [letter](#) from the CMA to Santander was published on the CMA's website in May 2018 relating to this breach. The letter stated that around 20,000 customers had received refunds totalling around £1.4m. However, subsequent to this letter and on concluding its remediation process, Santander found that around 25,000 customers had been affected, and as a result refunded around £2m in charges that should not have been taken from those customers' accounts.

The CMA's decision

21. In taking decisions about appropriate actions to take in response to a breach of a remedy, 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.

22. 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. There are six breaches, and all of them have occurred since Part 6 of the Order came into force on 2 February 2018. Santander has undertaken a detailed review of the issues in order to identify affected customers and any charges levied relating to them. However, at this stage, Santander has been unable to provide the CMA with the total number of customers affected and the value of charges taken from their accounts⁴ before an Alert was received due to the complexities associated with the data analysis required to ensure that any remediation activity is appropriately robust. However, we note that given the size of Santander and the number of customers it has, these breaches are clearly significant and a cause for concern for the CMA. Even where examined purely on the basis of the duration of these breaches, they represent a concern, as they have been ongoing since the Order came into force, demonstrating both insufficient attention having been paid by Santander to the implementation of and also to the ongoing compliance with this Order.
23. 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. We are content that Santander has engaged positively with the CMA with regard to putting in place fixes for the six breaches between May 2019 to September 2019, is proactively undertaking a comprehensive review of the issues and their root causes, and proposes to undertake any remediation (including refunding customers) necessary, with redress of customers scheduled to begin in December 2019. Whilst Santander has stated that remediation (including refunding customers) is not planned until 2020, and has not been able to provide the CMA with information about the size and value of all breaches, we note that Santander has plans in place to ensure refunds are completed.

⁴ Santander has explained that the process for calculating the size of the breach is complicated and involves a number of steps, and calculations must include charges and refunds which are 'in flight' i.e being incurred in parallel with the calculation project.

24. 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. Santander has breached the Order previously, and given the significance of that breach, we published a letter to Santander on 24 May 2019.
25. 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.
- In the event that the CMA decides to remove Part 6 of the Order on or before 18 December 2019 (the date at which the equivalent provisions in the FCA's rules come into force) there is no need for future action other than to ensure that Santander has not breached Part 6 of the Order in any way other than in relation to the breaches of which the CMA already is aware. In this event, those Articles identified at Article 3.1 of the Directions will not apply.
 - In the event that the CMA decides not to remove Part 6, we consider that it is necessary for the CMA to take formal action to ensure Santander will take all reasonable steps to become compliant with the Order and ensure it has sufficient controls and processes in place to protect its customers. This is the result of the number of breaches identified, their duration, the poor implementation and ongoing compliance with the remedy, and a previous breach about which the CMA wrote publicly to Santander.
26. The CMA has taken into consideration the information and representations provided by Santander between 25 July 2019 and 27 November 2019 and the fact that the CMA requires a range of compliance actions to be implemented by Santander. As 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 Santander.

Directions to Santander UK plc issued under the Retail Banking Market Investigation Order 2017

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 57 of the Retail Banking Market Investigation Order 2017 (the Order).

1. Commencement and Duration

- 1.1. The Directions come into force on 29 November 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. 'Action Plan' for the purposes of these Directions means a plan (including milestones where relevant) of how Santander shall deliver the requirements of these Directions and containing the information detailed in article 5.2.
- 2.3. 'Assurance Audit' for the purpose of these Directions means an assessment carried out by the Independent Body of Santander's processes, procedures and outcomes which make up compliance with Part 6 of the Order.
- 2.4. 'Independent Body' for the purposes of these Directions, means a body capable of carrying out an Assurance Audit of processes, procedures and outcomes, and is not part of the Santander corporate group/company, and is without conflicts of interest.
- 2.5. 'Material' for the purposes of these Directions means significant and/or systemic changes made to compliance systems or controls rather than minor technical or operational related changes.
- 2.6. 'Potential breach' for the purposes of these Directions, means any incident which Santander reasonably believes may breach the Order.

2.7. 'Relevant Staff' for the purposes of these Directions means as a minimum, all

Santander staff who are responsible for or take actions in connection with the Alerts which could result in charges for exceeding or attempting to exceed pre-agreed credit limits.

3. Application of Directions

3.1. In the event, within 3 months of the date the Directions come into force or any time prior to that date, the CMA publishes a notice setting out its final decision to remove Part 6 of the Order then from the date of that notice the following articles in these Directions shall not apply;

- article 5.2 bullet 2, and article 5.2 bullet 4;
- article 6 in its entirety;
- article 8 in its entirety;
- article 9.3.

4. Assurance Audit of Compliance

4.1. Santander is directed to appoint an Independent Body to conduct a one-off Assurance Audit of Santander's procedures, processes and outcomes which constituted and constitute compliance with Part 6 of the Order between 2 February 2018 and 18 December 2019. Santander will:

- submit to the CMA for approval a description of the scope of the Assurance Audit (which will form part of the contract with the Independent Body);
- confirm the appointment of the Independent Body to the CMA;
- submit the report by the Independent Body to the CMA within 30 calendar days of the report being completed. The report must describe in detail the extent of any other failures (except those breaches referenced in these Directions) in compliance with Part 6 of the Order between these dates;
- ensure that if any other failure of compliance with Part 6 were identified the report is accompanied by a statement of actions that Santander will carry out with any affected customers and more widely related to findings

in the report. This statement must be signed by a Director responsible for PCA products and a Director of Compliance

- all the above to be subject to the timings outlined in the Action Plan.

5. Action Specified with regard to the Action Plan

5.1. Santander shall abide by the Action Plan approved by the CMA.

5.2. The Action Plan shall contain the following information:

- With regard to article 4 of these Directions - details (including milestones where relevant) of how Santander shall deliver the requirements of article 4 of these Directions including dates for delivery;
- With regard to article 6 of these Directions - details (including milestones where relevant) of how Santander shall deliver the requirements of article 6 of these Directions including dates for delivery;
- With regard to article 7 of these Directions - details (including milestones where relevant) of how Santander shall deliver the requirements of article 7 of these Directions including dates for delivery and Santander's actions to identify and refund customers affected by the breaches of the Order; and
- With regard to article 8 of these Directions - details (including milestones where relevant) of how Santander shall deliver the requirements of article 8 of these Directions including dates for delivery.

5.3. Santander shall update the CMA on progress made in completing the actions set out in the Action Plan at monthly intervals.

5.4. Should Santander propose to make amendments to the published Action Plan all such proposed amendments need to be notified to and approved by the CMA before being implemented.

6. Action specified with regard to training

6.1. Santander shall create a training programme (Training Programme) on the key requirements of Part 6 of the Order for all relevant Relevant Staff within Santander.

- 6.2. The Training Programme should include an evaluation element, and the evaluation should demonstrate whether Relevant Staff clearly understand the requirements of Part 6 of the Order.
- 6.3. The Training Programme shall be run on an annual basis to ensure all new Relevant Staff receive the full training course (and evaluation). Existing Relevant Staff shall be provided with annual refresher training on an annual basis.
- 6.4. Santander shall
- provide to the CMA a training plan (Training Plan) containing details (including milestones where relevant) on how it shall deliver the requirements of the Training Programme, including dates for delivery;
 - update the CMA on progress made in completing the Training Plan via the monthly report in accordance with Article 5.3.

7. Actions specified with regard to refunds

- 7.1. Santander shall, in accordance with the Action Plan, provide the CMA on a monthly basis with a report setting out Santander's progress towards identifying and refunding the customers affected by the breaches of the Order detailed in the pre-amble to these Directions.
- 7.2. If Santander chooses not to refund any class of customer who has been affected by these breaches, or any other breaches of Part 6 of the Order, Santander shall make all reasonable efforts to inform those customers about their rights to pursue individual redress against Santander under section 167(4) Enterprise Act 2002 for the charges incurred by the customer as a result of the breaches of the Order detailed in the pre-amble to these directions.

8. Actions specified with regard to review of procedures

- 8.1. Santander shall carry out, on an annual basis, a full audit of the procedures, processes and outcomes which constitute compliance with Part 6 of the Order as put in place as a result of the Assurance Audit referred to above, to ensure they are still relevant and are still being complied with. The first of these annual reviews is to be carried out in the year after the review by the Independent Body. For the avoidance of doubt, these subsequent annual

reviews can be carried out by a unit within Santander as long as it is independent of the systems Santander uses to comply with Part 6 of the Order.

- 8.2. Santander shall provide the CMA with a report of the annual review referred to above within 30 days of the review's completion. This shall be accompanied by a statement explaining any changes it plans to make to its procedures and processes.

9. Monitoring and Compliance

- 9.1. A non-confidential summary of how the actions required by the applicable articles of these Directions are to be completed, with timescales for completion, are to be included in Santander's Action Plan.
- 9.2. Santander shall notify the CMA of any breaches or potential breaches of Part 6 of the Order within 14 calendar days of identifying a breach or potential breach. Santander shall take all necessary steps to ensure its internal systems are meeting this requirement.
- 9.3. Should Santander propose to make any material changes to its compliance systems or controls relating to compliance with Part 6 of the Order, proposed amendments need to be notified to, and approved by, the CMA in advance of implementation and before coming into effect.

Adam Land
Senior Director
Signed by authority of the CMA Board
29 November 2019