

# Directions to HSBC UK Bank plc (HSBC) issued under the Small and medium-sized enterprise (SME) banking undertakings 2002

30 March 2022

## Introduction

1. The CMA<sup>1</sup> is issuing Directions to HSBC UK Bank plc (HSBC) concerning breaches of the Undertakings signed by HSBC Bank plc<sup>2</sup> (the Undertakings). The breaches affect a number of loan agreements between 2002 and 2021. A total of 221 loans were affected, impacting 204 customers. The breaches were notified to the CMA in July 2020, December 2020, March 2021 and May 2021 and primarily concern loan agreements governed by Scottish Law ('Scots law') and secured by a Scots law floating charge. Eight of the 221 loan agreements were not related to the Scots law floating charge issue.
2. Clause 17 of the Undertakings include a prohibition on HSBC directly or indirectly requiring or threatening to require that SMEs that hold certain bank loans and deposit accounts also hold business current accounts (BCAs) with that bank. This is commonly known as 'bundling' products.
3. HSBC is subject to an annual reporting regime where it provides the CMA with an audit report of its compliance with the Undertakings on an annual basis. This reporting obligation is set out in a 2014 agreement<sup>3</sup> between HSBC and the CMA (the 2014 Agreement). HSBC is already subject to a set of [Directions issued by the CMA to HSBC in 2014](#) (2014 Directions) for a previous breach relating to bundling BCAs. The 2014 Directions were issued with the aim to improve HSBC's compliance with the Undertakings.

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<sup>1</sup> 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.

<sup>2</sup> HSBC informed the CMA that when HSBC Bank plc transferred part of its business to HSBC UK Bank plc on 1 July 2018, the obligations of HSBC Bank plc under the SME undertakings were transferred under the terms of HSBC's 2018 ringfence Transfer Scheme to HSBC UK Bank plc (the ring fenced entity).

<sup>3</sup> The 2014 Agreement was signed by the eight banks (the Banks) in March 2014 before Directions were issued to HSBC Bank plc later in that year. A copy of the 2014 Agreement can be viewed on pages 22 and 23 of the CMA's SME banking report on compliance: [SME banking undertakings 2002: a report on Banks' compliance audits 2020 \(publishing.service.gov.uk\)](#)

4. HSBC raised concerns in respect of compliance with the Bundling Undertakings. HSBC reported that the majority of impacted loan agreements contained a ‘Relevant Termination Event’ (a clause which gave HSBC the right to terminate a borrower’s loan if HSBC ceased to be the Borrower’s principal commercial bank). HSBC confirmed that eight of the 221 loan agreements contained clauses which raised concerns with compliance with Clause 17 of the Undertakings but which were not related to the Scottish floating charge issue.<sup>4</sup> The CMA considered these to be breaches of Clause 17 of the Undertakings and also a breach of the requirements of the 2014 Directions.<sup>5</sup> Therefore, the CMA is issuing a new set of directions to HSBC.
5. The Directions issued to HSBC on 30 March 2022 supersede the obligations of the 2014 Directions in full and where indicated, the obligations of the 2014 Agreement.

## Background

6. In 2002, following a Competition Commission (CC) investigation into banking services for SMEs, nine banks (two of which have since merged) including HSBC Bank plc agreed that, other than in respect of integrated products, they would no longer require an SME customer to open or maintain a BCA to get a business loan or to open, maintain or service a business deposit account. This practice is commonly known as bundling. HSBC Bank plc gave the Secretary of State for Trade and Industry and the Chancellor of the Exchequer undertakings under section 88 of the 1973 Act.
7. On 11 March 2014, the Office of Fair Trading (OFT) agreed with the banks that signed the Undertakings a package of measures that sought to achieve two main objectives that comprise the 2014 Agreement that includes: that each bank should provide staff dealing with SME customers with an annual

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<sup>4</sup> Three of these related to loans issued to Scottish customers which included bespoke clauses requiring the customer to maintain a BCA with HSBC. The remaining five cases consisted of loans governed by English law but which erroneously included the Relevant Termination Event.

<sup>5</sup> [SME banking 2002 behavioural undertakings: directions to banks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212422/SME_banking_2002_behavioural_undertakings_directions_to_banks.pdf)

Direction 1 “. . . take all steps within HSBC’s competence reasonably necessary or desirable to achieve and maintain compliance with Clause 17 of the Undertakings . . .”

Direction 2 “To refrain, at all levels, either directly or indirectly, internally or publicly, in practice or by means of any internal guideline, manual, procedure, terms and conditions or any other similar information, from failing to comply with Clause 17 of the Undertakings.”

Direction 6 “To establish and maintain effective governance, testing and monitoring to ensure ongoing compliance with Clause 17 of the Undertakings.”

written reminder on the obligations within Clause 17 of the Undertakings; and that each bank should, via its internal audit function, review its compliance with Clause 17 of the Undertakings and submit a report to the CMA (the Audit Report).

## Previous breaches

8. During 2013, the OFT received information suggesting that certain Banks had failed in some instances to comply with Clause 17 of the Undertakings. The OFT wrote to all Banks requesting information on the systems and procedures for ensuring compliance with the Undertakings. In response, HSBC informed the OFT that, as a result of its internal investigation into issues at the bank which may affect compliance with Clause 17 of the Undertakings, it was able to ascertain that some HSBC staff will have informed SME customers that it was a requirement to take out a BCA in order to obtain a loan.
9. The CMA reached the view that HSBC had failed to comply with Clause 17 of the Undertakings. On 10 October 2014, the CMA issued [Directions to HSBC Bank plc](#). In summary, the 2014 Directions required HSBC Bank plc to:
  - take all steps within HSBC Bank plc's competence reasonably necessary or desirable to achieve and maintain compliance with Clause 17 of the Undertakings;
  - refrain, at all levels, either directly or indirectly, internally or publicly, in practice or by means of any internal guideline, manual, procedure, terms and conditions or any other similar information, from failing to comply with Clause 17 of the Undertakings;
  - provide a written annual reminder to relevant staff about compliance with the Undertakings;
  - amend and maintain all internal manuals, guidance, product/loan documentation and associated training materials for communication to all staff to explain and/or ensure consistency with the Undertakings;
  - establish and maintain effective governance, testing and monitoring to ensure ongoing compliance with Clause 17 of the Undertakings;
  - create, roll-out and maintain mandatory training for all Relevant Staff; and
  - conduct an annual audit of its compliance with Clause 17 of the Undertakings and provide a compliance statement to the CMA.

## Current breaches

10. HSBC notified the CMA of the breaches in its annual compliance audit report of 31 July 2020. In particular, it reported that, HSBC had identified “*a potential issue with a small number of back-book loan agreements, concerning the inclusion in those loan agreements of a particular event of default*”, and was conducting further investigations to determine the size and scope of the issue. HSBC informed the CMA that it first identified the potential issue in January 2020 and although no breach was identified at that time, this prompted internal investigations to be conducted to verify whether the potential issue had led to any breaches of the Undertakings.
11. On 17 December 2020, following the conclusion of its initial internal investigations, HSBC confirmed it had identified a group of current and historic loan agreements in scope of the Undertakings which included non-compliant clauses.
12. HSBC reported that the majority of impacted loan agreements contained a ‘Relevant Termination Event’ (a clause which gave HSBC the right to terminate a borrower’s loan if HSBC ceased to be the Borrower’s principal commercial bank) and that a handful of loan agreements contained other non-compliant clauses. The CMA decided that HSBC had breached Clause 17 of the Undertakings and its 2014 Directions.
13. HSBC explained that the 221 impacted loan agreements in breach of the Undertakings are dated between 2002 to 2021:
  - ***Breaches relating to eight loan agreements which are unrelated to the Scots law floating charge issue***
14. HSBC reported to the CMA in December 2020 and 12 March 2021 that it had identified two loans (one opened in November 2002 and closed in August 2006, the other opened in 2018 and closed in March 2019) which were in scope of the Undertakings and included the Relevant Termination Event, but which were not governed by Scots law. Further, HSBC informed the CMA on 28 May 2021 and 23 December 2021 that it had identified a further five loans (four opened in May 2017, September 2017, September 2018 and October 2018 respectively which all remain open, and one opened in May 2014 and closed on 30 June 2015) unrelated to the Scots floating charge issue which contained other non-compliant clauses. HSBC confirmed that these instances

of non-compliance did not relate to a broader or systemic root cause, and were isolated issues. On 18 February 2022, HSBC notified it had identified a further loan affected. The CMA has included these eight loans in its assessment of the breach by HSBC.

- ***A breach concerning loan agreements secured by Scots law floating charges from May 2010 to June 2017***

15. Up until late 2017, HSBC's templates used for loan agreements in Scotland contained manual guidance to users specifying that the Relevant Termination Event was only to be included if:

(a) the borrower's turnover was more than £25 million per annum;<sup>6</sup> or

(b) a debenture or fixed charge over book debts was being taken or was held to secure the relevant loan.

16. HSBC reported that for some agreements its staff included the Relevant Termination Event wording on the mistaken understanding that a Scots law floating charge met condition (b) due to the inability under Scots law to take separate effective fixed charge security over book debts. These templates are no longer in use.

- ***A breach concerning loan agreements secured by Scots law floating charges entered into from late 2017***

17. From late 2017, HSBC loan agreements were prepared using a document management system. The coding of the relevant loan agreement templates provided that the Relevant Termination Event should only be included in loan agreements where the user identified that the borrower's turnover was more than £25 million per annum; or a debenture or fixed charge over book debts was being taken or held to secure the relevant loan.

18. The CMA understands that the incorrect inclusion of the Relevant Termination Event in the affected loan agreements resulted from an error in the coding of certain loan agreement templates, in that, where a HSBC staff member selected a Scots law floating charge as a security item, this caused condition

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<sup>6</sup> The Undertakings explains that small or medium sized enterprise (SME) refers to a business that, in respect of a given financial year applying to it, has annual sales revenues (exclusive of VAT and other turnover-related taxes) of no more than £25 million.

- (b) 'a debenture or fixed charge over book debts is being taken or held to secure the relevant loan' to be automatically met, and the Relevant Termination Event to be included in the loan agreement by HSBC.
19. Since identifying the breaches, HSBC has voluntarily put in place a remediation programme for all impacted customers. HSBC confirmed that, as of 18 February 2022 the final and verified number of loans to be included in the remediation exercise (including the additional eight customers who had non-Scots law governed loan agreements and which contained the Relevant Termination Event or non-compliant clauses unrelated to the Scots law floating charge issue) to be 221, impacting 204 customers.
20. HSBC wrote to all affected customers with open loans in September and December 2021 to formally bring the breaches to an end by waiving the non-compliant clauses in the affected loan agreements. HSBC also confirmed it will refund all impacted customers with open and closed loans. The estimated total amount of refunds of BCA fees and charges would be over £800,000.
21. In addition, HSBC informed the CMA that it has completed actions to fix the coding error which led to the breach, as well as completing actions to enhance its controls and processes, staff training and guidance in order to ensure similar breaches do not occur again. HSBC also confirmed that it undertook a review of its control environment in order to identify any additional potential issues or areas for improvement. For the reasons given below, the CMA does not consider HSBC's actions to be sufficient to deliver ongoing compliance with the Undertakings, and the CMA has decided to impose the following directions on HSBC.

## **CMA's decision**

22. The CMA has decided to issue Directions to HSBC in relation to the breaches described above, which were notified in 2020 and 2021.
23. The CMA acknowledges that HSBC proactively self-identified and reported the breach to the CMA, that HSBC has taken actions to end and address the breach (including communication with customers concerning the breach and the offer of refund, as well as enhancement to training, policies, processes and procedures), and has engaged positively with the CMA about the breach and in addressing it.

24. However, given HSBC's failure to identify the breach for a significant number of years either through its staff awareness or through the sampling it is required to undertake as part of the internal audits required by the 2014 Agreement, and the presence of the existing directions covering HSBC's conduct and the Undertakings, the CMA considers that it is necessary to issue new directions to HSBC to give the CMA sufficient reassurance that HSBC will be taking all appropriate measures to secure on-going compliance. The CMA is therefore directing HSBC to (i) appoint an independent body to conduct compliance audits, and (ii) implement enhanced controls and staff training measures.
25. The CMA provided HSBC with draft Directions specifying and describing the steps to be taken by it for the purposes of securing future compliance with the Undertakings. The CMA has taken into account HSBC's representations on the draft Directions, and now issues these Directions.

**The CMA gives these Directions (the Directions) to HSBC UK BANK PLC (HSBC) with company number 09928412 and registered address at 1 Centenary Square, Birmingham, B1 1HQ under the Small and medium-sized enterprise (SME) banking undertakings 2002**

**1. Commencement and Duration**

- 1.1. The Directions come into force on 30 March 2022.
- 1.2. The Directions continue to remain in force until such time as they are varied or revoked by the CMA. 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 Undertakings, unless stated otherwise.
- 2.2. ‘2014 Agreement’ – refers to the agreement with the CMA signed by HSBC Bank plc agreeing to, among other things, conduct an annual audit of its compliance with the Undertakings.<sup>7</sup>
- 2.3. ‘2014 Directions’ refers to the directions issued to HSBC Bank plc by the CMA on 21 October 2014.
- 2.4. ‘Action Plan’ – for the purpose of these Directions means a plan (including milestones where relevant) approved by the CMA of how the Bank shall deliver the requirements of these Directions and containing the detail required by these Directions. A non-confidential version can be found at Annexe A.
- 2.5. ‘The Bank’ refers to HSBC UK Bank plc. When HSBC Bank plc transferred part of its business to HSBC UK Bank plc on 1 July 2018, the obligations of HSBC Bank plc under the Undertakings and the 2014 Directions were transferred under the terms of HSBC’s 2018 ringfence Transfer Scheme to HSBC UK Bank plc (the ring fenced entity).

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<sup>7</sup> [Link](#) to 2014 Agreement.



- 2.6. 'BCA' – means a business current account as defined in clause 3(1) of the Undertakings.
- 2.7. 'Breaches' refers to the breaches of the Undertakings first notified to the CMA by the Bank on 31 July 2020.
- 2.8. 'CMA' – the Competition and Markets Authority
- 2.9. 'Competent and Experienced' member of Relevant Staff refers to Relevant Staff that have a detailed understanding of the Undertakings such that they are able to assess the competence of other Relevant Staff.
- 2.10. 'Independent Body' - means an auditor with sufficient expertise to carry out the Initial Assurance Engagement and any Subsequent Assurance Engagements appointed in line with appropriate and relevant standards (e.g. ISA, IIA, ISAE etc) and that is not part of the Bank's group/company, and is without conflicts of interest.
- 2.11. 'Initial Assurance Engagement' means the initial assurance engagement<sup>8</sup> under these Directions of the Bank's compliance with the Undertakings as described in clause 8.1 to 8.3.
- 2.12. 'Potential breach' for the purposes of these Directions, means any incident identified which is likely to impact on compliance with the Undertakings.
- 2.13. 'Relevant Staff' – The Bank's staff including but not limited to all staff that interact with SMEs in branch, telephone, email, online, staff responsible for the marketing and sale of business loans and business deposit accounts for SME customers, including account managers, management staff, policy makers, decision makers for relevant processes, all relationship managers for business banking, staff designing processes for guidance or online documentation for SME products, and any relevant internal auditors, and first, second and third line assurance model staff and external contractors who provide assurance on or work with any products in-scope of the Undertakings.

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<sup>8</sup> See the IAASB: [International Standard on Assurance Engagements \(ISAE\) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information | IFAC \(iaasb.org\)](https://www.iaasb.org/).

- 2.14. 'Report' – means the report prepared by the Independent Body following the Initial Assurance Engagement (per clause 9.1) or Subsequent Assurance Engagement.
- 2.15. 'Recommended Steps' – the steps included in the Report and approved by the CMA that the Bank should take following an Initial Assurance Engagement or Subsequent Assurance Engagement.
- 2.16. 'Recommended Timescale' - the timescale for implementing the Recommended Steps as determined by an Independent Body and approved by the CMA.
- 2.17. 'Training' – means the training on compliance with the Undertakings as set out in clauses 5.1 to 5.6.
- 2.18. 'Subsequent Assurance Engagement' – means any further assurance engagement<sup>9</sup> under these Directions of the Bank's compliance with the Undertakings following the Initial Assurance Engagement as described in clause 11.1.
- 2.19. 'Undertakings' - SME Banking Undertakings (Behavioural) 2002. These Undertakings were given to the Secretary of State for Trade and Industry and the Chancellor of the Exchequer under the monopoly provisions of the Fair Trading Act 1973.

### 3. Directions

- 3.1. The Bank is directed:
  - 3.1.1. To take all steps within the Bank's competence reasonably necessary or desirable to achieve and maintain compliance with Clause 17 of the Undertakings, including (but not limited to) the full implementation of the Action Plan by 23 April 2023 and to confirm such implementation in writing to the CMA (in line with Clause 13 of these Directions). The Action Plan includes ensuring that these Directions are put in place (or, in the case of items already in place at the date of these Directions, ensuring that they remain in place).

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<sup>9</sup> See the IAASB: [International Standard on Assurance Engagements \(ISAE\) 3000 Revised, Assurance Engagements Other than Audits or Reviews of Historical Financial Information | IFAC \(iaasb.org\)](https://www.iaasb.org/).

- 3.1.2. To comply, at all levels, either directly or indirectly, internally or publicly, in practice or by means of any internal guideline, manual, procedure, terms and conditions or any other similar information, with Clause 17 of the Undertakings.
- 3.1.3. To ensure that effective governance is in place for testing and monitoring ongoing compliance with Clause 17 of the Undertakings.

#### **4. Annual Reminders and statement of policy to Staff**

- 4.1. The Bank is directed to provide annually to each of its Relevant Staff, a specific and direct written reminder (which covers no issues other than the subject matter of the Undertakings):
  - 4.1.1. of all the Bank's substantive obligations under the Undertakings,
  - 4.1.2. that the Bank considers that any breach of the Undertakings or the Directions to be a serious matter, and that appropriate action will be taken in the event that a member of Relevant Staff fails to comply with the Undertakings; and
  - 4.1.3. that all Relevant Staff must complete the Training on an annual basis.
- 4.2. The Bank is directed to provide the text of this written reminder to the CMA within ten working days of its provision to all of its Relevant Staff.
- 4.3. The first such reminder will be provided by the Bank to all Relevant Staff in accordance with the Action Plan and no later than 12 months after the most recent written reminder issued by the Bank to Relevant Staff under clause 2 of the 2014 Agreement.
- 4.4. The Bank is directed to ensure that all internal manuals, guidance, product/loan documentation and associated training materials for communication to all staff:
  - 4.4.1. explain and/or ensure consistency with the Bank's obligation not to require a customer to open or maintain a business current account with specified business loans and/or business deposit account pursuant to the Undertakings (including exceptions to those requirements);

- 4.4.2. set out the applicable procedures that staff are to follow when dealing with new-to-bank SME customers seeking a loan or business deposit account;
- 4.4.3. clarify that Know Your Customer and anti-money laundering checks are applied to a customer and not the product.

## **5. Staff training on the Undertakings**

- 5.1. The Bank is directed to prepare suitable Training on compliance with the Undertakings. The Training must give all Relevant Staff a detailed description of the nature of the restrictions in the Undertakings and explain in full what these mean for the way BCA and business loan and deposit account products are offered to SMEs, and the reasons for the Undertakings being in place (the promotion of competition).
- 5.2. The Bank is directed to ensure it includes in its Training materials a hyperlink to the Undertakings.
- 5.3. The Bank is directed to ensure that the Competent and Experienced Relevant Staff are involved in overseeing the design and implementation of the Training.
- 5.4. The Bank is directed to ensure that all Relevant Staff must receive the Training in accordance with the Action Plan and no later than 12 months from the date of any training issued during 2022 in compliance with the Bank's prior obligations set out under the 2014 Directions.
- 5.5. Relevant Staff are to receive Training at least once annually.
- 5.6. The Bank is directed to maintain all final versions of materials developed for staff Training, internal staff policy guidance, product loan documentation and relevant manuals on an on-going basis and ensure these are relevant and up to date and fully compliant and are consistent with the Bank's obligations under the Undertakings.

## **6. Assessment of staff knowledge of the Undertakings**

- 6.1. The Bank is directed to ensure that:

- 6.1.1. a formal assessment for Relevant Staff is prepared in conjunction with the Training and must be conducted on an annual basis by all Relevant Staff;
- 6.1.2. the assessment is to be carried out annually by all Relevant Staff within 5 working days of completing the Training under clauses 5.1 to 5.6 above. Should any Relevant Staff fail the formal assessment after two attempts, the Bank is directed to ensure re-training is provided to the staff member;
- 6.1.3. the assessment will involve a minimum of 15 questions, where at least 5 questions representing one third of the scores are allocated for demonstrating a full understanding of the provisions of the Undertakings in abstract. In addition, at least 10 questions representing two thirds of the scores are allocated to demonstrating a full understanding of matters relating to the Undertakings in applied situations relevant to the Bank. These applied scenarios will include a range of breaches uncovered and highlighted by the CMA in its previous annual reports and compliance and enforcement work;
- 6.1.4. Competent and Experienced members of Relevant Staff will be involved in overseeing the marking of the assessment;
- 6.1.5. the pass mark for the assessment will be set no lower than 90% for all Relevant Staff; and
- 6.1.6. electronic copies of all assessments undertaken and the mark assigned will be retained by the Bank for review by an Independent Body for at least 24 months after completion. Once the Bank is no longer required to carry out a Subsequent Assurance Engagement, this requirement to retain assessments will cease.

## **7. Appointment of an Independent Body**

- 7.1. The Bank is directed to appoint an Independent Body to carry out an Initial Assurance Engagement and to monitor the implementation of any Recommended Steps that arise from this Initial Assurance Engagement.

- 7.2. The appointment of an Independent Body will be subject to the approval of the CMA, which will be sought in writing by the Bank explaining why its proposed choice of Independent Body is independent of the Bank and set out its competence in the relevant fields.
- 7.3. The Bank is directed to ensure a recommendation of an Independent Body has been made in accordance with the Action Plan and no later than within two calendar months of these Directions being issued. The Independent Body is to be appointed within 10 working days of the CMA confirming in writing that a proposed Independent Body is appropriate.

## **8. Initial Assurance Engagement of all compliance with the Undertakings**

- 8.1. The Bank is directed to ensure the appointed Independent Body carries out an Initial Assurance Engagement of all matters in the Bank relating both directly and indirectly to the compliance of the Bank with the Undertakings and these Directions. The Bank is directed to ensure the Independent Body's Initial Assurance Engagement will:
  - 8.1.1. have its scope agreed in advance between the Independent Body and the CMA, following consultation between the Bank and the Independent Body;
  - 8.1.2. examine in detail all matters of policy, procedure, staff training, staff assessment and staff knowledge of the Undertakings and all other areas (including IT and computer systems) and actions both directly and indirectly relevant to determine whether these policies, procedures, training and staff actions are sufficient to prevent the risk of future breaches of the Undertakings, or whether additional steps need to be taken to reasonably prevent future breaches;
  - 8.1.3. carry out, on the basis of appropriate audit standards, compliance checking of relevant case files, notes on the Bank's system for new BCAs loans and deposit accounts opened by SMEs from the date of these Directions. The Bank is directed to make relevant information sought by the Independent Body available to the Independent Body to allow it to assess compliance with the Undertakings; and

8.1.4. be in line with appropriate and relevant standards (e.g. ISA, IIA, ISAE etc).

8.2. The Bank is directed to provide all necessary access to its staff, internal processes, procedures, documentation, computer systems, including providing information and assistance in all relevant matters to allow the Independent Body to determine the necessary scope of its activities, and to carry out all work it deems appropriate to fulfil the Initial Assurance Engagement.

8.3. The Bank is directed to use its best endeavours to ensure that the Independent Body begins the Initial Assurance Engagement in accordance with the Action Plan and no later than one calendar month of the Independent Body having been appointed by the Bank.

*The Independent Body's opinion*

8.4. The Bank is directed to ensure that the Independent Body's terms of appointment include that it immediately notify the CMA in writing if it considers that it is no longer in a position to effectively carry out the specified functions.

8.5. The Independent Body should give its reasons for its opinion, including any supporting evidence available.

*Independent Body's remuneration*

8.6. The Bank is directed to remunerate and reimburse the Independent Body for all reasonable costs properly incurred in accordance with the terms and conditions of its appointment, and in such a way so as not to impede the Independent Body's independence or ability to effectively and properly carry out its functions.

**9. Outcomes of the Initial Assurance Engagement**

9.1. The Bank is directed to ensure the Independent Body will prepare a Report to be provided directly to the CMA on the adequacy of the Bank's procedures, processes and training and all other relevant matters to deliver compliance with the Undertakings. The Report will need to be prepared in accordance with the timings set out in the Action Plan.

- 9.2. Where processes, procedures and training are not considered sufficient to deliver full compliance with the Undertakings in the future, the Bank is directed to ensure the Independent Body will include in the Report to the CMA, the Recommended Steps for the Bank to implement to improve its compliance processes and procedures.
- 9.3. The Bank is directed to ensure the Independent Body will also include in the Report an appropriate Recommended Timescale for the Bank to implement these improvements, taking into account the benefit to customers and competition from their implementation and what could reasonably be achieved by the Bank using its best endeavours.
- 9.4. The Bank shall be provided with a reasonable opportunity to review the Report and produce a written response to the Report to be provided by the Independent Body to the CMA alongside the Report. The CMA will review the Report and any response produced by the Bank and where content, will provide its approval that the Recommended Steps are to be implemented by the Bank in accordance with the Recommended Timescale. The CMA may amend the Recommended Steps and Recommended Timescale where appropriate and reasonable. The Bank will be provided with a reasonable opportunity to comment on any amended Recommended Steps and Recommended Timescales before they are finalised.

## **10. Implementation of improvements and oversight by the Independent Body**

- 10.1. The Bank is directed to take the Recommended Steps within the Recommended Timescale in the Report, as approved or amended by the CMA pursuant to clause 9.4. The Bank shall incorporate the Recommended Steps into its Action Plan in accordance with the Recommended Timescale.
- 10.2. The Bank is directed to give the Independent Body all necessary access in order that the Independent Body can monitor the implementation of the Recommended Steps within the Recommended Timescale.
- 10.3. The Independent Body will report directly to the CMA and the Bank (simultaneously) on its oversight on the progress in relation to the implementation of any improvements set out in its Report on a monthly basis. In this report, it will raise any concerns regarding the implementation and timescales with both the CMA and the Bank.



## **11. Further assurance engagements by an Independent Body**

- 11.1. Following the Initial Assurance Engagement and if recommended by the initial Independent Body, the Bank is directed to appoint an Independent Body to carry out a further Subsequent Assurance Engagement of its compliance with the Undertakings and these Directions and to monitor the implementation of any Recommended Steps that may emerge from this Subsequent Assurance Engagement.
- 11.2. The timing of the Subsequent Assurance Engagement is to be determined by the Independent Body in the Report produced for the Initial Assurance Engagement. If approved by the CMA, the Bank is required to incorporate the Subsequent Assurance Engagement into the Action Plan.
- 11.3. A Subsequent Assurance Engagement is subject to the following requirements:
  - 11.3.1. it is to be carried out by an Independent Body but not necessarily the same Independent Body that carried out the Initial Assurance Engagement and the Bank may propose a different Independent Body for CMA approval;
  - 11.3.2. the scope is to be agreed by the Independent Body appointed for a Subsequent Assurance Engagement and the CMA following consultation with the Bank, and covering processes, policies, procedures, staff training and assessment of staff knowledge of the Undertakings;
  - 11.3.3. it must cover any new products or services that have been made available to SMEs since the Initial Assurance Engagement was completed; and
  - 11.3.4. it must cover the adequacy of all new processes and procedures introduced in response to these Directions and following previous Assurance Engagements.
- 11.4. The provisions in clauses 8.1.1 to 8.1.4, 8.2 to 8.6 and 9.1 to 9.4 inclusive apply to any Subsequent Assurance Engagement as they do to the Initial Assurance Engagement.
- 11.5. The reporting requirements and the requirement to implement the Recommended Steps in clauses 10.1 to 10.3 inclusive apply to any

Subsequent Assurance Engagement as they do to the Initial Assurance Engagement, save that the Independent Body may not include a further Subsequent Assurance Engagement as a Recommended Step in any further Subsequent Assurance Engagement Report if the Independent Body and the CMA conclude that the Recommended Steps included in the Initial Assurance Engagement or any Subsequent Assurance Engagement (as applicable) have been implemented in the Recommended Timescale. If such implementation has taken place, the requirements of clause 15 of these Directions shall apply.

- 11.6. Should the Recommended Steps of a Subsequent Assurance Engagement include a further Subsequent Assurance Engagement, an Independent Body should be appointed to carry out such a further Subsequent Assurance Engagement in accordance with clauses 11.2 to 11.6, unless the Bank is instructed otherwise by the CMA.
- 11.7. The Bank shall not be required to conduct a compliance review under clause 15.1 of these Directions (or an audit under the 2014 Agreement) in any year where it has appointed an Independent Body to conduct the Initial Assurance Engagement or any Subsequent Assurance Engagement, and where such an Initial Assurance Engagement or Subsequent Assurance Engagement is carried out and reported on fully within that year.

## **12. Communication to SMEs**

- 12.1. Within 12 months of the Directions coming into effect, the Bank is directed to communicate to all its current SME customers that hold a BCA to inform them of the existence of the full range of obligations in the Undertakings and highlighting the CMA's key messaging<sup>10</sup>.
- 12.2. The Bank is directed to ensure that the proposed wording of the communications to SMEs in clause 12.1 including the Bank's proposed method of communication to be used will be submitted in advance by the Bank to the CMA for approval prior to the Bank contacting SME customers.

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<sup>10</sup> The CMA set out some key messages that the eight banks should use when communicating with SMEs on complying with the Undertakings. The key messages are set out in paragraph 3.10 of the [SME banking 2002 behavioural undertakings: reports on compliance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

- 12.3. The Bank is further directed to contact any SME customer that has been newly identified (through the Initial Assurance Engagement, Subsequent Assurance Engagement or any Annual Review under clause 1 of the 2014 Agreement) as affected by a failure to comply with Clause 17 of the Undertakings, either at present or at any point in the past, in order to communicate to them that the SME customer is under no requirement to maintain its BCA with the Bank in order to retain a loan or business deposit account that fall within the scope of the Undertakings, save where exemptions apply.

**13. Action Plan to end the current breach(es) and carry out recommended actions**

- 13.1. The Action Plan is to contain timings for when the requirements in clauses 4.1 to 12.3 are to be completed.
- 13.2. The Bank is directed to complete the actions as set out in its Action Plan as agreed with the CMA.
- 13.3. The Bank is directed to amend its Action Plan to take account of the Recommended Steps and Recommended Timescale arising from the Independent Body's Initial Assurance Engagement and any Subsequent Assurance Engagements. Any such proposed amendments will be submitted to the CMA for approval in advance of changes taking place within the Bank.
- 13.4. Should the Bank seek amendments to the Action Plan, it may write to the CMA, setting out its reasoning and all appropriate evidence to substantiate its views, and the CMA will determine whether it is appropriate to vary either the Action Plan or these Directions, taking into account the impact on customers, competition in the market and the impact on the Bank among other relevant factors.
- 13.5. The Bank is directed to confirm to the CMA in writing, when it has completed each action in the Action Plan and provide a quarterly written update for the CMA on its actions in relation to these Directions until all actions required in these Directions and Action Plan have been fully implemented and completed.

- 13.6. A non-confidential summary of how these actions are to be completed, with timescales for completion, is contained in the Action Plan, at Annex A.

#### **14. Reporting obligations on the Bank and its staff**

- 14.1. The Bank is directed to:
- 14.1.1. inform all Relevant Staff to report all instances of breaches and Potential breaches of the Undertakings within the Bank immediately on identification;
  - 14.1.2. ensure that its processes and procedures facilitate such reporting and that they do not prevent or limit the ability of staff to report such breaches or Potential breaches;
  - 14.1.3. to the extent not already in place, put in place a comprehensive process for escalating reports of breaches and Potential breaches of the Undertakings swiftly and without any delay within the Bank; and
  - 14.1.4. report all breaches of the Undertakings to the CMA within 14 calendar days of the breach being identified.
- 14.2. The requirements in clauses 14.1.1 to 14.1.4 are to be implemented within the timeframe set out in the Action Plan.

#### **15. Monitoring and Compliance and provision of information**

- 15.1. The Bank is required to conduct annually a compliance review of the Bank's compliance with Clause 17 of the Undertakings, specifically including the following elements:
- 15.1.1. the policies, practices and procedures (including those related to training) which the Bank has in place to secure compliance with Clause 17 of the Undertakings;
  - 15.1.2. the awareness of Relevant Staff with the obligations created by Clause 17 of the Undertakings; and
  - 15.1.3. other evidence suggesting the presence or absence of actual or suspected non-compliance with Clause 17 of the Undertakings

(including a file review of new-to-bank SME loans and business deposit accounts, a review of customer complaint data or data available from internal escalation processes for internal concerns)

- 15.2. Such a compliance review must be conducted, outside the area of the Bank which is directly responsible for the provision of banking services to SMEs, by the internal audit function of the Bank, in accordance with the Code of Professional Conduct of the Chartered Institute of Internal Auditors.
- 15.3. The Bank is directed to provide all information required by these Directions when requested in writing by the CMA within reasonable timescales that will be set out by the CMA.

#### **16. Applicability of the 2014 Directions**

- 16.1. These Directions supersede the 2014 Directions in full and consequently the 2014 Directions will be revoked subsequently by the CMA.
- 16.2. All future annual compliance reporting under clause 15.1, if applicable pursuant to the terms of these Directions should report on compliance with these Directions.

Adam Land  
Senior Director  
Signed by authority of the CMA Board  
30 March 2022

Annex A: [HSBC's non-confidential Action Plan](#)