

SME banking behavioural undertakings of 2002

CMA report on compliance
Banks' audit 2015

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The Competition and Markets Authority has excluded from this published version of the provisional findings report information which the inquiry group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂].

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1. Introduction

The behavioural undertakings

- 1.1 In 2002, the major UK banks agreed that, except in specific circumstances, they would no longer require a small and medium-sized enterprise (SME) customer open or maintain a business current account (BCA) in order to get a business loan. This practice is commonly known as ‘bundling’ and was prevented by the behavioural undertakings given by the SME banks to the Secretary of State for Trade and Industry and the Chancellor of the Exchequer (the Undertakings).¹
- 1.2 The eight banks currently subject to the Undertakings are: AIB Group (UK) plc (First Trust), Bank of Ireland, Barclays Bank plc (Barclays); Clydesdale Bank plc (Clydesdale); HSBC Bank plc (HSBC), Lloyds TSB Bank plc (now part of Lloyds Banking Group and known as Lloyds in this report), Northern Bank Limited (trading as Danske Bank) and the Royal Bank of Scotland (RBS) which includes Ulster Bank Limited in Northern Ireland.
- 1.3 The bundling undertakings are set out in Clauses 17 to 19 of the Undertakings. These prohibited the banks from compelling a customer to open or maintain a BCA as a condition of granting, maintaining or servicing a loan or deposit account. The banks may, however, offer incentives (eg lower charges or interest rates) to SMEs to open a BCA alongside their loan or deposit account, and they may offer integrated products (provided that the integrated products are also offered separately).²

The 2014 Agreement³

- 1.4 On 11 March 2014, the Office of Fair Trading (OFT) agreed a package of measures (known as the 2014 Agreement) with all eight banks which are subject to the Undertakings.
- 1.5 The 2014 Agreement sought to achieve two main objectives:
 - to improve awareness of the bundling undertakings among relevant staff and

¹ See the [SME 2002 undertakings \(behavioural\)](#).

² The bundling undertakings prohibit the tying of a BCA and a loan or deposit account, but does not prohibit the provision of integrated products (ie the sale of several products as one combined product).

³ See Appendix 2.

- to assist the CMA in assessing overall levels of compliance with the bundling undertakings on an ongoing basis.

1.6 As part of the 2014 Agreement, the banks agreed to undertake a detailed annual audit of their systems and procedures for ensuring compliance with the bundling undertakings.

CMA reports on compliance

1.7 Following the 2014 Agreement, the OFT and then the Competition and Markets Authority (CMA) worked with the banks to produce a set of high-level principles to guide the focus and manner of their internal auditors' investigations. The CMA reviewed the banks' 2014 audit reports and reported on its findings in its report on compliance of 22 October 2014.⁴

1.8 Following an investigation in 2014, the CMA concluded that HSBC and First Trust Bank had breached the bundling undertakings. As a result, on 21 October 2014 the CMA gave Directions⁵ to these two banks to improve compliance with the bundling undertakings. The CMA has concluded that the issues giving rise to the breaches have been resolved satisfactorily.

1.9 This current report concerns the second round of audit reports submitted by relevant banks in 2015. From 2015, the CMA aligned the reporting period for annual audit reports to cover the period 1 July to 30 June annually. The annual submission date will be the last working day of July.

1.10 In accordance with the 2014 Agreement, the eight banks provided audit reports to the CMA by 31 July 2015. The CMA has reviewed each report and sought clarification from the banks where necessary. The CMA completed its detailed follow up and received information in full from all relevant banks in March 2016.

1.11 The CMA confirms that all the banks have met the provisions of the 2014 Agreement and have complied with the bundling undertakings.

1.12 All eight banks have taken steps in certain aspects to improve their systems and procedures for ensuring compliance with their obligations under the bundling undertakings.

⁴ CMA (2014), [SME banking 2002 behavioural undertakings: report on compliance](#).

⁵ CMA (2014), [SME banking 2002 behavioural undertakings: directions to banks](#).

2. Summary of audit report findings

- 2.1 For the purposes of the 2015 audit review the CMA has considered how well all eight banks have met the 2014 Agreement.
- 2.2 In the case of HSBC and First Trust Bank, the CMA has also considered compliance with the Directions issued to these banks and the supplementary information required to be provided by those directions.
- 2.3 For each bank, we have considered each section of the 2014 Agreement against the information provided by the banks as follows:
- procedures, practices and policies in place to promote compliance;
 - training for Relevant Staff⁶ – the level of staff awareness and understanding of the bundling undertakings and any assessment of that training (by means of direct testing and/or mystery shopping) and any incidences of non-compliance with the bundling undertakings;
 - loan application cases – banks’ reviews of their new loan applications and whether there have been any incidences of non-compliance; and
 - complaints data – banks’ reviews of SME banking-related customer complaints and whether there have been any incidences of non-compliance.
- 2.4 The CMA confirms that all eight banks have met the provisions of the 2014 Agreement and have complied with the bundling undertakings.
- 2.5 In the case of HSBC and First Trust, the CMA has also considered compliance with all the requirements of the Directions issued to these two banks. The main elements include:
- the policies, practices and procedures which a bank has in place to secure compliance with Clause 17 of the Undertakings;
 - implementation and maintenance of a staff training programme and ensuring staff awareness of the obligations created by Clause 17 of the Undertakings; and
 - other evidence suggesting the presence or absence of actual or suspected non-compliance with Clause 17 of the Undertakings (including a file review

⁶ Relevant staff as defined in the CMA’s 2014 Agreement: ‘Bank’s staff who are responsible for the marketing and sale of business loans and business deposit accounts’.

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).

HSBC

- 2.6 In addition to complying with the 2014 Agreement, the CMA considers that HSBC has met the requirements of the Directions.
- 2.7 HSBC reported that it has adequate and appropriate policies, practices and procedures to secure compliance with the bundling undertakings.
- 2.8 HSBC has taken steps to meet the requirements of the Directions and the 2014 Agreement by ensuring that it continues to update its procedures and internal information guides. For example, the bundling disclosure statement was included with the Internal Product Information Guides for its products. Following the testing of the bank's IT solution to further automate the drawdown of stand-alone loans, HSBC reported that the live pilot was successful. The CMA was updated at different stages and through to the successful implementation of this change.
- 2.9 In relation to staff awareness, HSBC carried out [redacted] mystery shopping calls and [redacted] mystery shopping branch visits to assess guidance and advice given to customers in response to bundling queries. The initial results from the mystery shopping calls prompted HSBC to carry out further targeted training of business telephone banking staff in respect of sales of business deposit accounts only, resulting in [redacted] responses from a further sample of [redacted] calls being compliant for questions on deposit accounts.
- 2.10 HSBC reviewed its mandatory on-line e-learning course for relevant staff, its content and test scores. It was reported that the course covered all key aspects of the obligations of the bundling undertakings and [redacted] of relevant staff had completed the learning and passed the assessment. The remaining [redacted] of relevant staff who failed the assessment passed on the second attempt.
- 2.11 HSBC reviewed a sample of [redacted] cases where a BCA was opened the same month as a small business loan and it reported that all of the cases had a valid reason for opening the current account and the customer has confirmed they wanted the current account. HSBC reported that there was no evidence of product bundling.

- 2.12 With respect to its complaints, HSBC investigated a sample of [redacted] complaints from customers. It reported that no complaints relating to the bundling undertakings were identified.

First Trust Bank

- 2.13 In addition to complying with the 2014 Agreement, the CMA considers that First Trust has met the requirements of the Directions. The CMA has not identified any concerns about compliance with the bundling undertakings.
- 2.14 The CMA received written confirmation from First Trust that it had acted fully on outstanding recommendations contained as part of the Group's Internal 2014 Audit by December 2014.
- 2.15 First Trust confirmed that it undertook a review in 2015 of its policies and procedures to verify compliance with the bundling undertakings and found no evidence of instances of non-compliance.
- 2.16 Training was provided in the form of a PowerPoint presentation to all relevant staff. Relevant staff then provided written confirmation that they had understood the training. Following the training in 2015, First Trust reported that staff understanding was tested through a series of interviews with a random sample of [redacted] relevant staff. All [redacted] staff (chosen independently and randomly from staff listings of business areas) were interviewed and found to have a good understanding of the bundling undertakings. First Trust reviewed its business monitoring process and reported this to be effective. On a quarterly basis a review of a sample of [redacted] cases of new business loans / deposits held with a BCA. No instances of non-compliance have been identified.
- 2.17 First Trust has a specific category for complaints relating to product bundling and information is extracted from the complaints system. No complaints relating to the bundling undertakings were identified through First Trust's review of complaints from its complaints management system.

Barclays Bank

- 2.18 A review by Barclays of its policies, guidance and procedures (including those relating to training) concluded that its product design and distribution processes, policies and procedures comply with the requirements of the undertakings; and staff responsible for the marketing and sale of business loans and business deposit accounts are not incentivised to act, and there is no indication that they have acted, in a way that is inconsistent with the requirements of the bundling undertakings.

- 2.19 Barclays reported that of the [X] relevant staff interviewed on their knowledge and awareness [X] were assessed as 'satisfactory' as they were able to demonstrate adequately an understanding of the bundling undertakings. However, [X] of staff were 'unsatisfactory' in interviews, a slight improvement on 2014 results of [X] of staff scoring 'unsatisfactory'. Following its 2015 audit, Barclays reported that training was rolled out to additional staff. Mandatory training included [X] has been completed by its Relevant Staff in 2015 and will be undertaken annually.
- 2.20 Barclays reported that it sent an annual reminder to its staff in October 2014 and that from 2015 would be incorporating the annual reminder into its annual training. Given the CMA preference for the annual reminder to be a stand-alone communication to staff rather than having it incorporated into the annual training, Barclays anticipates being able to provide the annual reminder to relevant staff separately from the training from 2016.
- 2.21 A review of a sample of [X] sanctioned loan facilities from new SME accounts did not identify any instances of 'Product Bundling' or 'Tied Purchases' / 'Product Bundling'.
- 2.22 Barclays reviewed its complaints for the period July 2014 – May 2015 via automated auditing and manual review. It reported that it found no complaints that alleged 'product bundling' or 'tied purchases'.

Bank of Ireland

- 2.23 From the testing undertaken, Bank of Ireland reported it did not find any evidence to indicate product bundling, having interviewed a sample of staff to test their understanding of the bundling undertakings; reviewed SME product terms and conditions; reviewed loan procedures; tested loan and BCA documentation for a sample of [X] customers; and reviewed all SME-related complaints to assess whether any related specifically to product bundling.
- 2.24 No staff interviewed in 2014 were interviewed for the 2015 audit. The sample was divided between the two regions of Northern Ireland. Over the two audits in 2014 and 2015, [X] of the population of Relationship Managers were interviewed.
- 2.25 In relation to case reviews, Bank of Ireland tested the loan and BCA documentation for a sample of [X] SME customers out of a population of [X] where a BCA was opened within three months before the loan or one month after, to verify that there was no indication of product bundling.

- 2.26 With respect to its complaints records, Bank of Ireland reported that its process for recording complaints was revised in 2015, to identify clearly any complaint relating to potential product bundling. It also confirmed that the bank had not received any complaints in relation to product bundling in 2015.
- 2.27 Bank of Ireland has confirmed that both recommendations raised in the 2014 audit report have now been closed. Additionally, Bank of Ireland made four recommendations in its 2015 report on the procedure for improving the preparation and quality of extracting monthly product bundling data and will be reporting on their progress in 2016.

Clydesdale Bank

- 2.28 Clydesdale reported that its audit review did not find any evidence of bundling.
- 2.29 Clydesdale reported that recommendations to improve practices from the 2014 Audit Review and the CMA's Report on Compliance 2014, had been implemented successfully with the exception of one point. The outstanding point was to meet CMA best practice guidelines it is recommended that a specific category is created to capture any bundling prohibition related complaints. Clydesdale confirmed that the planned upgrade to the complaints database, including the creation of a new sub-category to capture complaints relating to product bundling had to be postponed in December 2015 due to technical issues. Clydesdale confirmed that a new Complaints Handling System was successfully implemented in May 2016 which includes the creation of a root cause analysis sub-category to capture complaints relating to product bundling.
- 2.30 [X] members of staff were found to have no knowledge of the Undertakings and believed that the bank should not or would not progress if split banking was involved. However, no incidences of product bundling were identified. The [X] members were located in the Business Direct channel where the quarterly certification was absent from the Manager's Planning Diary. The Business Direct Manager's Planning Diary was updated and Clydesdale confirmed that the [X] members of staff completed the training certification and will be included in the testing for 2016's audit.
- 2.31 Clydesdale reported that its quarterly staff training certification has been implemented. This will be completed by all staff involved in dealing with business customers. Staff must sign the certification to confirm they have read and understood their responsibilities in relation to the bundling undertakings. The Business Direct Manager's Planning Diary has been updated to include this staff training certification and trigger its completion.

- 2.32 Clydesdale reported that the training is re-enforced through the Annual Reminder Statement directed at all staff involved in dealing with business customers; and the Credit Memorandum template (see further in the following paragraph) now used by all staff involved in providing customer loan facilities which incorporates specific reference to the bundling undertakings.
- 2.33 Following the 2014 audit, a template was introduced in September 2014 which requires completion by Relationship Managers to record the reason for a customer choosing to hold their transactional current accounts or deposit accounts with the Bank. The template states that the bank cannot directly or indirectly require the opening or maintaining of a business account (except feeder account) or deposit account as a condition of granting or maintaining a business loan.
- 2.34 Clydesdale reviewed a sample of lending case files and reported no incidence of product bundling. Two instances were noted where the expectation to transfer a transactional current account to Clydesdale Bank was proposed as a condition of providing a loan facility. This was withdrawn by the next level approver, indicating the effectiveness of the training for centrally-based credit sanctioning staff.

Danske Bank

- 2.35 Danske Bank reported that its monitoring of compliance highlighted no issues or breaches of the bundling undertakings during the reporting period.
- 2.36 Internal Audit performed staff awareness testing through interviews with [redacted] of the [redacted] Business Managers. No issues or breaches were identified from these reviews. Monitoring controls were introduced following the Group Internal Audit recommendation in the 2014 review. Monitoring controls on the bank's policies, practices and procedures cover adherence with the bundling undertakings. A review of Danske Bank's monitoring and oversight framework was carried out to establish if adequate checks were made in identifying any breaches of the bundling undertakings.
- 2.37 Danske Bank has an on-line 'Competition Behaviour' training for 2015 and a 'Competition Law Guide'. There is also a specific business procedure 'SME – Competition Commission Undertakings.' This is available to staff via the Danske Bank Intranet (Portal) and is compulsory for all staff to read on an annual basis including the Business Manager population who deal with the SME client base. A reminder issued annually through the Planning Diary since inception in 2012.

- 2.38 Danske Bank will include confirmation on the completion of its on-line Competition Behaviour training for 2015 in the scope of its 2016 review.
- 2.39 Danske Bank undertook a case review of a sample testing of [X] new loans and deposits opened in the reporting period (out of a loan population of [X] loan applications). Danske Bank reported that no issues in relation to compliance with bundling requirements have been identified and there was no evidence of bundling as a 'Condition of Sanction'. Danske Bank undertook a case review of a sample testing of [X] new loans and deposits opened in the reporting period. Danske Bank reported that no issues in relation to compliance with bundling requirements have been identified and there was no evidence of bundling as a 'Condition of Sanction'.
- 2.40 Danske Bank's review of Business Banking customer complaints received in the reporting period also did not identify any actual or suspected non-compliance with the bundling undertakings.

Lloyds Banking Group

- 2.41 Lloyds' Internal Audit function performed its 2015 audit to assess the bank's compliance with the behavioural undertakings. The audit did not identify evidence of non-compliance with these undertakings. Nevertheless, some enhancements were identified which Lloyds management agreed to implement (eg guidance provided to staff on servicing accounts and to the oversight of 'Conditions of Sanction' recorded in SME Credit Applications). Lloyds confirmed that these were completed.
- 2.42 [X] of Relationship Managers and Credit Sanction Managers completed the annual mandatory training which contained relevant training materials complying with the bundling undertakings. Of the [X] relevant staff that were interviewed across geographical locations and channels, [X] were able to confirm that LBG does not allow the bundling of current accounts with loan or deposit accounts and [X] remembered the training and annual reminder.
- 2.43 Lloyds tested all of its Credit Applications identified as being switcher-related for the key words 'banking', 'switch', 'transfer', and 'main'. Lloyds reported that while this did not indicate any non-compliant SME Credit Application Forms, the oversight of 'Conditions of Sanction' recorded in the forms required some improvement (to the quality assurance sampling of credit applications) to provide assurance of on-going compliance with the bundling undertakings. A further detailed sample testing of [X] out of the [X] sanctioned credit applications did not reveal evidence of non-compliance with the bundling undertakings. [X] stated elsewhere within the Credit Application that the BCA was not a condition of sanction, [X] fall under the definition of a Commercial

Mortgage, Credit Card, Overdraft and/or Debenture – therefore outside the scope of the behavioural undertakings. For the remaining one case, the relevant colleague interviewed advised that it was the customer’s request to transfer their overall banking relationship.

- 2.44 Lloyds tested all complaints for the period 1 April 2014 – 31 March 2015 and identified [redacted] possible matches to bundling through key word searches – but further investigation revealed that there was no relation to bundling. It then did a detailed review of [redacted] complaints selected at random and did not identify any instances of non-compliance.
- 2.45 However, a complaint had been received which had indicated a potential non-compliance issue with the bundling undertakings. In the event, the customer decided not to proceed with the loan application. A full review of the complaint concluded that the colleague involved was not able to demonstrate compliance with the bundling undertakings and subsequently received additional training on them. Internal Auditors concluded that this was not systemic since its testing of complaints did not highlight any other issues.

Royal Bank of Scotland

- 2.46 RBS identified some areas where agreed management action will further enhance the Bank’s compliance with the bundling undertakings. These areas relate to clarifying the description of product terms and conditions and marketing material for [redacted] low volume products; rollout of specific bundling undertakings training; and enhanced monitoring to identify potential non-compliance. This training was implemented in July 2015.
- 2.47 While no specific bundling undertakings training was available to the [redacted] relevant staff in 2014, RBS reported that all of a sample of [redacted] relevant staff interviewed demonstrated a sufficient understanding of the bundling undertakings (gleaned from bank-wide communications). An e-learning module specific to the bundling undertakings has been developed by RBS: it went live in July 2015, was rolled out to all relevant staff and formed part of the ‘New Joiner’ training for new staff or staff moving to a role that requires them to undergo this training. The completion of allocated learning is mandatory for all staff. Staff not completing their training will be reminded to do so by their line manager. The training will be repeated annually.
- 2.48 RBS reported that its review of all policies and procedures relating to sales practices for SME lending and deposit products revealed that there was inconsistency in the internal document used by staff and the wording used in the customer loan document. The internal staff document was amended July 2015. RBS also reviewed its SME product information to establish whether

there is any wording to indicate that customers are directly or indirectly required to open or maintain their BCA as a consequence of taking out a loan or opening a deposit account. One issue was identified on the wording of a product's factsheet. RBS considered the wording for the product could create ambiguity over whether it should be interpreted as a deposit account. The wording was amended in Q3 2015.

- 2.49 RBS launched a new product review process whereby new SME products are assessed for compliance with the bundling undertakings before being approved for sale.
- 2.50 RBS did not perform any review of relevant data on SME loans and deposits, in particular the share of such loans and deposits not associated with a BCA. RBS also notes that loan applications are keyed into its system (as opposed filling in a form) and therefore there is no clear paperwork for amendment. RBS has included warnings and guidance regarding the bundling undertakings on its relevant products guidance pages on its staff intranet.
- 2.51 A sample of [X] complaints out of a total of [X] complaints from SME customers were reviewed by RBS to determine whether there were any instances of non-compliance. No complaints from the sample reviewed specifically related to the bundling undertakings. However, two complaints were identified where customers complained about service charges being applied to perceived feeder accounts. RBS introduced a specific escalation process for complaints relating to the bundling undertakings for all businesses under RBS and NatWest brands since Q1 2015. Before this all complaints were subject to a standard escalation process.

3. Best practice for ensuring compliance

Best practice

- 3.1 The CMA's best practice points from its 2014 Report continue to be relevant to ensuring compliance with the bundling undertaking and form part of the Checklist for the Agreement (see Appendix 1).
- 3.2 The CMA would like to see high standards maintained (or improvements made to meet those standards) in the three areas below:
- Better guidance and education for credit-sanctioning staff on the bundling prohibition to ensure that communications with frontline relationship managers and their SME customers are compliant with the bundling prohibition.
 - Revisions to standard paperwork drawn up for loan applications to ensure that relevant staff consider the bundling prohibition when dealing with new-to-bank SME customers (while also assisting bank's ability to monitor compliance).
 - Changes to categories used in bank's internal complaints records to allow for better monitoring of compliance with the bundling prohibition.
- 3.3 In assessing the 2015 audit reports and having regard to the above points, the CMA focused on the following three main areas when reviewing practice across the banks and looking to possible improvements and best practice:
- staff awareness and training;
 - reviews of credit application case files; and
 - reviews of complaints

Staff training

Awareness and testing

- 3.4 The CMA believes that ensuring a high level of staff awareness is key to complying with the bundling undertakings. All banks have reported that they have staff training on the requirements of the bundling undertakings.

- 3.5 Across the banks there are variations as to the level of formal training and ways in which training is delivered to staff and the frequency varies between annual and quarterly training. Some banks provide on-line based training while others provide reading material/training packs and one bank provides annual training via a PowerPoint presentation for relevant staff.
- 3.6 Banks should ensure mechanisms are in place so that all relevant staff receive staff training on bundling undertakings, for example, written confirmation that relevant staff have attended or read and understood training materials, which some banks have already in place. A number of banks have formal assessment and testing of the awareness training whilst others do not.
- 3.7 The CMA would be keen to see banks test relevant staff's understanding and awareness as part of their training programmes. A training programme should be provided to all relevant staff and assessed and evaluated properly for effectiveness and prevention of non-compliance.
- 3.8 The CMA also considers that mystery shopping exercises used for branch visits or telephone calls is an effective and robust way of testing compliance.
- 3.9 In cases where it has been identified by the banks' audits that staff have failed in tests or incidences occurred where staff have given incorrect information, banks have provided staff with additional training or repeated the training.
- 3.10 For reporting/ explaining levels of compliance in audit reports, Banks reported with terms such as, 'satisfactory', 'competently', 'sufficiently' or 'acceptable knowledge'. The CMA would find it helpful if banks would offer quantitative evidence, for example providing results in figures of the total relevant staff population, the number of staff assessed/ tested/ interviewed and threshold for each category.
- 3.11 In all cases, please confirm the methodology used for sampling, ie geographic, teams and business areas.

Annual reminders

- 3.12 In accordance with section 2 of the 2014 Agreement, a copy of the Annual Reminder should be submitted to the CMA within ten working days following its provision to Relevant Staff. The CMA requested from some banks the copies of Annual Reminders as they had not been provided initially. Considering this issue on a practical level, the CMA would like to receive the Annual Reminder at the time when banks submits their audit report. This applies to all banks and future reporting rounds.

- 3.13 Annual Reminders to Relevant Staff should also be a stand-alone communication to ensure prominence of the bundling prohibition. Banks used different methods of providing the Annual Reminder to staff. This varied from emails directly to each relevant staff and confirmation from those individuals that they have read and understood the Annual Reminder communication, to putting the Annual Reminder onto the bank's intranet pages. For HSBC and First Trust the directions require both to provide specific and direct written reminders of the bundling undertakings annually to each of its Relevant Staff. Both HSBC and First Trust reported that they met the requirement.
- 3.14 Overall, the CMA notes that some improvements to staff training have been demonstrated by some of the banks since the previous audit review. These improvements include identifying and rolling out specific bundling undertakings training to an area of the business that did not initially have the training and launching a new e-learning module specific to bundling undertakings training.
- 3.15 The CMA expects to see banks continue to review and ensure compliance through enhancing its processes and procedures. The CMA would be interested to hear from any banks on any new enhancements and improvements made to staff training and awareness of the bundling undertakings for meeting compliance and awareness levels among relevant staff.

Loan applications

- 3.16 In reviewing loan application and new BCA account cases, the sample sizes used by banks varied between 15 and over 200 new cases to identify any potential cases of bundling. Banks adopted different methodologies for selecting cases for review, for example, a sample of 10 SME customers, out of a total sample population of 201 where a BCA was opened within three months before the loan or one month after or all new bank connections in the reporting period 1 July 2014 – 30 June 2015 were reviewed. Other methods include sample testing determined by sampling methodologies.
- 3.17 The CMA would encourage banks to review and maintain internal guidance and staff communication on loan applications used to promote compliance with the bundling undertakings. An example of an improvement made by bank is to amend its recording system BCA conditions in credit applications so that it is made clear that there is no product bundling.

Complaints

- 3.18 Banks adopted differing approaches to monitoring their complaints for potential product bundling issues. In 2015, the methods for identifying potential product bundling issues ranged from a review of the full population of SME-related complaints to assess for product bundling using management information to extract from the bank's complaints system and then reviewing a sample size of complaints during the reporting period; using a specific category for complaints relating to bundling; to developing a specific category to capture any complaints relating to the bundling undertakings.
- 3.19 When categorising complaints, some banks used key words to search their systems to extract complaints. The type of key words used for searches included 'Main', 'Banking', 'Switch', and 'Transfer'. There is a risk of omitting complaints relating to bundling if the bank's existing key words do not capture certain bundling complaints for the in-scope review. However, for the banks with a complaints category or code where the case handler can identify when a complaint relate to bundling searching on key words is not needed for the process of identifying any complaints on product bundling.
- 3.20 Some of the banks have already moved to having a specific complaints category and the CMA considers this to be best practice in capturing all complaints relating to product bundling.
- 3.21 The sample sizes used by banks for the review of complaints ranged from 15 complaints to the full population. The CMA expects banks to provide an explanation of the methodology on the sample size of the complaints along with the complaints data and findings and any analysis on the figures.

Next steps

- 3.22 While no breaches of the bundling undertaking were identified, banks should continue to review their processes and procedures in place to ensure compliance, monitor those processes and procedures and make improvements where necessary. The CMA will continue to engage with banks on the content and methodology used for audits to ensure that information can be comparable as possible between the banks and to ensure compliance of the bundling undertakings. However, for the next reporting round in 2016 the CMA anticipates that there will be less need for as many exchanges with the banks individually in order to obtain complete audit reports.

- 3.23 The CMA's Checklist (see Appendix 1 of this Report) is the practical application of the Agreement and used only as a guide to facilitate monitoring of the Agreement. Banks should submit Audit Reports to the CMA on the last working day in July annually. Reports should cover the audit period of 1 July – 30 June.
- 3.24 In addition, banks are encouraged to report any non-compliance issues to the CMA as soon as they are identified and not wait until submission of the reports to inform the CMA of any such issues.

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Appendix 1: Checklist for the 2014 Agreement

The contents of the annual audit reports should contain the following information:

1. Procedures, practices and policies in place to promote compliance
2. Description of internal communications and staff training on compliance
3. Description of external communications – eg customer guidance
4. Description of any staff awareness training, frequency of provision and indication of to whom it is provided
5. Processes and practices to monitor compliance (ie how is monitoring done and when)
6. List of non-compliance issues in relation to bundling undertakings identified through
 - (a) complaints and
 - (b) banks' monitoring of compliance
7. Internal complaints escalation processes
8. Review of customer complaint or appeal records
9. Description of the remedial measures taken by banks to address any non-compliance issues
10. Review of any new products to confirm that they meet the relevant regulatory requirements

Appendix 2: CMA's 2014 Agreement with the eight banks

Agreement with respect to the limitation of bundling

1. That THE BANK¹ will, with respect to clauses 17 to 19 of the behavioural undertakings given by the banks to the Secretary of State for Trade and Industry and Chancellor of the Exchequer on 31 October 2002 ('the Bundling Undertakings'):
 - (a) On an annual basis, conduct a review of [THE BANK'S] compliance with the Bundling Undertakings, specifically including the following issues:
 - (i) The policies, practices and procedures (including those related to training) which THE BANK has in place to secure compliance with the Bundling Undertakings.
 - (ii) The awareness of THE BANK'S staff who are responsible for the marketing and sale of business loans and business deposit accounts ('the Relevant Staff') with the obligations created by the Bundling Undertakings.²
 - (iii) Other evidence suggesting the presence or absence of actual or suspected non-compliance with the Bundling Undertakings (including customer complaint data or data available from internal escalation processes for internal concerns).

Such a 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 Conduct³ of the Chartered Institute of Internal Auditors.⁴

- (b) Provide a copy of such a review to the OFT/CMA with an annual statement of THE BANK'S compliance with the Bundling Undertakings which addresses the issues referred to in 1a. The first such statement will be provided by [THE BANK] to the OFT within 4 months of its announcement by the OFT

¹ To add the identity of the relevant bank.

² In undertaking such a review, an appropriate sample of staff should be assessed. Such a sample should be representative of staff at the various brands within THE BANK'S Group (where applicable), geographical locations and the range of sales/marketing channels available (eg in branch, online, by telephone).

³ See the Chartered Institute of Internal Auditors [Code of Professional Conduct](#).

⁴ In the event that the internal audit function of THE BANK is unable to conduct that review, the review must be conducted by an external auditor, independent from THE BANK.

2. That THE BANK, on an annual basis, provides to each of its Relevant Staff, a specific and direct written reminder (which covers no issues, other than the subject matter of the Bundling Undertakings) of:
 - (a) THE BANK'S obligations under the Bundling Undertakings.
 - (b) That THE BANK considers that any breach of those obligations is a serious matter, and that appropriate action will be taken in the event that a member of its staff fails to comply with them.

The first such reminder will be provided by [THE BANK] to the Relevant Staff within 1 month of its agreement of this proposal and its announcement by the OFT. A copy of such a reminder will be provided to the OFT/CMA within 10 working days following its provision to the Relevant Staff

Terms used in this document are consistent with the definitions included in the Undertakings.