

SME Banking behavioural undertakings 2002

CMA report on compliance
Banks' audits 2018

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1. Executive Summary

- 1.1 This report summarises how well eight banks¹ (the eight banks) have complied with a number of obligations restricting the bundling of certain banking products offered to Small and Medium-size Enterprises (SMEs)². These obligations and further definitions are described in Annex 1 and Annex 3.
- 1.2 In 2014, the eight banks signed an agreement to conduct annual audit reviews³ of their compliance with the Undertakings, including where applicable: their policies, practices and procedures (including those related to training); staff awareness; and other evidence suggesting the presence or absence of actual or suspected non-compliance. The eight banks provide Audit reports each year to the CMA describing their compliance with the obligations.
- 1.3 This report sets out the CMA's findings from its analysis of the eight banks' Audit reports for the year to 30 June 2018. This report also highlights best practice where one or more of the eight banks have made improvements or enhanced procedures and practices to monitor and promote compliance with these obligations.
- 1.4 The most significant issue identified during the year was the two breaches by Barclays of the Undertakings given to the CMA⁴. The breaches relate to two Barclays products; Business Premium Accounts (BPAs) and Notice Deposit Accounts (NAs). Both BPA and NA are deposit accounts.
- (a) The first breach relates to a requirement for customers to have a Barclays' Business Current Account (BCA) in order to access a Barclays' BPA. This requirement was in place from 2014 to 2018 (BPA Breach).

¹ AIB Group (UK) plc (known as First Trust Bank), 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 (known as Danske Bank) and the Royal Bank of Scotland (RBS) which includes Ulster Bank Limited (Ulster Bank) in Northern Ireland (together referred to as 'the eight banks').

Nine banks originally agreed to the behavioural undertakings, two of these banks, HBOS Plc and Lloyds TSB Bank plc, subsequently merged to become Lloyds Banking Group.

² SME Banking Undertakings (Behavioural) 2002 <https://www.gov.uk/government/publications/small-and-medium-sized-enterprise-sme-banking-undertakings>

³ See Annex 1 of this Report – CMA's 2014 Agreement. Also see, Annex 3 Glossary for definitions.

⁴ Undertakings by Barclays Bank Plc to the Secretary of State for Trade and Industry and the Chancellor of the Exchequer under Section 88 of the Fair Trading Act 1973.

- (b) The second breach relates to product literature stating that a Barclays BCA was required to access a Barclays NA from 2010 to 2018 (NA Breach).
- 1.5 The breaches (combined) affected 816 customers. Barclays notified the CMA of the BPA Breach in 2018, together with the facts surrounding the NA Breach.
 - 1.6 Following careful consideration of the information and having taken into account Barclays' representations, the CMA decided to issue [Directions to Barclays](#), which were published on 4 July 2019.
 - 1.7 In Chapter 2 of this report ('Issues identified in banks' Audit reports') the CMA highlights other issues reported by Barclays, Danske Bank, First Trust Bank, HSBC and RBS, which they identified through annual audits conducted in 2018.
 - 1.8 The CMA is pleased to report that a number of the eight banks are improving and enhancing procedures and practices to monitor and promote compliance with the Undertakings. The CMA expects the eight banks to take heed of the best practice points outlined in Chapter 3. They should then consider how to improve their procedures, practices and staff training, so they achieve better compliance with these Undertakings which are designed to protect small businesses.

2. Issues identified in banks' Audit reports

2.1 As part of the annual reporting regime introduced in 2014 to maintain compliance with the Undertakings, banks subject to the Undertakings carry out an audit of their practices and procedures. These are then reported to the CMA by 31 July each year. The CMA has assessed the extent to which the eight banks have complied with their obligations under the Undertakings and the 2014 Agreement. In the case of HSBC and First Trust Bank, the CMA has also considered the extent to which they have complied with their obligations under [the Directions](#) imposed on these two banks in 2014. For each of the eight banks, the CMA has assessed performance in the following categories:

- **policies, practices and procedures** (including those related to training) which the bank has in place to secure compliance with the Undertakings
- **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 requirements of the Undertakings
- **other relevant evidence** suggesting the presence or absence of actual or suspected non-compliance with the Undertakings

2.2 The CMA has identified some issues reported by the following banks which are set out below:

- Barclays
- Danske Bank
- First Trust Bank
- HSBC
- RBS

Barclays

2.3 On 3 August 2018 Barclays notified the CMA in its Audit report that it had uncovered two breaches of the Undertakings in relation to BPAs and NAs. Following notification of the breaches, the CMA engaged with Barclays to seek information on the issues raised including in relation to the cause and extent of the breaches and steps Barclays proposed taking to rectify each breach. On 4 July 2019 the CMA issued Directions to Barclays under clause 28 of the Undertakings signed by Barclays. These Directions seek to ensure future compliance with the Undertakings.

BPA Breach

- 2.4 Barclays informed the CMA that in 2014 Barclays removed the ability of holders of a BPA to move funds to or from non-Barclays' accounts and therefore the BPA could only be accessed via a Barclays BCA. Barclays therefore breached the Undertaking not to bundle products for SMEs. Barclays has confirmed that this restriction remained in place until 22 October 2018, when a technical solution was implemented.
- 2.5 Barclays explained that the decision to remove access for non-Barclays BCAs was an attempt to manage the risk of fraud and that the consequential breach of the Undertakings was inadvertent. Barclays has confirmed that a total of 255 BPA customers had been affected through unnecessarily having to hold a Barclays BCA (and paying transaction fees when transferring funds into and out of the BCA). Barclays confirmed that it paid refunds to all affected BPA customers by 17 April 2019 with the exception of five customers which Barclays is attempting to trace in order to issue refunds. Barclays will update the CMA when this has been completed.

NA Breach

- 2.6 Since 2010, potential holders of a NA were informed via their terms and conditions that "To open the account, the Customer must hold a current account with Barclays in the same currency. The Customer may only deposit or withdraw funds by transfer to or from that current account". Barclays explained to the CMA that despite the terms and conditions it was possible to open and maintain a NA without also holding a Barclays' BCA, and that some SMEs managed to do so. Barclays confirmed that a total of 561 NA customers had been affected through being informed wrongly by inaccurate wording in the product literature that they had to hold a Barclays BCA.
- 2.7 These terms and conditions remained in place until 31 October 2018 when they were updated so that they no longer contained this written requirement.
- 2.8 Barclays therefore breached the Undertaking not to threaten to bundle products. This is because the wording above, which is contained in Barclays' terms and conditions, states that in order to open the Notice Account, the customer must hold a Barclays BCA and that the facility of depositing and withdrawing funds can only be carried out through Barclays' BCA.
- 2.9 Barclays informed the CMA of the action it has already taken, and proposed further action it intends to take in order to fix these breaches and to prevent further breaches:

- Barclays has implemented a technical solution which now allows BPA customers to transfer funds using the BCA of another bank - it has informed its customers of this
- Barclays has amended the terms and conditions of NAs so they no longer contain a requirement for customers to hold a BCA with Barclays - it has informed customers of this
- Barclays aims to complete remediation totalling £1,910.55 to affected BPA holders in respect of payments made that they should not have to have made. Refunds were paid to customers by 17 April 2019 with the exception of additional refunds totalling £38.55 which will be paid to five customers if they can be traced by Barclays.
- Barclays intends to put internal frameworks in place to ensure compliance with the Undertakings. The frameworks will include:
 - updated online training for all relevant members of staff
 - a review of all client facing documentation
 - improved product approval processes
- Barclays intends to deliver enhanced annual training to senior staff on compliance with the Undertakings
- Barclays internal audit function will test and review the compliance frameworks referred to above

2.10 In relation to the CMA's 2014 Agreement, Barclays reported that some content on Barclays' Business Loans external website presented customers with both the option to open a BCA and also the option to take out just a loan under a single web page. There could be a concern that customers interpreted that a Barclays BCA should be opened in order to order to obtain a loan. Barclays did not think this content would be misinterpreted. However, Barclays has updated the content of the website to eliminate the potential for any misinterpretation.

2.11 Barclays reported that 24 staff members did not receive an Annual Reminder of its obligations under the Undertakings. Subsequently, Barclays confirmed that it has sent an Annual Reminder to the 24 staff members who did not previously receive it (to the extent that the staff still work for Barclays). This was completed by 9 November 2018. For both its Business Banking and Corporate Banking divisions, Barclays told the CMA that it has procedures in place to promote compliance. However, in both banking areas Barclays does

not have a centralised compliance framework relating to the Undertakings. Barclays explained that as a result, its management does not have a consolidated view of the interpretation and practical application of the Undertakings for Business Banking.

- 2.12 In August 2018, Barclays told the CMA it carried out a review of its processes relating to the Undertakings and created an action plan to ensure a framework is in place to demonstrate compliance with the Undertakings in future. Subsequently, Barclays reported that a number of steps had been completed in May 2019 and that the framework will be fully embedded by November 2019 as per the action plan provided by them.

Danske Bank

- 2.13 Danske Bank told the CMA that in 2017 it prepared a new Powerpoint presentation to seek to improve compliance with the Undertakings. The presentation is something that all staff are required to read. Danske Bank reported that it has no process in place to confirm which staff members completed or understood the presentation.
- 2.14 Danske Bank told the CMA that for the next reporting period it will be delivering its training online which will enable it to track and record which staff members have completed it.

First Trust Bank

- 2.15 First Trust Bank reported that it complied with the CMA's Directions⁵ and it considers its control environment and management awareness to be satisfactory.⁶ First Trust Bank confirmed that no bundling incidences have been identified. However, the CMA notes that First Trust Bank told us that its Compliance Monitoring team highlighted three issues:

- (i) the first issue related to the online training module Relevant Staff must complete on the Undertakings. Due to a manual error a discrepancy occurred in assigning the training module to relevant staff. This error was identified by

⁵ Directions to First Trust Bank - <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

⁶ According to First Trust Bank's own definition of satisfactory, which is "The internal control system of the audited activity is, in general, effective. No intense remedial action is required." First Trust Bank defines its Management Awareness satisfactory rating as "Management are risk aware and have a detailed understanding of their risks, with suitable action plans in place to manage the risk profile of their operation".

First Trust Bank and rectified quickly to enable all relevant staff to complete the annual training module within the reporting period.

- (ii) The second issue related to the testing of staff awareness and understanding. As part of First Trust Bank's joint assurance testing, the Compliance and Group Internal Audit teams selected a cross section of staff across the relevant areas and conducted 38 telephone interviews to confirm knowledge and understanding of the requirements. The outcome was that 3 staff within the centralised complaints function were uncertain of the requirements. In response, a presentation was delivered to staff within the specific area and confirmation received on their understanding by all attendees.
- (iii) The third issue was that the First Trust Internal Audit reported a lack of independence in the monthly first line assurance testing. A change was introduced after the previous reporting period in 2017 where one team now completes the monthly first line assurance testing to verify no instances of bundling. However, this team is involved in the 'end to end' process where they check loan application documentation for evidence of bundling prior to issue. Previously this task had been completed by a team independent of the team end to end process. The First Trust Internal Audit reported it reviewed a sample of the testing carried out by the current team and found no issues. First Trust Bank has advised the CMA that the current team's role was transferred to a newly created Credit Assurance Team on 1 November 2018, which is independent of the end to end process.

HSBC

- 2.16 HSBC reported that it complied with the CMA's Directions⁷ but that its mystery shopping exercise carried out to determine staff awareness and compliance with the Undertakings identified two instances where the responses given by HSBC staff were not fully aligned with the Undertakings. It noted that these two responses were given by staff that were not directly responsible for opening accounts or issuing loans. HSBC stated that in the future, through its mystery shopping exercises, it will take action to follow up with any employee who gives a partially compliant or non-compliant response and the employee will be required to take a training course.

⁷ Directions to HSBC - <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

RBS

- 2.17 RBS reported that it conducted a digital mystery shopping exercise and five out of a sample of eight webchat operators stated that opening a BCA would be necessary to open a deposit product. RBS reported that based on its internal audit review of areas including its products, procedures, practices, policies, complaints and loan applications it had not identified any instances of a customer being required to open a BCA as a condition of the granting, maintaining or servicing of any business loan, or the opening, maintaining or servicing of any business deposit account. RBS informed us that the staff concerned had moved from one part of the business to the SME part of the business in March 2018 and therefore started advising on SME banking part way through the reporting period. Following the mystery shopping exercise, these members of staff received the annual reminder and have completed their training. Another 326 staff members were not initially included in the distribution of the annual reminder because they also moved from one part of the business to the SME part of the business and started advising on SME banking part through the reporting period. Those same members of staff did not receive the 2017 e-learning training module because, at the time the training was rolled out, they were not part of the SME business. These members of staff subsequently received the annual reminder and training which was initially missed.
- 2.18 In addition, RBS reported that the following procedures have been introduced within the team:
- word search testing is now undertaken, as well as line manager sample checking, to ensure that there are no concerns arising in the advice being given out
 - line managers will consider staff awareness of the Undertakings as part of their regular team coaching sessions

Conclusion

- 2.19 While we are pleased to see improvements, we remain concerned by the continued instances of issues reported by the eight banks which may suggest not all the banks are investing appropriately in their regulatory compliance concerning this area to provide robust systems, monitoring and suitable training for staff to prevent issues arising.
- 2.20 The CMA is disappointed by the nature and extent of the breaches by Barclays. When self-reporting the breaches, Barclays told us that these were inadvertent in nature. However, it is also of significant concern that Barclays

was unable to identify the breaches over four and eight years and that they only became apparent to Barclays following a more extensively scoped audit process, which was in part driven by the new, more specific questionnaire that the CMA developed to reflect its increased scrutiny on compliance with the Undertakings.

3. Best practice for ensuring compliance

Best practice

3.1 The CMA expects to see high standards maintained and put in place across the eight banks to ensure compliance improves in the future. While the areas of best practice outlined in previous reports⁸ continue to be relevant, this section outlines the current areas of best practice that are relevant for the eight banks and which could improve the consistency of compliance. This chapter explores best practice and possible improvements for banks to consider in the following areas:

- Banks' procedures, practices and policies
- Banks' internal communications on compliance
- Banks' communications with its customers on bundling
- Staff awareness and training
- Customer complaints and banks' procedures relating to bundling

Procedures, practices and policies

Table 1: Procedures, practices and policies

Note: First Trust Bank and HSBC complied with the relevant parts of the First Trust Bank and HSBC Directions.

	First Trust (AIB)	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
Procedures to promote compliance?	✓	✓	✓	✓	✓	✓	✓	✓
Procedures to monitor compliance?	✓	✓	✓	✓	✓	✓	✓	✓
Procedures reviewed?	✓	✓	✓	✓	✓	✓	✓	✓
First or second line assurance models ⁹ in place?	✓	First line only	First line only	First Line only	✓	✓	First line only	First line only

⁸ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-report-on-compliance>

⁹ Monitoring and checking compliance as described by the Chartered Institute of Internal Auditors - <https://www.iaa.org.uk/resources/audit-committees/governance-of-risk-three-lines-of-defence/>

First line assurance includes functions that own and manage risk for example, management controls and internal control measures. Second line assurance include functions that oversee or specialise in risk management and compliance.

- 3.2 The eight banks reported that they have procedures in place to promote and monitor compliance. For example, the eight banks reported that they have first line assurance procedures in place to check their compliance with the Undertakings. First Trust, HSBC and Lloyds also have second line assurance models. We expect the eight banks to employ robust checking of their compliance with the Undertakings with independent oversight and to review the effectiveness of their assurance models. All eight banks reported that they have reviewed all procedures, practices and policies for complying with the Undertakings.
- 3.3 The CMA expects each bank to continue to review and ensure compliance through its processes and procedures and to update those processes and procedures where appropriate.
- 3.4 The CMA expects the eight banks to report on the professional standards which are used to conduct all such reviews in the future.

Policies, practices and procedures relating to internal communications on compliance

Table 2: Policies, practices and procedures relating to internal communications on compliance

	First Trust (AIB)	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
Staff reminded about bundling?	✓	✓	✓	✓	✓	✓	✓	✓
Annual reminders on bundling reviewed?	✓	✓	✓	✓	✓	✓	✓	✓
'Best practices' and 'professional standards' taken into account in reviews?	✓	✓	✓	✓	✓	✓	✓	✓
Did all Relevant Staff receive the Annual Reminder at the correct time?	✓	✓	✓	✓	✓	✓	✓	✗

Note: First Trust Bank and HSBC complied with the relevant parts of the First Trust Bank and HSBC Directions.

Annual Reminders to staff

- 3.5 The eight banks are required to provide a specific written Annual Reminder to Relevant Staff. The Annual Reminder and any training materials should be provided in separate communications during the year, in accordance with clause 2 of the 2014 Agreement.
- 3.6 The eight banks used different methods to provide the Annual Reminder to staff. This varied from emails directly to all 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. Information on how Annual Reminders are provided to staff and details of any mechanisms in place for staff to confirm receipt and understanding of Annual Reminders should be included in Audit reports.
- 3.7 In all cases where Annual Reminders are provided via email, the eight banks should review their staff distribution lists regularly to ensure that lists of all Relevant Staff are kept up to date. The eight banks should ensure that all

Relevant Staff receive an Annual Reminder on bundling. This is particularly important when the eight banks go through restructuring or reorganisation of their business or there are new staff joining SME Banking teams. The CMA expects the eight banks to take this into account in training or induction of new joiners or movers as part of their restructuring or recruitment plans. RBS reported that its staff that didn't originally receive the Annual Reminder missed it because they moved from one part of the business to the SME part. However, RBS told the CMA that it provided Annual Reminders to staff involved in dealing with business customers including front line, call centre, marketing, product staff and credit staff.

- 3.8 Some banks sent Annual Reminders to more staff than just the Relevant Staff, for example staff involved in dealing with business customers. In some cases all staff were required to read the Annual Reminder posted as an item on the bank's intranet portal. The CMA considers this to be a beneficial approach so that a wider group of bank staff are informed about the Undertakings and understand the obligations on the Bank.
- 3.9 More generally, the CMA encourages all eight banks to review and ensure that all internal guidance and staff communication are appropriate and that they promote full compliance with the Undertakings.

Staff Guidance

- 3.10 The CMA encourages the eight banks to adopt staff guidance which will assist staff responsible for setting up loan products or opening accounts to maintain compliance with the Undertakings. Clydesdale told the CMA that it provided staff guidance within a template called the 'Credit Memorandum'. This template assists relationship managers in recording new accounts transferred to the bank and the reasons for a customer choosing to hold their transactional current account or deposit account with the bank. The Credit Memorandum is also used by the relationship managers to capture all aspects of the customer from a credit perspective.

Policies, practices and procedures relating to external communications e.g. customer guidance

Table 3: Policies, practices and procedures relating to external communications e.g. customer guidance

	First Trust (AIB)	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
External communication reviewed?	✗	✓	✓	✗	✓	✓	✓	✓
Best practice or professional standards taken into account when conducting this review?	✗	✓	✓	✗	✓	✓	✓	✓

Customer guidance

- 3.11 The CMA considers it would be helpful if the eight banks’ external communications to customers about SME banking products included clear and explicit messaging that they do not directly or indirectly require a SME customer to open or maintain a BCA as a condition of granting, opening, maintaining or servicing of any business loan or business deposit account (except in cases which fall within the exceptions provided in the Undertakings).
- 3.12 An example of this being done has been given by HSBC where it provides customer information stating that “an HSBC Business Current Account is not required to apply for this loan...”¹⁰
- 3.13 The CMA encourages the other banks to consider implementing a similar approach as part of promoting compliance through external communications.
- 3.14 Six banks reviewed their external communications. In future the CMA expects all eight banks to conduct reviews of external communications as part of their on-going compliance work and to keep information relevant and up to date.

¹⁰ Reported in HSBC’s annual Audit report 2018. HSBC’s product information fact sheets available to customers for all in-scope product loans and deposit accounts.

Staff Awareness and Training

3.15 The CMA believes that staff awareness is key to complying with the Undertakings. The eight banks reported that during the 2017/18 reporting round, Relevant Staff received training on the requirements of the Undertakings.

Table 4: Staff awareness training

	First Trust (AIB)	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
All Relevant Staff received training?	✓	✓	✗	✓	✓	✓	✗	✓
Did training include an assessment element?	✗	✓	✓	✗	✓	✓	✗	✓
Staff training reviewed?	✓	✓	✓	✓	✓	✓	✓	✓
Staff interviews carried out to assess staff awareness?	✓	✓	✗	✓	✓	✓	✓	✓

Note: First Trust Bank and HSBC complied with the relevant parts of the First Trust Bank and HSBC Directions.

3.16 Training materials on the Undertakings should be reviewed on an on-going basis to ensure that they remain relevant, effective and up to date.

3.17 Six banks confirmed that all their relevant staff received training on the Undertakings. Seven of the eight banks provided on-line training while Danske Bank provided annual training through a presentation on the bank's intranet. Danske Bank reported that it was unable to evidence that all relevant staff had read the training. However, it noted that its internal audit found no instances of product bundling and "that all staff interviewed had a good understanding of the Undertakings".¹¹

3.18 The CMA encourages Danske Bank to address this matter by introducing a system to record the completion of staff training, in part to be able to demonstrate whether all Relevant Staff have received the appropriate training.

3.19 At the time of the Audit report, Barclays reported that it could not demonstrate whether there were any members of Relevant Staff who should have been assigned to training but subsequently confirmed that there were not. There

¹¹ Danske Bank's annual Audit report 2018.

were some instances where there was a discrepancy between the number of staff that were assigned the training and the number of staff that were recorded to have actually taken the training. Barclays has since reported that it has systems in place to address this.

- 3.20 The CMA considers that the eight banks should also test the understanding and awareness of Relevant Staff of their responsibilities as part of their training programmes. A training programme should be provided to all Relevant Staff and assessed and evaluated for effectiveness and prevention of non-compliance. The CMA notes that Barclays, HSBC, Lloyds, the Bank of Ireland and RBS include an assessment element as part of their staff training programme. The CMA encourages the remaining three banks to implement a formal assessment as part of their staff training.
- 3.21 Where staff fail tests, interviews or a mystery shopping exercise on awareness of the Undertakings could usefully take place. First Trust, HSBC, Lloyds and RBS confirmed they have provided staff members with further training or opportunities to repeat training and retake the training assessment. The CMA expects all eight banks to provide all Relevant Staff who fail to demonstrate a satisfactory level of awareness and understanding of the Undertakings, with the opportunity to repeat training and take a subsequent assessment.
- 3.22 The eight banks should provide refresher training for returning Relevant Staff and also provide training to any new Relevant Staff before they can advise on SME Banking. Barclays confirmed that new joiners and those returning from long term absence or career breaks received the Undertakings training within 72 hours of their joining or re-joining Barclays. This also applies to staff members moving into a part of the business which deals with SMEs.
- 3.23 While the eight banks should take their own commercial decisions on how best to comply with the Undertakings, the CMA considers that mystery shopping exercises are an effective and robust way of testing compliance. For example, mystery shopping exercises have identified situations where staff would have provided to customers incorrect information which would breach the Undertakings. HSBC and RBS have reported to us that they have conducted mystery shopping exercises. The remaining banks are encouraged to undertake such exercises as part of their compliance testing. For reporting or explaining levels of compliance in Audit reports, the eight banks reported with terms such as, 'satisfactory', 'competently', 'sufficiently' or 'acceptable knowledge'. The CMA would like all the eight banks to offer quantitative evidence in future, for example providing results in figures relating to the total Relevant Staff population, the number of staff assessed, tested or interviewed and the threshold for each category. The CMA considers this would be helpful

to provide an indicator of compliance which is useful for monitoring purposes. We note some banks already do this.

- 3.24 In all cases, the eight banks should confirm to the CMA the high-level methodology used for any sampling undertaken, such as geographic location of staff, teams and business areas. In conducting reviews of staff awareness levels, an appropriate sample of staff should be assessed. Such a sample should be of a size and nature that is representative of the range of staff employed. We note some banks already do this.
- 3.25 Seven banks, all except Barclays, conducted staff interviews to test staff awareness levels. The CMA would like to see all banks ask a set of questions in interviews which adequately tests for acceptable levels of staff awareness and knowledge of the Undertakings. An interview should only be passed if the Relevant Staff member can demonstrate:
- a satisfactory awareness of the Undertakings
 - a satisfactory level of understanding of how to comply with the Undertakings
 - the ability to ensure compliance with the Undertakings when advising SME customers in practice
- 3.26 The CMA considers that broader understanding of the obligations in the Undertakings will allow more staff to identify concerning action that could be potential or actual breaches and improve compliance.

Other evidence

Table 5: Other evidence

	First Trust (AIB)	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
New to bank SME loans and business deposits and facility letters been reviewed?	✓	✓	✓	✓	✓	✓	✓	✓
Customer complaints reviewed?	✓	✓	✓	✓	✓	✓	✓	✓
Bank lending appeals process reviewed?	✗	✗	✗	✗	✓	✓	✗	✓
Individual complaint code for bundling?	✓	✓	✓	✓	✓	✓	✓	✓
Internal complaint escalation process?	✓	✓	✓	✓	✓	✓	✓	✓
Internal complaints reviewed?	✓	✓	✓	✗	✓	✓	✓	✓

Note: First Trust Bank maintains a complaint category relating to potential breaches of Clause 17 of the Undertakings and therefore complies with Clause 7 of the Directions issued by the CMA.

Complaints data

- 3.27 Each of the eight banks confirmed they reviewed their customer complaints. They adopted differing approaches to monitoring customer complaints for potential product bundling issues. Lloyds, RBS, Clydesdale and First Trust Bank obtained all complaints received by the bank and conducted a word search of all complaints to filter for issues. Bank of Ireland used management information to extract relevant complaints from their complaints system and reviewed a sample of complaints during the reporting period. HSBC reviewed a sample of potential bundling complaints which were identified via a coding system for complaints.
- 3.28 When the eight banks categorised complaints through word searches in order to extract relevant complaints, the eight banks used key words such as “Main”, “Banking”, “Switch” and “Transfer”. The CMA considers there is a risk of omitting complaints relating to product bundling if the bank’s existing key words do not capture certain product bundling complaints for the in-scope

review. However, for the eight banks with a complaints category or code where the case handler can identify when a complaint relates to bundling, searching on key words is not needed for the process of identifying any complaints on product bundling.

- 3.29 All eight banks have reported that they use a specific category within their complaints systems for complaints relating to bundling. The CMA considers this to be best practice in capturing all complaints relating to product bundling.

Lending appeals process

- 3.30 HSBC, Lloyds, and RBS reviewed their lending appeals decisions as part of their reviews of complaints to understand more about their compliance with the Undertakings. Reviews were conducted to check that any lending decisions did not breach the Undertakings. Bank of Ireland responded in its Audit report template that it will be including a review of its lending appeals process as part of future audit coverage.

Internal complaints escalation processes

- 3.31 The eight banks confirmed they have internal complaints escalation processes where staff can report incidences of bundling. The CMA considers this to be an effective process to allow for reporting by staff for potential breaches of the Undertakings.

Loan applications

- 3.32 In reviewing applications for loans and new BCA accounts, the size of samples used by the eight banks to identify potential cases of bundling varied. Each of the eight banks reviewed cases with new customers or new accounts opened. They adopted different methodologies for selecting cases for review in this area.
- 3.33 Where applicable, each of the eight banks reported that internal guidance, staff communications, facility letters and sanctioning documentation have been reviewed as part of the banks' audits. The CMA encourages all of the eight banks to review and maintain internal guidance and staff communication on loan applications used to promote compliance with the Undertakings.
- 3.34 For example, Lloyds told us that all credit lending loan applications where a condition of sanction states that the customer must have their main bank with Lloyds have been reviewed.

3.35 The CMA would be keen for the eight banks to consider enhancements relating to the loan application process and procedures to ensure more consistent compliance with the Undertakings.

Conclusion

3.36 The CMA expects each of the eight banks to take into account the best practice points set out in this Report and in previous CMA reports.

3.37 The CMA highlights the following best practice points from its assessment of the eight banks' activities in the past year. The CMA expects the eight banks to:

- employ robust checking of their compliance with the Undertakings and to review the effectiveness of their individual assurance models
- report on the relevant professional standards that are used to conduct annual audit reviews
- continue to review and ensure compliance through their processes and procedures and to update those processes and procedures where appropriate
- provide clear messages to customers in order to promote compliance through external communications, for example, website information clearly stating that the bank will not be requiring customers to open a BCA with a loan or deposit account
- ensure all Relevant Staff receive an Annual Reminder of the Undertakings - this is because the CMA considers that staff awareness is key to complying with the Undertakings
- the eight banks should review their staff distribution lists regularly (in all cases where Annual Reminders are provided via email) to ensure that lists of Relevant Staff are kept up to date and the CMA expects the eight banks to take this into account in all restructuring and recruitment activities
- review and maintain all internal guidance and staff communication used to promote compliance with the Undertakings
- make enhancements and improvements to staff training to ensure more consistent compliance with the Undertakings

- record staff training centrally so that the eight banks are able to monitor and report whether all Relevant Staff members have undertaken training and include an assessment element as part of their staff training
- consider conducting mystery shopping exercises - the CMA considers that mystery shopping exercises are an effective and robust way of testing compliance and would like to see their use expand
- confirm to the CMA the high-level methodology used for any sampling undertaken, such as geographic location, teams and business areas, for example, in conducting reviews of staff awareness levels, an appropriate sample of staff should be assessed and the size and nature of samples should be representative of the range of staff employed
- provide a brief justification and any analysis for their methodology, including how the selected sample generates robust, statistically significant results
- implement a specific complaints category for bundling related complaints to be best practice in capturing all complaints relating to product bundling and would like to see all the eight banks able to categorise complaints in a way to allow those relating to bundling to be identified
- review and present other relevant evidence (including complaints data, loan applications, lending appeals process, internal complaints process) to demonstrate compliance with the Undertakings in future reports to the CMA

4. Next Steps

- 4.1 The CMA expects the eight banks subject to the obligations of the Undertakings and the 2014 Agreement to consider this Report in full and seek to implement the best practice methodologies and practices outlined to ensure continued compliance with the Undertakings and to ensure its staff and customers are aware of the restrictions.
- 4.2 The CMA will continue to monitor and take appropriate enforcement action in cases of breaches to these obligations. It also continues to expect the eight banks to notify it of any breaches, or potential breaches as soon as they are identified, and not to wait to report these in the next annual reporting cycle. In a breach or potential breach scenario, the CMA proposes to discuss all such issues with the eight banks to understand the scale, scope and reasoning for the breach and the bank's approach to remediation.
- 4.3 The next reporting period concluded on 30 June 2019. Reports should be submitted to the CMA by 31 July 2019.
- 4.4 For queries relating to the SME Banking Undertakings and compliance reporting please contact the CMA's remedies monitoring team:

Email: RemediesMonitoringTeam@cma.gov.uk

Annex 1: The obligations on the eight banks

In 2002, following a Competition Commission investigation into banking services for SMEs, nine banks (two of which have since merged) agreed that, except in specific circumstances, they would no longer require an SME customer to open or maintain a BCA to get a business loan or deposit account. This practice is commonly known as bundling and is prohibited by the Undertakings.

The Bundling Restrictions are set out in Clauses 17 to 19 of the Undertakings. These prohibit the eight banks from compelling an SME customer to open or maintain a BCA as a condition of granting, maintaining or servicing a loan or deposit account. Banks may, however, offer incentives (e.g. 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 at different times to the opening of the BCA or loan deposit account).¹²

On 11 March 2014, the Office of Fair Trading (OFT) agreed a package of measures (known as the 2014 Agreement) with the eight banks to:

- improve awareness of the Undertakings among Relevant Staff
- assist the CMA¹³ in assessing overall levels of compliance with the Undertakings on an ongoing basis

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

Following the 2014 Agreement, the OFT and then the CMA worked with the eight banks to produce a set of high-level principles to guide the focus and manner of their internal auditors' inspections.

The CMA reviewed the eight banks' 2014 Audit reports and reported on its findings in its report on compliance of 22 October 2014.¹⁴

¹² The Undertakings prohibit the tying of a BCA and a loan or deposit account, but do not prohibit the provision of integrated products (i.e. the sale of several products as one combined product).

¹³ On 1 April 2014, the relevant functions of the OFT and the CC were transferred to the Competition and Markets Authority (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.

¹⁴ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-report-on-compliance>

On 21 October 2014, the CMA issued Directions¹⁵ to two banks to improve compliance with the Undertakings following breaches.

On 4 July 2019, the CMA issued Directions¹⁶ to Barclays for two breaches of Clause 17 of the Undertakings.

¹⁵ See CMA.GOV.UK for Directions to HSBC and First Trust: <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

¹⁶ See CMA.GOV.UK for Directions to Barclays: <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-barclays>

The 2014 Agreement

Agreement with respect to the limitation of bundling

1. That THE BANK⁸ 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.⁹
 - (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 Conduct¹⁰ of the Chartered Institute of Internal Auditors.¹¹

- (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

⁸ To add the identity of the relevant bank.

⁹ 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 (e.g. in branch, online, by telephone).

¹⁰ <http://www.iaa.org.uk/members/member-benefits/code-of-professional-conduct/>

¹¹ 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.

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

Annex 2: CMA reports on compliance

Since 2015, the CMA has aligned the reporting period for annual Audit reports to cover the period 1 July to 30 June. The eight banks are required to submit Audit reports to the CMA by the last working day of July. This Report sets out the results of the fifth round of Audit reports which were submitted by the eight banks in July 2018, covering the period from 1 July 2017 - 30 June 2018.

As part of the CMA's on-going review of processes, the CMA reviewed the content and formats of the previous Audit reports provided by the eight banks and introduced a new template for Audit reports in the 2017/18 year. The CMA aimed to provide the following benefits:

- to standardise and streamline the reporting process for the eight banks and for the CMA
- to provide improved clarity on what information the CMA needs specifically to evidence compliance of the Undertakings
- to reduce the burden on the eight banks by reducing the number of follow-up questions necessary for the CMA to ensure it has the information required to make an assessment of compliance
- to allow for easier comparability of information for readers of the CMA's Report
- to improve transparency in the CMA's publication of the eight banks' information by having the banks' audit results presented in a standardised format
- to assist SMEs small and medium sized businesses to see how the eight banks perform against the requirements of the Undertakings

The template forms the basis of the CMA's Report so that the information the eight banks report to us remains accurate and consistent.

Clause 12 of the First Trust Directions and Clause 11 of the HSBC Directions require both banks to provide to the CMA a copy of the annual review conducted on each banks' compliance with Clause 17 of the Undertakings.

Clause 1(b) of the 2014 Agreement states that the eight banks should provide a copy of the annual review conducted on the eight banks' compliance with statements of the eight banks' compliance with Clause 17 of the Undertakings.

The requirements above should be satisfied by the eight banks providing their Audit reports in the format of the CMA's reporting template.

Annex 3: Glossary

Unless otherwise indicated, terms have the same meaning as the CMA's 2014 Agreement in Annex 1 of this Report.

The following words and expressions shall bear the following meanings in this Report:

2014 Agreement – signed by the eight banks. The 2014 Agreement is available in Annex 1 of this Report.

Audit report – a requirement in the 2014 Agreement for the eight banks to conduct annual audit reviews and submit audit reports to the CMA.

Annual Reminders – as defined in the 2014 Agreement. On an annual basis, the eight banks are required to provide to each of its Relevant Staff, a specific and direct written reminder (which covers no issues other than the subject matter of the Undertakings).

banks, The eight - AIB Group (UK) plc (known as First Trust Bank or 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 (known as Danske Bank) and the Royal Bank of Scotland (RBS) which includes Ulster Bank Limited (Ulster Bank) in Northern Ireland (together referred to in this Report as 'the eight banks'). Nine banks originally agreed to the behavioural undertakings, two of these banks, HBOS Plc and Lloyds TSB Bank plc, subsequently merged to become Lloyds Banking Group.

BCAs – Business Current Accounts

BPAs – Barclays Premium Accounts

CMA – Competition and Markets Authority. On 1 April 2014, the relevant functions of the OFT and the CC were transferred to the Competition and Markets Authority (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.

First Trust Directions – CMA issued Directions to First Trust in 2014

<https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

HSBC Directions – CMA issued Directions to HSBC in 2014

<https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

NAs - Notice Deposit Accounts

OFT – Office of Fair Trading

Relevant Staff – as defined in the 2014 Agreement. The Bank’s staff who are responsible for the marketing and sale of business loans and business deposit accounts.

Report – CMA’s Report on Compliance 2018

SMEs - Small and Medium-size Enterprises

Undertakings - SME Banking Undertakings (Behavioural) 2002. These Undertakings were given by the Secretary of State for Trade and Industry and the Chancellor of the Exchequer under the monopoly provisions of the Fair Trading Act 1973. They were signed by nine banks in 2002 and require them to:

- ensure that small and medium-sized enterprises (SMEs) can open a deposit account without also needing to open a business current account
- publish details of their tariffs
- meet time targets for account switching services

Bundling restrictions are set out in Clauses 17 to 20 of the Undertakings. In 2016, the CMA conducted a review and made a decision to release some obligations under the Undertakings. However, the bundling restrictions were retained.¹⁷

¹⁷ <https://www.gov.uk/cma-cases/sme-banking-undertakings-review>