

SME Banking behavioural undertakings 2002

CMA report on Banks' compliance audits 2019

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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 2.
- 1.2 In 2014, the eight banks signed an agreement (the 2014 Agreement) to conduct annual audit reviews³ of their compliance with the SME Banking Undertakings (Behavioural) 2002 (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 Undertakings and the obligations in the 2014 Agreement.
- 1.3 This Report sets out the CMA's findings from its analysis of the eight banks' audit reports covering the period from 1 July 2018 to 30 June 2019. This report also highlights best practice where one or more of the eight banks have made improvements or enhanced their procedures and practices to monitor and promote compliance with the Undertakings and with the obligations in the 2014 Agreement.
- 1.4 There were no significant breaches of the Undertakings identified during the reporting year.
- 1.5 HSBC, due to the way it carried out the ring-fencing⁴ of its retail banking business in July 2018, has 0.1% of its SME customers in the non ring-fenced bank, HSBC Bank plc (HSBC Non-RFB), while 99.9% of SME customers are in the ring-fenced bank, HSBC UK Bank plc (HSBC UK). HSBC considers that both banks within HSBC need to comply with the Undertakings, the HSBC

¹ AIB Group (UK) plc (known as First Trust Bank until November 2019 and from that date as AIB NI), Bank of Ireland, Barclays Bank plc (Barclays); Clydesdale Bank plc (Clydesdale) which incorporates Yorkshire Bank and is currently undergoing rebranding to Virgin Money UK; 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 2 Glossary for definitions.

⁴ As required under the Financial Services (Banking Reform) Act 2013.

Directions⁵ and the 2014 Agreement. For the relevant audit period, HSBC UK has not breached the Undertakings, the HSBC Directions or the 2014 Agreement. However, HSBC Non-RFB, with c.978 SME customers, has during the past audit year not always met the full requirements of four of the HSBC Directions and the 2014 Agreement. Prior to the 2019 audit commencing, HSBC Non-RFB had identified these issues and defined action plans to enable compliance. We note, in addition, that during the relevant period, these c.978 SME customers opened only 8 deposit accounts and no loan accounts. Consequently, the relevant activity was minimal in nature, and none of the breaches of the HSBC Directions led to breaches of the Undertakings. Therefore, we consider that the interests of SMEs were not materially harmed by this breach and note that HSBC Non-RFB has taken action to correct each breach.

- 1.6 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.
- 1.7 The CMA issued Directions⁶ to Barclays under the Undertakings on 4 July 2019. This is outside the reporting period covered by this report and will be covered by next year's report.
- 1.8 The next reporting period concludes on 30 June 2020. Reports are normally sent to the CMA on 31 July each year. However, due to the Coronavirus (Covid-19) pandemic, we understand that banks (and other businesses) are under particular resource pressure and we have therefore agreed to some slightly longer deadlines for this reporting period on an individual basis, where a bank has made a request.
- 1.9 For queries relating to the SME Banking Undertakings and compliance reporting please contact the CMA's remedies monitoring team:
RemediesMonitoringTeam@cma.gov.uk

⁵ See Annex 2 Glossary and the HSBC Directions <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

⁶ See Annex 2 and the Barclays Directions <https://www.gov.uk/government/publications/payment-protection-insurance-order-directions-to-barclays-bank>

2. Issues identified in banks' audit reports

- 2.1 As part of the annual reporting regime introduced in the 2014 Agreement to ensure compliance with the Undertakings, banks subject to the Undertakings carry out an annual audit of their practices and procedures. These are reported to the CMA by 31 July each year.
- 2.2 The CMA has assessed the extent to which the eight banks have complied with their obligations under the Undertakings and under the 2014 Agreement. In the case of HSBC and AIB NI (at the time of the Directions called First Trust Bank), the CMA has also considered the extent to which they have complied with their obligations under [the HSBC and AIB NI Directions](#)⁷ imposed on these two banks. 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
 - **policies, practices and procedures relating to internal communications on compliance**
 - **policies, practices and procedures relating to external communications** e.g. customer guidance
 - **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.
- 2.3 HSBC UK did not breach the HSBC Directions. However, HSBC reported that HSBC Non-RFB has breached Directions 2, 5, 6 and 8 of the HSBC Directions. These breaches relate to:
- **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.

⁷ See CMA.GOV.UK for Directions to HSBC and AIB NI (then named First Trust):

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

- Direction 5: To amend (and maintain amendments for) all internal manuals, guidance, product/loan documentation and associated training materials for communication to all staff.
- Direction 6: To establish and maintain effective governance, testing and monitoring to ensure ongoing compliance with Clause 17 of the Undertakings.
- Direction 8: To create, roll-out and maintain mandatory training for all Relevant Staff in Business Banking, Credit & Risk and Business Management on the background of Clause 17 of the Undertakings and measures designed to achieve compliance as listed above, which will be required to be completed annually.

2.4 While the CMA takes all breaches of its Directions seriously, we note that these breaches only related to HSBC Non-RFB. The breaches did not lead to breaches of the Undertakings themselves, and no SME's interests were harmed. Nonetheless, we expect HSBC to ensure that these issues are rectified in time for the audit report to be submitted to the CMA in 2020 with the exception of mandatory training to be completed later in 2020.

3. Best practice for ensuring compliance

Best practice

3.1 The CMA expects to see high standards put in place and maintained across the eight banks to ensure compliance continues to improve. 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' policies, practices and procedures
- Banks' policies, practices and procedures relating to internal communications on compliance
- Banks' policies, practices and procedures relating to external communications e.g. customer guidance
- Banks' staff awareness and training
- Other evidence of compliance

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

Policies, practices and procedures

Table 1: Policies, practices and procedures ('Y' indicates Yes and 'N' indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
Procedures to promote compliance?	Y	Y	Y	Y	N	Y	Y	Y
Procedures to monitor compliance?	Y	Y	Y	Y	N	Y	Y	Y
Procedures reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
First line assurance models ⁹ in place?	Y	Y	N	Y	N	Y	Y	Y
Second line assurance models in place?	Y	N	N	N	Y	Y	Y	Y

Notes:

- (1) AIB NI complied with the relevant parts of its Directions given to First Trust Bank.
- (2) The results for HSBC indicate HSBC UK and HSBC Non-RFB's combined compliance. HSBC UK has 'Y' to the 5 questions in this table.

3.2 In relation to procedures to promote compliance, Lloyds reported that while it is possible for staff members to open a standalone deposit product for customers, it did not have a documented policy in place for this procedure. It is now in the process of uploading a procedure document to resolve this.

3.3 RBSG stated that one of its fact sheets contained wording which could have been (wrongly) interpreted as meaning that a BCA was necessary to maintain a deposit account. This wording has since been changed. However, both banks were generally compliant.

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.

- 3.4 HSBC reported that HSBC UK had procedures, practices and policies in place to comply with the Undertakings during the reporting period. However, for HSBC Non-RFB, following ring-fencing the team that assumed responsibility for reviewing lending applications from HSBC Non-RFB's relationship managers had not established procedures to comply with the Undertakings. Also, for example, the instruction manual for the team within HSBC Non-RFB responsible for providing first line reviews of credit applications did not refer to the Undertakings (although this omission has now been fixed, and no relevant lending occurred within HSBC Non-RFB during the relevant period). The CMA considers that these issues are breaches by HSBC Non-RFB of Direction 2 of the HSBC Directions, which requires HSBC to comply "with Clause 17 of the Undertakings at all levels, internally or publicly, in practice and by means of internal guidance, manual, procedure, terms and conditions or any other similar information", and Direction 5 of the HSBC Directions, which requires HSBC "To amend (and maintain amendments for) all internal manuals, guidance, product/loan documentation and associated training materials for communication to all staff". HSBC Non-RFB has informed us that HSBC Bank Non-RFB has since established compliant procedures and amended its instruction manual.
- 3.5 Although Barclays has first line assurance in place, Barclays Internal Audit reported that two of its business units (Savings, Investments & Wealth Management, and Private Bank) had not implemented either a first line or second line of defence against product bundling. These controls were implemented by end-November 2019 with the controls fully embedded by April 2020. Barclays notes that these business units do not target UK SMEs as a client base. No bundling was found when the units' practices were reviewed.
- 3.6 HSBC reported that HSBC UK had both first and second line controls throughout the reporting period. However following ring-fencing HSBC Non-RFB did not have first line controls in place to assess compliance with the Undertakings for the whole of the reporting period. It introduced these controls on 30 November 2019. Direction 6 of the HSBC Directions requires that it must "establish and maintain effective governance, testing and monitoring to ensure ongoing compliance with Clause 17 of the Undertakings". The CMA therefore considers that for part of the reporting period HSBC Non-RFB was in breach of Direction 6. HSBC has informed us that HSBC Non-RFB has since introduced first line controls.
- 3.7 AIB NI, HSBC, Lloyds and Danske report they have second line assurance models in place, as well as first line assurance. AIB NI reported that it used third line assurance testing too.

3.8 Although Barclays has first line assurance in place, Barclays Internal Audit reported that during this reporting period the Quality Assurance team within Barclays Business Banking did not monitor two products in scope of the Undertakings. However, Barclays' internal audit team subsequently carried out checks on a sample of these products and did not identify any instances of bundling.

Policies, practices and procedures relating to internal communications on compliance

Table 2: Policies, practices and procedures relating to internal communications on compliance ('Y' indicates Yes and 'N' indicates No)

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

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

Annual Reminders to staff

3.9 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.

3.10 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. 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.

- 3.11 While Barclays sent an Annual Reminder to the majority of Relevant Staff, it failed to do so for 327 staff in its 'Business Banking Marketing, Advocacy, Credit Risk and Legal Copy Clearance' teams. It provided them with the reminder a month later. Barclays Internal Audit also identified that a number of Relevant Staff in the Marketing teams within 'Private Banking' and the 'Savings, Investments & Wealth Management' did not receive the Annual Reminder. It was also reported that support staff (not classified as Relevant Staff) in the 'Complaints, Advocacy and Credit Risk' teams within 'Savings, Investments & Wealth Management' and the Complaints team within 'Private Banking' did not receive the Annual Reminder.
- 3.12 Banks should carry out checks to ensure that staff actually receive and read the Annual Reminder. Clydesdale reported that only 48% of Relevant Staff confirmed that they had read the Annual Reminder. However, it has now introduced a mandatory compliance module in its in-house training system which is scheduled for completion twice a year. A third reminder targeted at relevant staff is published on its Intranet.
- 3.13 Some banks sent Annual Reminders to more staff than just the Relevant Staff, for example staff involved in dealing with business customers. One bank required all staff 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.
- 3.14 Each of the eight banks were able to point to either 'best practice' or 'professional standards' that they had taken into account when carrying out reviews of compliance with the Annual Reminder requirements.

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 ('Y' indicates Yes and 'N' indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
External communication reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Best practice or professional standards taken into account when conducting this review?	Y	Y	Y	Y	Y	Y	Y	Y

Customer guidance

3.15 While not a requirement of the Undertakings or Agreement, 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 Bundling Requirements). An example of this being done was given by HSBC which provides customer information stating that "an HSBC Business Current Account is not required to apply for this loan"¹⁰ The CMA encourages the other banks to consider implementing a similar approach as part of promoting compliance through external communications.

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

Table 4: Staff awareness training ('Y' indicates Yes and 'N' indicates No)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
All Relevant Staff received training?	Y	Y	N	Y	N	Y	Y	Y
Did training include an assessment element?	N	Y	Y	N	Y	Y	Y	Y
Staff training reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Staff interviews carried out to assess staff awareness?	Y	Y	Y	Y	Y	Y	Y	Y

Notes:

- (1) AIB NI complied with the relevant parts of the First Trust Bank Directions.
- (2) The results for HSBC indicate HSBC UK and HSBC Non-RFB's combined compliance. HSBC UK has 'Y' to the 5 questions in this table

- 3.16 The CMA believes that staff awareness is key to complying with the Undertakings. The eight banks reported that during the 2018/19 reporting round, Relevant Staff received training on the requirements of the Undertakings, although some banks reported that not all Relevant Staff received the training when they should have done.
- 3.17 Training materials on the Undertakings should be reviewed on an on-going basis to ensure that they remain relevant, effective and up to date.
- 3.18 AIB NI, Bank of Ireland, Clydesdale, Lloyds and Danske confirmed that all their Relevant Staff received training on the Undertakings. Clydesdale runs its online training programme twice-yearly.
- 3.19 Barclays Internal Audit identified that the 2018 training was not given to all support staff, specifically staff working in the Advocacy; Marketing; and Legal Copy Clearance teams in its Business Banking Unit, as well as staff in its Private Bank and Savings, Investments & Wealth Management business units and International Corporate Banking team. Additionally, Barclays only gave the training to individual Credit Risk staff rather than at an organisation unit level. This means new Credit Risk joiners were not automatically assigned the

training. It has since confirmed that this training was provided to these new joiners.

- 3.20 HSBC UK reported that 98.1% of all Relevant Staff received training on the Undertakings. However, HSBC Non-RFB reported that it failed to send a requirement to complete the training to 43 employees representing 1.2% of HSBC's Relevant Staff. As such, we consider that HSBC Non-RFB has breached Direction 8 of the HSBC Directions which states that it must "create, roll-out and maintain mandatory training for all Relevant Staff in Business Banking, Credit & Risk and Business Management on the background of Clause 17 of the Undertakings and measures designed to achieve compliance as listed above, which will be required to be completed annually." HSBC Non-RFB reported that it has since issued all staff with the training.
- 3.21 We note that some banks have reported that they have not been able to deliver appropriate training to some Relevant Staff within the correct timeframes for a variety of reasons, including staff being on maternity leave, long term sick leave, and career breaks. One bank has committed that in future it will introduce an additional control identifying the above staff on short or long-term breaks and ensure that they are assigned the module upon their return. We consider this to be good practice in ensuring all Relevant Staff receive the training.
- 3.22 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. The CMA notes that Barclays, HSBC, Lloyds, Danske, Bank of Ireland, and RBS include an assessment element as part of their staff training programme. The CMA encourages Clydesdale and AIB NI to implement a formal assessment as part of their staff training.
- 3.23 The CMA considers that mystery shopping exercises are an effective and robust way of testing compliance. For example, in the CMA's wider experience of remedies, mystery shopping exercises have identified situations where staff would have provided to customers incorrect information which would breach the Undertakings. AIB NI, HSBC and RBS have reported to us that they have conducted mystery shopping exercises. Although not a requirement of the Undertakings or Agreement, the remaining banks are encouraged to undertake such exercises as part of their compliance testing.

Other evidence

Table 5: Other evidence ('Y' indicates Yes, 'N' indicates No, N/A indicates that there were no internal complaints received by the bank or new products launched during the audit reporting period and therefore no review was conducted by the bank)

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale Bank	HSBC	Lloyds	Danske (Northern Bank)	RBS
New to bank SME loans and business deposits and facility letters reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Customer complaints reviewed?	Y	Y	Y	Y	Y	Y	Y	Y
Bank lending appeals process reviewed?	N	Y	Y	N	Y	Y	Y	Y
Individual complaint code for bundling?	Y	N	Y	N	Y	N	Y	Y
Internal complaint escalation process?	Y	Y	Y	Y	Y	Y	Y	Y
Internal complaints reviewed?	Y	Y	Y	N/A	Y	Y	N/A	Y
New products reviewed?	N/A	N/A	Y	Y	N/A	N/A	N/A	N/A

Note: AIB NI 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.

3.24 Lloyds, RBS, Barclays, Clydesdale and AIB NI obtained all complaints received by the bank and conducted a word search of all complaints to filter for issues. Bank of Ireland reviewed BCA/Business Loan complaints on a monthly basis. HSBC reviewed a sample of potential bundling complaints during the reporting period.

3.25 All banks except AIB NI and Clydesdale 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. Clydesdale did not undertake a review of the Bank's lending appeals process. It decided that this was not necessary due to the level of staff awareness in relation to product bundling and because there have been no incidences of non-compliance identified in the reporting year.

- 3.26 With the exception of Lloyds, Bank of Ireland, and Clydesdale, 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. We encourage these banks to introduce a specific complaint code for bundling. It is disappointing that Clydesdale formerly had a specific code, but chose to remove it.
- 3.27 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.
- 3.28 All banks reviewed internal complaints where some had been received. No banks identified internal complaints relating to SME product bundling. Two banks reviewed new products' compliance with the Undertakings, where applicable new products had been launched. Neither bank identified failures in compliance where new products had been launched.

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).¹¹

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 CMA¹² 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.

¹¹ 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).

¹² 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.

The CMA reviewed the eight banks' 2014 Audit reports and reported on its findings in its report on compliance of 22 October 2014.¹³

On 21 October 2014, the CMA issued Directions¹⁴ to two banks to improve compliance with the Undertakings following breaches.

On 4 July 2019, the CMA issued Directions¹⁵ to Barclays for two breaches of Clause 17 of the Undertakings.

¹³ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-report-on-compliance>

¹⁴ See CMA.GOV.UK for Directions to HSBC and AIB NI (then named First Trust): <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

¹⁵ 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 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 (e.g. in branch, online, by telephone).

³ <http://www.iaa.org.uk/members/member-benefits/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.

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

Annex 2: 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 AIB NI in this report, and previously known as First Trust); Bank of Ireland; Barclays Bank plc (Barclays); Clydesdale Bank plc (Clydesdale); HSBC Bank plc (HSBC); Lloyds Banking Group (Lloyds); 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.

Barclays Directions – CMA issued Directions to Barclays in 2019¹⁶

BCAs – Business Current 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.

¹⁶ <https://www.gov.uk/government/publications/payment-protection-insurance-order-directions-to-barclays-bank>

First Trust Directions – CMA issued Directions to First Trust in 2014.¹⁷ First Trust is now known as AIB NI.

HSBC Directions – CMA issued Directions to HSBC in 2014¹⁸

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 2019

SMEs - Small and Medium-size Enterprises

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. 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.¹⁹

¹⁷ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

¹⁸ <https://www.gov.uk/government/publications/sme-banking-2002-behavioural-undertakings-directions-to-banks>

¹⁹ <https://www.gov.uk/cma-cases/sme-banking-undertakings-review>