

SME Banking behavioural undertakings 2002

CMA report on Banks' compliance audits 2021

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1. Summary

- 1.1 This Report describes how well the banks (as defined in Appendix B) have complied with their obligations restricting the bundling of certain banking products offered to Small and Medium-size Enterprises (SMEs). These obligations and further definitions are described in Appendix A and Appendix B.
- 1.2 In 2002, the banks¹ committed to legal obligations in the SME Banking Undertakings (Behavioural) 2002 (the Undertakings), not directly or indirectly require, agree or threaten to require, as a condition of the granting, maintaining or servicing of any business loan to, or the opening, maintaining or servicing of any business deposit account for, any SME that the SME should open or maintain any business current account (BCA) with that bank. This process is known as ‘bundling’.
- 1.3 In 2014, the banks signed an agreement (the 2014 Agreement, at Appendix A) to conduct annual audit reviews of their compliance with 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 including internal audit reviews. The obligations in the enhanced compliance regime are designed to improve the level of compliance given previous breaches that had been identified.
- 1.4 This report sets out the CMA’s findings from its analysis of the banks’ audit reports covering the period from 1 July 2020 to 30 June 2021. Where appropriate, the CMA has highlighted good practice where one or more of the 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.
- 1.5 In this reporting year, three of the banks have uncovered breaches of the Undertakings: Danske Bank, HSBC and NatWest Group. The CMA is concerned by these continuing breaches given the enhanced compliance measures that have been in place for several years. The banks are already subject to significant regulation in the UK and should be capable of complying with the Undertakings without any breaches. The CMA has sought additional powers from Government to address continuing failures to comply with its

¹ The original legal entities that signed up to the undertakings were AIB Group (UK) plc, Bank of Ireland, Barclays Bank plc, Clydesdale Bank plc, HBOS plc, HSBC Bank plc, Lloyds TSB Bank plc, Northern Bank Ltd and the Royal Bank of Scotland Group plc.

undertakings and orders, including the ability to impose a financial penalty for future breaches.

- 1.6 The breaches have been published on the GOV.UK website and have been recorded as entries on the CMA's Register of Breaches.² Links to each of these breaches are below. Links to previous public enforcement of the Undertakings can be found at Appendix C.

Danske Bank

- 1.7 The CMA found that Danske Bank breached the Undertakings by requiring a number of their customers who were operating their business finances through a personal current account to open a business current account with Danske Bank in order to apply for loans provided under the Government-backed [Bounce Back Loans Scheme \(BLS\)](#). We published the [first breach letter on this matter](#) in March 2021, and having uncovered a further breach, we published the [second breach letter](#) in November 2021.

HSBC

- 1.8 HSBC UK reported a breach involving loan agreements that contained a particular termination event (a clause which gave HSBC the right to terminate a borrower's loan if HSBC ceased to be the Borrower's principal commercial bank), as well as other non-compliant clauses. The CMA considered use of these clauses to be a breach by HSBC UK of Clause 17 of the Undertakings and also a breach of the requirements of the 2014 Directions.³ The CMA published [new Directions to HSBC UK](#) on 30 March 2022.

NatWest Group

- 1.9 NatWest Group reported a suspected breach on 29 January 2021. Customers applying for a Small Business Loan (SBL) from November 2016, who did not have an existing BCA with NatWest Group, were asked to open a feeder account or BCA to service their SBL. Due to a shortcoming in the design of NatWest Group's Electronic On-Boarding Account Opening process (eOBAO), NatWest Group's systems only allowed customers to open a BCA.

² The CMA's [Register of Breaches](#) is a register of all significant breaches notified to us since 1 April 2020 of market remedies (made or accepted under sections 159 and 161 of the Enterprise Act 2002) and merger remedies (made or accepted under sections 82 and 84 of the Enterprise Act 2002).

³ HSBC Bank plc (HSBC's non-ring fenced bank) and HSBC UK (HSBC's ring-fenced bank) were already subject to a set of [Directions issued by the CMA to HSBC in 2014](#) (2014 Directions) for a previous breach relating to bundling business current accounts. These directions have now been superseded by the new Directions issued to HSBC UK on 30 March 2022.

The CMA considered this to amount to a breach of Clause 17 of the Undertakings and has imposed Directions on NatWest Group as a result.

Guidance

- 1.10 The CMA is available to provide guidance in relation to matters regarding compliance for these and other Undertakings and Orders affecting retail banks. The CMA encourages banks to contact the CMA as soon as any breaches or potential issues arise, even where the full details have not become clear. This is to enable the CMA to understand the breaches and consider appropriate action with the organisation concerned. There are further details in the CMA's published guidance '[Merger and market remedies: Guidance on reporting, investigation and enforcement of potential breaches](#)'.
- 1.11 For queries relating to the SME Banking Undertakings and compliance reporting please contact the CMA's Remedies Monitoring and Enforcement Team: RemediesMonitoringTeam@cma.gov.uk

2. Compliance issues identified

- 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 banks have complied with their obligations under the Undertakings and under the 2014 Agreement. The CMA has also assessed compliance with Directions issued under these Undertakings:
- to HSBC in 2014
 - to AIB NI (formerly First Trust) in 2014, and
 - to Barclays in 2019.
- 2.3 For each of the banks, the CMA has assessed performance by reference to 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.

Breaches of the Undertakings

- 2.4 Breaches by Danske Bank, HSBC and NatWest Group all resulted in potential or actual financial harm to small businesses. The Undertakings prohibit bundling loans and BCAs for small businesses. The Undertakings help to preserve choice for small businesses about the banking services they use, enabling small businesses to select their preferred BCA provider

independently of any lending relationships, and prevent the large banks from restricting competition. The description of the breaches is set out below.

Danske Bank

- 2.5 Danske Bank breached the Undertakings by requiring up to 205 SMEs customers who were operating their business finances through a personal current account to open a BCA with Danske Bank in order to progress their application for a loan under the BBLs. Danske Bank started offering the loans under the Scheme on 4 May 2020. The CMA published a letter to Danske on 12 November 2021.
- 2.6 Danske Bank wrote to affected customers and offered refunds of BCA charges and the option to switch to a fee-free loan servicing account.
- 2.7 To ensure future compliance, Danske Bank has committed to take actions including implementing an enhanced staff training programme, appointing an independent body to conduct compliance audits and writing to its SME customers to increase awareness of the rules against bundling.
- 2.8 Given the challenging circumstances of responding to the Covid-19 pandemic, in combination with the constructive approach taken by Danske Bank to ending the breach and preventing further breaches, the CMA did not consider it appropriate to take any action beyond the letter published in November 2021.
- 2.9 Danske Bank previously breached the Undertakings. The CMA published its previous letter to Danske Bank on 30 March 2021.
- 2.10 Danske Bank confirmed that the total figure paid to affected customers in relation to the second breach is approximately £10,000. Combined with the refunds to affected customers in Danske Bank's first breach, the total amount refunded to affected customers for the two breaches by Danske Bank was approximately £28,000.

HSBC

- 2.11 The CMA issued Directions to HSBC UK in March 2022. The breaches affect a number of loan agreements entered into between 2002 and 2021. A total of 221 loans were affected, impacting 204 customers. The breaches were notified to the CMA in July 2020, December 2020, March 2021 and May 2021 and primarily concern loan agreements governed by Scottish Law ('Scots law') and secured by a Scots law floating charge.

- 2.12 HSBC Bank plc (HSBC's non-ring fenced bank) and HSBC UK (HSBC's ring fenced bank) were already subject to a set of Directions issued by the CMA to HSBC in 2014 (2014 Directions) for a previous breach relating to bundling BCAs. The 2014 Directions were issued with the aim to improve HSBC's compliance with the Undertakings. The 2022 Directions supersede the 2014 Directions in full.
- 2.13 HSBC self-identified concerns in respect of compliance with the Bundling Undertakings. HSBC reported that the majority of impacted loan agreements were governed by Scots law and contained a 'Relevant Termination Event' (a clause which gave HSBC the right to terminate a borrower's loan if HSBC ceased to be the Borrower's principal commercial bank) on the mistaken understanding that a Scottish Law floating charge fell within the exemptions provided for under the Bundling Undertakings.
- 2.14 In addition to being a breach of the Undertakings, this also constituted a failure to comply with Clause 1 of the 2014 Directions, which is in summary "To take all steps within HSBC's competence reasonably necessary or desirable to achieve and maintain compliance with Clause 17 of the Undertakings . . .".
- 2.15 HSBC wrote to all affected customers with open loans in September and December 2021 to formally bring the breaches to an end by waiving the non-compliant clauses in the affected loan agreements. HSBC also confirmed it would refund all impacted customers with open and closed loans. The estimated total amount of refunds of BCA fees and charges for all impacted customers is approximately £700,000.
- 2.16 In addition, HSBC informed the CMA that it has completed actions to fix the coding error which led to the breach, as well as completing actions to enhance its controls and processes, staff training and guidance to prevent a recurrence of similar breaches. HSBC also confirmed that it undertook a review of its control environment to identify any additional potential issues or areas for improvement.
- 2.17 HSBC failed to identify the breach for a significant number of years either through its staff awareness initiatives or through the sampling it is required to undertake as part of the internal audits required by the 2014 Agreement. Given this, and the presence of the existing directions covering HSBC's conduct and the Undertakings, the CMA considered that it was necessary to issue new directions to HSBC. The CMA therefore issued directions to HSBC UK to (i) appoint an independent body to conduct compliance audits, and (ii) implement enhanced controls and staff training measures. These Directions

give the CMA reassurance that HSBC will be taking all appropriate measures to secure on-going compliance.

NatWest Group

- 2.18 The CMA issued Directions to NatWest Group on 31 August 2022. NatWest Group required 956 of its customers to open a BCA as a result of an SBL (small business loan) application. The breach was ongoing between November 2016 and May 2020.
- 2.19 NatWest Group confirmed that 702 of the 956 customers with BCAs opened as a result of an SBL application are eligible for refunds of the BCA charges. NatWest Group will also write to all 956 affected customers, explaining the breach. The estimated total amount of refunds of BCA fees and charges for all impacted customers is approximately £600,000. To prevent further breaches, NatWest Group stated that it is implementing a standalone journey in its electronic on-boarding system for loan servicing account applications and widening the scope of its annual compliance reviews to include an assessment of the accuracy of the account type set up in line with the customers' request.
- 2.20 However, the CMA considers that it is necessary to issue directions to Natwest to give the CMA sufficient reassurance that NatWest will be taking all appropriate measures to secure on-going compliance. The breach was significant in size, the system put in place was in breach of the Undertakings and the breach went undetected by NatWest Group's staff for over three years during the design, implementation and operation of the system. The CMA has therefore directed NatWest Group to ensure it carries out a full independent audit of its compliance with the Undertakings.
- 2.21 AIB NI and Barclays complied with the Directions given to them in 2014 and 2019 respectively.

3. Best practice for ensuring compliance

3.1 The CMA expects to see high standards put in place and maintained across the banks to ensure full compliance with the Undertakings, the 2014 Agreement and Directions where appropriate. While the areas of best practice outlined in previous reports⁴ continue to be relevant, this section outlines the current areas of best practice that are relevant for the banks and which could improve the consistency of compliance. This chapter highlights best practice and possible improvements for banks to consider in the following areas:

- (a) Banks' policies, practices and procedures in relation to compliance with the obligations not to bundle BCAs with loans and deposit accounts
- (b) Banks' policies, practices and procedures relating to internal communications on compliance
- (c) Banks' policies, practices and procedures relating to external communications e.g. customer guidance
- (d) Banks' staff awareness and training and
- (e) Other evidence of compliance.

⁴ SME banking 2002 behavioural undertakings: reports on compliance - GOV.UK (www.gov.uk)

Policies, practices and procedures in relation to compliance

3.2 Table 1 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance.

Table 1: Policies, practices and procedures

Questions on compliance	AIB NI	Bank of Ireland	Barclays	Clydesdale	HSBC	LBG	Danske Bank	NatWest Group
Procedures to promote compliance?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Procedures to monitor compliance?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Procedures reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
First line assurance models ⁵ in place?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Second line assurance models in place?	Yes	No	Yes	No	Yes	Yes	No	Yes

Source: the banks

3.3 Bank of Ireland’s monitoring excluded loans made under the BBLs. Bank of Ireland subsequently checked the compliance of loans made under the BBLs by 16 September 2021.

3.4 Three banks did not employ a second-line assurance model (Bank of Ireland, Clydesdale and Danske Bank). As noted elsewhere in this document, the CMA has reported on multiple breaches of these Undertakings over many years, including three within the past 12 months. Therefore, we think that second-line assurance testing is prudent and recommend that the banks that

⁵ Monitoring and checking compliance as described by the Chartered Institute of Internal Auditors - [Chartered Institute of Internal Auditors | iia.org.uk](https://www.iaa.org.uk)

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.

do not currently undertake this begin to do so. We note that Bank of Ireland has now implemented a second-line assurance model, and that Danske Bank, which had paused its second-line assurance model during the Covid-19 pandemic had reintroduced it in March 2022. Clydesdale has said that it adopts an annual risk-based planning approach to its assurance and whilst the requirements of the Undertakings are considered, this has not featured as a priority area for second line assurance activity given the ongoing first line testing and annual Internal Audit review.

Policies, practices and procedures relating to internal communications on compliance

3.5 Table 2 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures relating to internal communications to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance.

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

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale	HSBC	LBG	Danske Bank	NatWest Group
Staff reminded about bundling?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Annual reminders on bundling reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
‘Best practices’ and ‘professional standards’ taken into account in reviews?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Did all Relevant Staff receive the Annual Reminder at the correct time?	Yes	Yes	No	Yes	No	Yes	Yes	Yes

Source: the banks

3.6 The CMA was pleased to note that Clydesdale carries out training twice yearly, which increases the chance of staff members having their training prominent in their minds when undertaking their duties.

3.7 The CMA also noted that:

- 247 HSBC staff had not received an annual reminder at the correct time. HSBC subsequently sent the annual reminder to these staff and will be implementing a further control through a quarterly review to check whether changes in its business framework structures affect who is provided with the annual reminder

- 135 Barclays staff did not receive the annual reminder during the assessment period. This was due to Barclays' reliance on manual processes to identify certain groups of staff. Barclays is currently looking into how its processes can be improved to fix this for future years. The annual reminder was later assigned to all relevant staff still in role that did not receive it during the relevant period.

3.8 The CMA is pleased to note that all banks now employ professional standards when undertaking reviews of internal communications.

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

3.9 Table 3 shows the CMA's assessment on whether each individual bank has provided evidence in audit reports of policies, practices and procedures relating to external communications to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance.

Table 3: Policies, practices and procedures relating to external communications on compliance

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale	HSBC	LBG	Danske Bank	NatWest Group
External communication reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Best practice or professional standards taken into account when conducting this review?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: The banks

3.10 The CMA is pleased to note that all banks now employ professional standards when undertaking reviews of external communications.

Staff Awareness and Training

3.11 Table 4 shows the CMA’s assessment on whether each individual bank has provided evidence in audit reports of staff awareness and training to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance.

Table 4: Staff awareness and training

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale	HSBC	LBG	Danske Bank	NatWest Group
All Relevant Staff received training?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Did training include an assessment element?	Yes	No	Yes	No	Yes	Yes	Yes	Yes
Staff training reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Staff interviews carried out to assess staff awareness?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Source: The banks.

3.12 The CMA was pleased to note that in addition to carrying out interviews of Relevant Staff, HSBC use Mystery Shopping. HSBC’s audit teams call a sample of staff based within Business Telephone Banking teams pretending to be a real customer in order to test their awareness of the Bundling Undertakings. We think this is helpful in checking compliance because it mimics the circumstances in which a Relevant Staff member will give advice in a real discussion with a potential customer.

3.13 The CMA also notes that:

- Neither Bank of Ireland nor Clydesdale Bank carried out an assessment element to establish whether the training is successful or not in informing staff of their obligations. Bank of Ireland has now included an assessment element in its training programme, and Clydesdale has committed to introducing an assessment in 2022.
- 272 NatWest Group staff did not receive training. NatWest Group will include these staff members in future training.

Other evidence

3.14 Table 5 shows the CMA’s assessment on whether each individual bank has provided other evidence to enable them to comply with the obligations not to bundle BCAs with loans and deposit accounts. The purpose of this is to identify where banks should strengthen their compliance.

Table 5: Other evidence

Questions on compliance	AIB NI	Bank of Ireland	Barclays Bank	Clydesdale	HSBC	LBG	Danske Bank	NatWest Group
New to bank SME loans and business deposits and facility letters reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Customer complaints reviewed?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Bank lending appeals process reviewed?	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Individual complaint code for bundling?	Yes	No	Yes	No	Yes	No	Yes	Yes
Internal complaint escalation process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Internal complaints reviewed?	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
New products reviewed?	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes

Source: The banks.

3.15 Bank of Ireland reported that while it does not have a specific complaint code for bundling, it reviews each complaint made to check for bundling issues. A specific complaint code has now been added to planned system development and is awaiting implementation.

3.16 Clydesdale reported that it did not review its appeal lending process as staff awareness in relation to product bundling was high and because there were no incidences of non-compliance identified in the reporting year. The CMA considers that regardless of the level of staff awareness of the Undertakings,

reviews should be carried out to ensure that awareness amongst staff has not slipped.

- 3.17 Clydesdale does not have an individual complaint code for bundling but has committed to reintroducing one in advance of the 2022 reporting round.
- 3.18 Clydesdale reported that it did not review its internal complaints process. This was because other key elements of the bank's complaints handling process are periodically reviewed by the bank's 3 Lines of Defence teams. Reviews are carried out in line with the annual assurance plans. The CMA still considers that reviews are useful. The CMA has identified breaches by different banks of the Undertakings over a number of years. Banks need to ensure that their internal complaints processes are capable of identifying breaches, some of which may be novel. A regular review is a good way of ensuring internal complaints processes are capable of identifying new concerns.
- 3.19 LBG did not have an individual complaint code for bundling but has since introduced one, on 15 September 2021.
- 3.20 While Danske Bank reviewed one of the three banks' lending processes in the reporting year, it had not formally reviewed the other two since 2014 and 2019. Whilst both of these had been reviewed informally in the reporting year, we think it important that formal reviews are carried out regularly on important documents such as these.

Appendix A: The obligations on the banks

In 2002, following a Competition Commission (CC) 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 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).⁶

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

- improve awareness of the Undertakings among Relevant Staff
- assist the CMA⁷ in assessing overall levels of compliance with the Undertakings on an ongoing basis

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 Undertakings.

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

The CMA reviewed the banks' 2014 Audit reports and reported on its findings in its report on compliance of 22 October 2014.⁸

⁶ 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).

⁷ 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.

⁸ [SME banking 2002 behavioural undertakings: reports on compliance - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

On 21 October 2014, the CMA issued Directions⁹ to two banks to improve compliance with the Undertakings following breaches.

On 4 July 2019, the CMA issued Directions¹⁰ to Barclays for two breaches of Clause 17 of the Undertakings.

On 30 March 2022, the CMA issued Directions to HSBC UK for a breach of Clause 17 of the Undertakings.¹¹

On 31 August 2022, the CMA issued Directions to NatWest Group for a breach of Clause 17 of the Undertakings.

⁹ See CMA.GOV.UK for Directions to HSBC and AIB NI (then named First Trust): [SME banking 2002 behavioural undertakings: directions to banks - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/sme-banking-2002-behavioural-undertakings-directions-to-banks)

¹⁰ See CMA.GOV.UK for Directions to Barclays: [SME banking 2002 behavioural undertakings: Directions to Barclays - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/sme-banking-2002-behavioural-undertakings-directions-to-barclays)

¹¹ These Directions supersede the previous directions issued to HSBC in 2014.

The 2014 Agreement

Agreement with respect to the limitation of bundling

1. That THE BANK¹² 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.¹³
 - (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 Conduct¹⁴ of the Chartered Institute of Internal Auditors.¹⁵
 - (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 issued 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
2. That THE BANK, on an annual basis, provides to each of its Relevant Staff,

¹² To add the identity of the relevant bank.

¹³ 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).

¹⁴ [Code of Professional Conduct](#) | [Member benefits](#) | [Members](#) | [IIA](#)

¹⁵ 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.

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.

Appendix B: Glossary

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

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

2014 Agreement – signed by the banks. The 2014 Agreement is available in Appendix A of this Report.

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

Annual Reminders – referred to in section 2 of the 2014 Agreement. On an annual basis, the 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 - AIB Group (UK) plc (known as AIB NI in this report, and previously known as First Trust); Bank of Ireland; Barclays Bank plc and Barclays Bank UK plc (as the case may be) (together, Barclays); Clydesdale Bank plc's SME Business and Branches in Scotland (Clydesdale); HSBC UK Bank plc (HSBC UK) and HSBC Bank plc (as the case may be) (together, HSBC); Lloyds Banking Group plc (LBG); Northern Bank Limited (known as Danske Bank) and NatWest Group plc (NatWest Group) (formerly the Royal Bank of Scotland Group plc (RBS)) which includes Ulster Bank Limited (Ulster Bank) in Northern Ireland. Nine banks originally agreed to the behavioural undertakings, two of these banks, HBOS Plc and Lloyds TSB Bank plc, subsequently merged and became part of Lloyds Banking Group plc.

BCAs – Business Current Accounts

BBLs - Bounce Back Loans Scheme

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.

OFT – Office of Fair Trading

Report – CMA's Report on Compliance 2022

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 take out a loan or 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.¹⁶

¹⁶ [SME banking undertakings review - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

Appendix C – Previous enforcement action

Enforcement action taken by the CMA under the Undertakings

Bank	Details	Number of small businesses affected
HSBC Bank plc	Directions issued in 2014 to HSBC.	Some HSBC staff informed a number of SMEs that there was a requirement to open a BCA in order to obtain a loan.
First Trust (AIB NI)	Directions issued in 2014 to First Trust.	6
Barclays	Directions issued in to 2019 to Barclays.	816
AIB NI	Public letter to AIB NI published in 2020.	Failure to comply with Directions.
Lloyds Banking Group	Public letter to Lloyds published in 2020.	30,000
Clydesdale Bank (now Virgin Money (Scotland))	Public letter to Clydesdale published in 2021.	55
Danske Bank	Public letter to Danske published in 2021.	305
Danske Bank	Public letter to Danske Bank published in November 2021 on a second breach	205
HSBC UK Bank plc (HSBC)	Directions issued in 2022 to HSBC	204
NatWest Group	Directions issued in 2022 to NatWest	956