

**Santander UK response to the CMA’s ‘Statement of Policy on the CMA’s Approach:
Administrative Penalties’**

- 1.1 Santander UK plc (“Santander UK”) welcomes the opportunity to provide comments on the CMA’s draft Statement of Policy in relation to Administrative Penalties published on 11 July 2024 (“Draft SoP”). In particular, we are keen to provide our views on the new financial penalties for breaches of market investigation orders, which under the new administrative penalties regime¹ will constitute breaches of ‘Remedy Requirements’², and thus be subject to fines of up to 5% global turnover. At present, the CMA can sanction or require remediation of such breaches by public letters or ‘directions’, and this therefore represents a material change to the enforcement landscape.
- 1.2 In this response, we make limited comments on the wider suite of administrative penalties introduced or retained by the CMA. We fully support a culture of compliance and believe that well run firms should have no difficulty in complying with well-scoped and proportionate legal and regulatory requirements and information requests.
- 1.3 However, as a financial services firm, we do have significant experience of implementing and ensuring ongoing compliance with market investigation orders, most notably the Payment Protection Insurance Order 2011 (the “PPI Order”) and the Retail Banking Market Investigation Order 2017 (the “Retail Banking Order”), as well as visibility of the SME Banking Undertakings 2002. We are therefore very familiar with challenges associated with complying with such Orders, as well as the CMA’s current approach to enforcement. On the basis of this experience, we have a number of concerns around the potential scale of the fines that could be imposed for breaching Remedy Requirements, as well as the CMA’s potential application of fining powers in line with the guidance set out in the Draft SoP.
- 1.4 For context, a table of the CMA’s enforcement activity for ‘breaches’ of market investigation orders within the financial services sector is set out in [Annex 1](#). A table illustrating how specific remedies have been breached multiple times (suggesting challenges in interpretation or ongoing technical compliance) is at [Annex 2](#).
- 1.5 Our key concerns are as follows:
 - i) ***The design limitations of certain Remedy Requirements make breaches (attracting fines of up to 5% global turnover) inevitable.*** Whilst consulted upon as part of the market investigation and occasionally trialled, the reality is that remedies in CMA Orders are often designed without the CMA or industry fully understanding the impact or workability of the requirement. They can be loosely or poorly drafted, which makes

¹ Introduced pursuant to the Digital Markets, Competition and Consumer Protection regime.

² As defined at para 1.4 of the Draft SoP: “‘Remedy Requirements’ for the purposes of this statement of policy are requirements imposed or accepted by the CMA to address, and as relevant, remedy concerns the CMA has identified in cases under the CA98 and EA02 (whether on an interim or final basis) and on an interim basis under the DMCCA24 (for example, an interim measure in a mergers case under section sections 72, 80 or 81 or paragraph 2 of Schedule 7 EA02, an order imposed by the CMA under section 161 EA02 following a market investigation, or an Interim Enforcement Order (IEO) imposed under section 32 DMCCA24)” .

compliance challenging and the threshold for breach and reporting very low. In addition, many of the rules have no customer or competitive impact in practice.

Against this context, with the best will in the world, recidivism (an aggravating factor within the Draft SoP) is inevitable. This is illustrated by the tables in Annexes 1 and 2. Whilst the CMA has cited the number of breaches of Remedy Requirements in its advocacy to government as evidence of the need for deterrent fining powers,³ in our view this misrepresents the nature and impact of the breaches.

UK retail financial services firms – which have supervisory relationships with a number of authorities, a strict regulatory framework to comply with and a real focus on customers – are by nature and culture the most compliance-focused organisations in the country. The fact that several banks, each with a sophisticated compliance function and extensive experience, have breached the same requirements (see [Annex 2](#)) illustrates not that organisations do not take compliance seriously, but rather the very real challenges that large, complex organisations with multiple products, services and business areas, undergoing frequent IT changes, face in ensuring ongoing compliance.

- ii) ***The CMA takes a strict, and often technical approach, to compliance.*** Examples include issuing public letters in relation to a bank’s technical systems failure that resulted in services quality information not being updated on a webpage for 6 weeks (even though it had been correct for six years), and for a bank failing to display posters on service quality metrics sufficiently prominently in branch. Other regulators (including the FCA) in practice take a more pragmatic and proportionate approach to their supervisory responsibilities – explicitly focusing their work on the key drivers of conduct likely to drive harm. They understand that organisations that are subject to constant regulatory and operational change and multiple, often overlapping regulatory requirements, may face technical compliance issues with regulations that were drafted up to two decades earlier.

The breaches listed in Annex 1 do not relate to firms’ failure to implement a Remedy Requirement (indeed, firms have overwhelmingly complied at great expense and effort to implement remedies with the specified timeline), but rather supplementary issues that arise down the line. Taking such a technical approach - dealing with issues which firms generally self-remediate and take significant management time – therefore appears inconsistent with the CMA’s statement in the Draft SoP that: “*The primary focus of administrative penalties addressed in the Draft [CMA4] is on the interference with the CMA’s investigatory and remedies powers, and intrinsically to the CMA’s ability to carry out its work.*”⁴

- iii) ***In light of the above, there is a divergence in standards between the CMA’s approach to enforcement of rules and how financial services regulators would ‘sanction’ issues in complying with similar (or overlapping) rules.*** This is a

³See letter from Kevin Hollinrake MP, Minister of State, to David Raw, Managing Director, UKF dated 23 April 2024.

⁴ Consultation Document: Administrative Penalties: Statement of Policy on the CMA’s Approach”, 11 July 2024.

particularly important issue where the CMA continues to intervene in markets for which the FCA and PSR have conduct and regulatory responsibility, including a concurrent competition objective. There is no policy reason for the CMA to take a far stricter approach, and to sanction multiple firms for similar issues rather than making an industry-wide intervention, than the FCA in that scenario (leaving aside the issue of allocation appropriateness).

It cannot be understated how much management and supporting function time is already taken up dealing with CMA breaches that have limited customer impact. In Santander's experience of investigating and remediating market investigation order breaches across multiple products and business areas, each breach can take thousands of hours of resource to deal with it in the manner the CMA expects.

In contrast, the FCA has an ongoing supervisory relationship with regulated firms, through which firms will report and discuss the types of issues and incidents akin to CMA Order breaches which arise in the BAU operation of financial services. It is acknowledged that not all breaches can be prevented, and that an effective control environment is essential to catch and fix issues early. Under SUP 15.3 of the FCA Handbook, only certain events, including a significant failure in the firm's systems and controls or significant breach of any requirement imposed by the Consumer Credit Act 1974 ("CCA") or legislation made under the CCA, should be notified to the FCA.

- iv) ***Fines of up to 5% global turnover for breaches of historic Orders that may no longer have relevance to competition/ the market appears disproportionate.*** Whilst the CMA can, and occasionally does, review remedies to ensure that they remain appropriate, the majority stay in force for far longer than required, with the CMA often facing resourcing and capacity issues which delay or prevent the timely review and revocation of such Orders.⁵

- v) ***In the context of material fines, the CMA will need to ensure a fair and proportionate approach to decisions.*** Whilst the Draft SoP gives the CMA discretion on whether and at what level to apply fines, the CMA Remedies Monitoring Team has historically taken a technical approach to remedies oversight, issuing warning letters and 'directions' in respect of minor issues (as set out in Annex 1), where the FCA would likely have taken no action. The FCA's approach to enforcement specifically states that it takes a risk-based approach towards its use of the enforcement tool, and notes that it may be appropriate to deal with compliance failures without formal disciplinary or other enforcement action. In the context of material fining powers, we urge the CMA to reconsider its approach to date, and to clarify this in the Draft SoP.

- vi) ***Relatedly, there will be increased litigiousness in CMA enforcement.*** The CMA's fining decisions under their new powers will be appealable to the Competition Appeals Tribunal. In light of the potential quantum of the fines and resulting impact on their business, firms will be much more likely to defend against such breaches, supported

⁵ A good example is the PPI market investigation Order, implemented in 2011, which continues in force notwithstanding there are very few firms still offering Payment Protection Insurance in the market. The number of breaches of Article 4 is indicative of complying with the Order. [3-].

by external legal counsel. In the context of relatively minor breaches, this would be a real incursion on the time and resources of all parties involved, including the CMA. By contrast, management of firms that have received proportionate, informal enforcement actions for breaches for relatively minor breaches have generally accepted the decision and have taken the necessary steps to remedy the breach as soon as possible. This is reflected in the detail of the Letters and Directions listed in Annex 1. We believe that a proportionate approach to enforcement will, in the vast majority of cases, result in better outcomes.

- vii) ***When combined with the CMA’s new powers to vary market investigation orders for a period of 10 years from identifying an Adverse Effect on Competition (“AEC”) in a market investigation, the ability to fine 5% for failing to comply with shifting remedies concerns around legitimate business certainty and protection of rights.*** The markets investigation regime has historically contained a number of procedural steps and consultation stages to guarantee that such rights are protected. This includes strict parameters within which the CMA can and cannot act (including only being able to act when it has identified an AEC, and only to resolve that specified AEC) and multi-stage consultation on remedies as they are developed. The new regime risks undermining these fundamental legal rights because the CMA will not need to follow all of the procedural steps before making significant interventions in markets.

This gives rise to the possibility that a firm could face significant fines for non-compliance with an amended Order that goes beyond the original AEC of the market investigation and which did not face the scrutiny of a full market investigation before being implemented. This severely undermines the principle of legal certainty and firms’ defence rights.

- viii) ***The CMA’s current approach to enforcement of Remedy Requirements is inconsistent with the move of financial services firms towards being digital banks.*** A review of the Letters and Directions issued in the financial services sector (see Annex 1) shows that for each ‘breach’ firms make very significant enhancements to process and control environments. In light of firms’ legacy and multiple IT systems, these are often required to be manual interventions and the insertion of four or six eye checks at multiple stages of a product or customer journey to prevent recurrence. We urge the CMA to consider the impact and proportionality of this reality, particularly given the divergence with FCA standards described above, and the FCA’s own rule-making ability.

Potential problems with the Draft SoP

- 1.6 Whilst recognising that the Draft SoP affords the CMA much discretion in how and when to calculate fines, and on the mitigating factors that can be taken into account when deciding whether a fine is appropriate (in particular a lack of customer impact), the examples provided in Annex 1 of the Draft SoP suggest that the CMA would consider as ‘significant’ various minor breaches that have no impact on deterrence or customer/ competition outcomes. The same guidance will guide the Competition Appeals Tribunal on any appeal.⁶ As a result, we do not

⁶ Paragraph 2.10, Consultation Document: Administrative Penalties: Statement of Policy on the CMA’s Approach”, 11 July 2024.

think that the Draft SoP provides firms with any comfort that the CMA will take a proportionate approach to setting fines now that it has received new powers.

- 1.7 For example, example 7 in Annex 2 shows a failure in relation to a complicated information remedy, which the CMA suggests would likely attract larger fixed fines and possibly also directions. This example is analogous to many of the breaches of market investigation orders committed by financial services firms in recent years, as set out in the table in Annex 1. This example will therefore cause concern that the CMA will continue to take a tough approach to enforcement of the type of breaches that have been seen to date.
- 1.8 The example is also atypical in several ways, however. It shows the issue being identified through customer complaints directly to the CMA. By contrast, breaches by financial services firms usually do not cause any actual customer impact and customers generally remain unaware of the issue. In addition, financial services firms usually detect the breach through their own compliance functions, self-report to the CMA and take all necessary steps to remediate the breach as soon as possible. Despite good-faith implementation of the initial remedy, it is possible for even the best-resourced and most compliance-focused organisations to inadvertently lose track of poorly drafted technical requirements over an extended period when faced with organisational changes and an evolving regulatory landscape. We urge the CMA to add an additional example to reflect the experiences of financial services firms to date - and setting out a willingness to take a proportionate approach in that scenario.
- 1.9 Another example in the Draft SoP (example 1, Annex 2) cites the example of a CEO who misses an important information request for the duration of a merger inquiry. The CMA says that if – when contacted by the CMA the day after the deadline has passed – the CEO is hugely apologetic and offers to provide the majority of the information that day, with the remainder to follow the next day – it is likely to consider this a minor/ mitigated failure. However, information requests often require multiple inputs and significant data gathering, which means the provision of information to this timescale is unrealistic. The guidance therefore does not provide meaningful comfort on how this situation might play out in reality.

Retrospective application

- 1.10 In May this year, the Rt Hon Kemi Badenoch MP (then Secretary of State for Business and Trade) and Kevin Hollinrake MP (then Minister of State for Department of Business and Trade) confirmed via letters to the industry association body UK Finance⁷ that the new administrative penalties regime would not have retrospective application, aka would not apply to existing Remedy Requirements or historic breaches. However, we have heard anecdotally that the CMA has orally confirmed to Barclays that it intends the new administrative regime will have retrospective effect. We encourage the CMA and the new Labour government to respect these previous assurances, particularly in light of the issues spelt out in this note.

FCA and CMA concurrency

⁷ KH to David Raw, Managing Director, UKF dated 23 April 2024, and KB to Sarah Boon, Managing Director of Corporate Affairs and Strategic Policy, UKF dated 28 May 2024.

- 1.11 As has been referenced, where Remedy Requirements within CMA Orders overlap in substance with the FCA's (or other regulators') broader regulatory rulebook and objectives, the existence of overlapping sets of rules introduces complexity and confusion, which increases the likelihood of breaches.
- 1.12 Examples of overlap from the Retail Banking Order include Part 7 on Monthly Maximum Charges ("MMCs"), the objectives of which have been met by High Cost of Credit Rules.⁸ Part 3 on Service Quality Metrics has very similar objectives to BCOBS 7 in the FCA handbook, the result of which means Santander hosts two separate webpages providing similar but slightly different information and metrics on service quality.⁹ On Part 2 (Open Banking), PSD2 introduced equivalent provisions to the payment initiation provisions on which the CMA and industry have been focused over the last six years (notwithstanding this was not responsive to the AEC identified), and appointed the FCA as competent authority for this regulation in the UK.
- 1.13 Where the approach to monitoring, reporting and enforcement is different between the FCA and CMA, as described in paragraph 1.5(iii) above, confusion is heightened. We would welcome consideration by the CMA of whether, in particular, the Retail Banking Order can be revoked, or, if not, its provisions transferred to the FCA for inclusion with similar provisions in existing rule books and regulations.

Our request

- 1.14 In light of the above, we urge the CMA - and the Secretary of State when proposing the implementing legislation - to consider the following steps when finalising the Draft SoP:
- i) That the CMA take steps - including talking to other regulators and with industries that have experienced market investigations - to better understand the issues that lead to the majority of breaches of CMA Orders. This includes organisational complexity and issues with Order drafting. We hope that this would inform an understanding that fines of up to 5% global turnover will not change levels of 'compliance' or customer outcomes. Firms have generally been willing to implement Remedy Requirements within the CMA's required timescales. The systems and change issues that give rise to breaches are realistically unavoidable.
 - ii) Where the CMA nonetheless takes a provisional decision to fine a firm for a breach of a Remedy Requirement, this decision should be taken by an appropriate group of senior individuals within the CMA, applying a common sense approach in light of all the mitigating factors in the Draft SoP, paying particular attention to whether the breach was made in bad faith or because of negligence in the true sense, and whether there was any actual customer harm. In regulated sectors, there should be a comparison with the

⁸ At the time Part 7 was introduced, overdraft pricing was complex, with many different approaches to charges and the objective of the remedy was to enable customers to compare the costs of different current accounts. The FCA interventions pursuant to the High Cost of Credit reviews have made it much more straightforward for customers to compare overdraft pricing. Information relating to the MMC is now largely redundant.

⁹<https://www.santander.co.uk/personal/support/customer-support/service-quality-metrics> (FCA) and [Service Quality Results | Santander UK](#) (CMA). The differing requirements for how and where similar information (e.g. quality scores) is displayed can be confusing for customers and firms in assuring compliance.

approach that would be taken by other regulators in relation to similar or overlapping regulatory rules. The CMA should be required to consult the PRA and/or the FCA before exercising fining powers in relation to financial services firms if the exercise of such powers is likely to have a material adverse effect on the advancement of their objectives under FSMA.

- iii) For future market investigations, as far as possible, the CMA should refer rule-making to the relevant sector regulator, so that firms are not subject to similar, overlapping rules that arise when the CMA does not revoke its Remedy Requirements after new regulatory rules come into play. Simplifying the regulatory landscape will help firms in their compliance efforts.
- iv) In light of the potential consequences for industry, we would ask the CMA to keep historic Remedy Requirements under review, and revoke these as soon as possible and appropriate. Where a sector regulator introduces overlapping rules, the CMA Order or remedy should ideally be revoked at the same time. This must all be clearly communicated in a revised version of the Order so that market participants know their compliance obligations.

In particular, at this stage we urge the CMA to consider whether the Retail Banking Order, or provisions within it, can be revoked or, if not, transferred to the FCA for inclusion with similar provisions in their regulatory rulebook.

- v) As a minimum, the CMA should confirm – together with government – that the new administrative regime will not have retrospective application, i.e. will not apply to existing Remedy Requirements that were designed and agreed before fines of 5% global turnover were possible. This is consistent with the assurances to UK Finance provided by Kemi Badenoch and Kevin Hollinrake.
- 1.15 We would be happy to discuss our response in more detail with the CMA and other relevant stakeholders if that would be helpful. Please direct any correspondence in the first instance to Santander Regulatory Liaison (santanderregulatoryliaison@santander.co.uk). Please note that [redacted].
- 1.16 In light of the concurrency angle, and the role for the implementing legislation in determining the questions around retrospective application, we are also sharing this paper with the FCA and Government.

Annex 1 – Breaches of Market Investigation Orders in Financial Services**Breaches of Payment Protection Insurance Market Investigation Order 2011**

Company	Date published	Relevant provision	Details	Outcome* ¹⁰
Nationwide Building Society	16 May 2024	Article 4	<p>Incorrect information was provided in one field in the Annual Review Statement for 131 Mortgage PPI policyholders between April 2012 and December 2023.</p> <p>Cause: error in the way its systems were set up following the introduction of the Annual Review Statements.</p>	<p>Letter</p> <p>(Significant but Nationwide has exited the PPI market)</p>
3XD Limited	29 November 2023	Article 10.3	<p>Prohibited administration fees of £2 monthly were charged to 3,142 Mortgage Payment Protection Insurance policyholders (£31,256 total) between 19 October 2022 and 10 March 2023.</p> <p>Cause: 3XD Limited being unaware of the provisions of the Order when introducing the administration fee.</p>	Letter
Barclays Bank plc	9 November 2022	Article 4	<p>Annual Reviews were not sent to 1,306 former Mortgage Payment Protection Insurance policyholders between 2014 and 2017.</p> <p>Cause: where mortgage customers moved house & notified this to the Mortgage team, this change of address was not passed onto MPPI business unit sending out the Annual reviews.</p>	Letter
The Royal Bank Scotland Group plc	11 August 2022	Article 4	<p>10, 730 mortgage PPI customers did not receive their annual reviews as they were sent to out of date addresses between 2012 and 2018.</p> <p>Cause: inadequate process between RBS and its underwriter to ensure Annual Reviews were sent to the correct address.</p>	Directions
NewDay Limited	29 October 2021	Article 4	<p>Annual Reviews were not sent to 4,831 customers between 2014 – 2017 (for 3 different reasons). In addition, 17,000 customers were sent Annual Reviews that understated the amount of PPI premium paid over the year.</p>	Letter

* Letters can include remediation + 8% interest, significant enhancements to process and controls and internal/external audits. Directions are those, but formalised via a binding action plan and often appointment of auditors.

Company	Date published	Relevant provision	Details	Outcome* ¹⁰
			Causes: 2 x coding errors; 1 x customers were missing from a third party list.	
		Article 15	A PPI Compliance Officer was not appointed after the PPI book was acquired in 2013.	
Lloyds Banking Group plc	9 September 2021	Article 4	Monthly PPI benefit value figures were not included in PPI Annual Reviews sent to a total of 41, 26 and 23 PPI customers from the 2019, 2020 and 2021 mailing cycles respectively.	Letter (Discovered pursuant to previous Directions)
Cardif Pinnacle	25 February 2021	Article 4	Annual Reviews sent to 4,812 customers between 2012 and 2020 included inaccurate Annual PPI Cost. Cause: coding error meant annual reviews covered durations of 11 or 13 (rather than 12) months	Letter (Discovered pursuant to previous Directions systems and controls enhancements)
Lloyds Banking Group plc	3 February 2021	Article 4	Between January 2013 and September 2020, Annual Reviews sent to approximately 8,800 PPI customers either did not include a monthly PPI benefit figure, or displayed the monthly PPI benefit figure in the wrong box of the statement, or included an incorrect monthly value of PPI within the 'Type of Cover' field. Cause: 'Type of cover' field incorrectly populated (although was correctly displayed elsewhere in the Annual Review)	Letter (Discovered pursuant to previous Directions systems and controls enhancements)
Cardiff Pinnacle	29 September 2020	Article 4	77 PPI customers did not receive Annual Reviews in April 2019 and 167 customers were sent inaccurate Annual Reviews in July 2020. Cause: 1 x policy record incorrectly indicated an Annual Review had already been issued; 1 x prior technical fix in Directions had not worked.	Letter (Discovered pursuant to previous Directions systems and controls enhancements)
Lloyds Banking Group	8 July 2020	Article 4	18 breaches from 2012 – July 2020. 4,950 PPI customers did not receive Annual Reviews within 14 days of the anniversary date and 5,537 customers were provided with incorrect information in the Annual Reviews they received.	Letter (Only as covered by recent Directions).

Company	Date published	Relevant provision	Details	Outcome* ¹⁰
			Cause: multiple technical and system causes.	
Nationwide Building Society	8 July 2020	Article 4	In the 2020 cycle, 3,053 Mortgage Payment Protect Insurance customers did not receive Annual Reviews by the due date. Cause: Incorrect record included within MPPI data due to be provided to Nationwide's print house in Dec 2019 for mailing to customers.	Letter (covered by previous Directions)
Cardiff Pinnacle	8 July 2020	Article 4	14,833 Annual Reviews sent to customers either understated or overstated the Annual Cost of PPI and/or the Average Monthly cost of PPI. Cause: a coding error in the policy management system.	Directions
Paymentshield Limited	19 March 2020	Article 4	Between April 2013 and 19 August 2019, 604 customers were not issued with Mortgage PPI or Income Protection PPI Annual Reviews. In addition, customers did not receive Annual Reviews for every other year. Cause: an internal IT failure which prevented Annual Reviews from being generated.	Directions
Nationwide Building Society	18 October 2019	Article 4	Between 6 April 2012 and 31 December 2017, Annual Reviews for 15,472 accounts were not sent to customers. Cause: a system coding error.	Directions
Santander UK plc	23 August 2019	Article 4	Incorrect information was provided in Annual Reviews which were sent to 3,433 customers with mortgage PPI policies between 2012 and 2017 in cases where the mortgage was in arrears on one particular mortgage platform. The information was regarding the balance of the customer's outstanding mortgage. Cause: discrepancy in the supplementary mortgage data value provided in relation to the customer's 'Total Outstanding Loan' for those in arrears on a specific Santander mortgage data platform.	Directions

Company	Date published	Relevant provision	Details	Outcome* ¹⁰
Lloyds Banking Group plc	4 October 2018	Article 4	<p>2 x breaches: Annual Reviews were not sent to approximately 14,060 customers with open or closed PPI policies between 2012 and 2018 and 2,884 Annual Reviews sent to customers included incorrect PPI premiums.</p> <p>Cause: controls and procedures in place to prevent breaches were inadequate.</p>	Directions
Barclays Bank UK plc	6 August 2018	Article 4	<p>Between October 2016 and October 2017, 2,265 customers who held PPI with Barclays in respect of Littlewoods credit cards did not receive PPI annual review statements.</p> <p>Cause: control mechanisms introduced to comply with article 4 were inadequate.</p>	Directions
Paymentshield Limited	6 September 2017	Article 4	<p>Between 2012 – 2017, 3,067 customers did not receive one or more Annual Reviews. Consequently, a total of 5,295 Annual Reviews were not issued.</p> <p>Cause: customer mailing process stopped any further mail being dispatched to an address when mail undelivered as 'addressee gone away'.</p>	Letter
Aviva plc	24 January 2017	Article 4	<p>In 2016, Annual Reviews sent to PPI customers (of distributor partners) included inaccurate information relating to the amount paid on PPI.</p> <p>Cause: IT issue gave rise to incorrect data.</p>	Letter
Santander UK plc	5 December 2016	Article 4	<p>520 PPI customers did not receive Annual Reviews during the period 2012 – 2015 (of which only 54 has not cancelled PPI or moved away from address).</p>	Letter
Lloyds Banking Group	24 January 2017	Article 4	<p>3 x breaches (for 3 different reasons). 4,700 customers received Annual Reviews which included incorrect figures relating to 'Estimated total remaining charge for loan' and 'total remaining amount that you must pay back' in 2015.</p> <p>Causes: 1) 'gone away' indicator on accounts not always uptodate; 2) coding error; 3) issues with migration of records to a new IT platform; 4) error with certain non-automated mortgage repayment insurance.</p>	Letter

Company	Date published	Relevant provision	Details	Outcome* ¹⁰
		Part 7	207 customers were overcharged premium amounts.	
Barclays Bank plc	27 April 2016	Article 4	In the 2015 Annual Review cycle: 3 x serious breaches: 52 customers did not receive Credit Card PPI Annual Reviews regarding their credit card PPI; 9,404 customers did not receive Annual Reviews throughout three Credit Card PPI Annual Review periods; and 740 Mortgage PPI customers did not receive a specific mortgage PPI scheme.	Letter

Breaches of Retail Banking Market Investigation Order (“RBMO”)¹¹

Company	Date published	Relevant provision	Details	
HSBC UK Bank plc	25 July 2024	Part 2	Information published between 19 July 2022 and 7 October 2023 through Read-Only APIs were inaccurate. In particular, 167 branches were not removed from the APIs since their closure and 2 operating branches were not disclosed. Cause: previous automatic source of information was replaced with manual source of information.	Directions
		Part 8	The EAR published between 24 June 2023 and 10 August 2023 on the HSBC Kinetic Webform page was incorrect. Cause: relevant page was not included in the list of web pages requiring updates to reflect changes in the Bank of England base rate.	
TSB	25 July 2024	Part 7	Monthly Maximum Charge related to overdraft charges were not disclosed in Spend and Save Plus customers’ monthly statements nor within the mobile app journey for new customers (although they were available elsewhere), from February 2021 – February 2024.	Letter
		Article 56.2	Breach of Part 7 was not reported to the CMA within 14 days of discovery.	
AIB	25 July 2024	Part 2	Information required to be disclosed under Article 12.1.2 (open data product and reference points) were not up to date between 1 July 2022- 2 November 2023.	Letter

¹¹ NB: Unclear whether new providers of personal and business current accounts and SME products since 2016 are aware of the CMA Retail Banking Order and therefore submit an annual compliance statement.

Company	Date published	Relevant provision	Details	
		Part 8	Incorrect information on equivalent annual rate for a business current account product and annual percentage rate for a loan product were published on 2 webpages, between 1 July 2022 – 28 August 2023 and 1 January 2023 – 29 September 2023 respectively.	
		Article 56.2	Breach of Part 8 was not reported to CMA within 14 days of discovery.	
Lloyds Banking Group Plc	25 July 2024	Part 2	Between 2 December 2023 – 12 January, the location of 363 ATMs through Open Banking APIs was not published during a pilot exercise which involved moving ATM data to a new internal management system. Cause: pilot exercise to move ATM data to a new internal management system but failing to put sufficient safeguards in place to ensure that Open Banking data was correct during the pilot.	Letter
HSBC UK Bank plc	25 July 2024	Part 7	Between 27 October 2023 – 28 February 2024, 310 multi-function devices (ATM replacements) used by consumers to withdraw cash showed the incorrect Monthly Maximum Charge (£35 instead of £20) when users attempted to make a withdrawal that would have taken them into their overdraft. Cause: A third-party contractor entered the wrong value for the MMC on a new batch of HSBC devices.	Letter
Co-Operative Bank	15 August 2023	Part 3	Between 15 August 2022 and 3 October 2022, service quality information published on website were not up to date. Cause: Defect in the content platform automated push publishing step.	Letter
		Article 56.2	Breach of Part 3 was not reported to the CMA within 14 days of discovery.	

Company	Date published	Relevant provision	Details	
NatWest Group plc	15 August 2023	Part 3	Between 15 August 2022 and 12 January 2023, and again between 15 February 2023 and March/April 2024 posters on service quality information were not displayed prominently in branches.	Letter
		Part 8	Between 1 November 2022 and 24 January 2023 interest rate published on one webpage for three brands within the group were inaccurate.	
HSBC UK Bank plc	25 July 2023	Part 5	Between February 2018 and November 2022, an estimated 12,200 Payment Transaction Histories were not sent to former business current account customers with a turnover of less than £6.5 million Cause: weaknesses in its control environment and individual human errors amongst its staff.	Letter
TSB Bank plc	25 July 2023	Part 5	Between April 2022 and 20 March 2023, an estimated 105,607 Payment Transaction Histories were not sent to former business current account holders with a turnover of less than £6.5 million. Cause: change made to internal procedures without the appropriate governance changes being followed.	Letter
Nationwide Building Society	25 July 2023	Part 5	Between 2 February 2018 and 17 May 2023, an estimated 51,185 Payment Transaction Histories were not sent to former personal current account holders. Cause: 'no trace' markers were put on certain PCAs where it was concerned that addresses were out of date. On removing the 'no trace' market, Nationwide failed to check impacted customers received information on how to download transaction histories.	Letter

Company	Date published	Relevant provision	Details	
HSBC UK Bank plc	19 January 2023	Part 2	From 2017 – 2022, information on fees, charges, rates, and eligibility criteria for accounts and loans were either not published or published inaccurately through Open Data APIs for personal current accounts, business current accounts or SME lending products.	Letter
Northern Bank Limited t/a Danske Bank	11 November 2022	Part 2	Between October 2018 and 26 July 2022, information on business current accounts made available through Open Data APIs were inaccurate and out of date on 45 occasions.	Letter
Nationwide Building Society	11 November 2022	Part 2	10 x periods when various information points on personal current accounts made available through Open Data APIs were out of date, between 31 March 2017 and 7 October 2022.	Letter
NatWest Group plc	11 November 2022	Part 8	Between 2 August 2017 and 10 August 2022, annual percentage rate for one specific SME lending product was either displayed incorrectly or not displayed at all.	Letter
Monzo Bank Limited	26 July 2022	Part 5	Between 31 May 2021 and 11 March 2022, Payment Transaction Histories were not provided to 13,566 customers. Cause: a coding error meant Payment Transaction Histories were not sent to customers who used the CASS system to close accounts.	Directions
Bank of Ireland (UK) plc	22 July 2022	Part 2	At various points between 2 October and 6 October 2021, certain information on products and services made available through Read-only requirements of Open Banking were inaccurate and out of date (e.g. it included 15 closed branches, forgot to include a closed lunch hour during COVID and overstated the number of ongoing ATMs).	Letter

Company	Date published	Relevant provision	Details	
		Part 3	Between 25 May 202 and 22 April 2022, a link to the Service Quality Indicators was not displayed within two steps of the primary mobile banking app screen when accessed through tablet devices.	
Barclays Bank Plc & Barclays Bank UK Plc	22 July 2022	Part 8	Between 2 August 2018 and 17 December 2021, the representative equivalent annual rate was not kept up to date on the Business Banking agricultural overdraft webpage (although the Business Banking webpage was correct) and on the Corporate Bank rates webpage for some period.	Letter
HSBC UK Bank plc	22 July 2022	Part 7	The value of the Monthly Maximum Charges for unarranged overdrafts were: a) not disclosed on website homepages for UK Premier Account and First Direct's 1 st Account; b) not included in the Statement of Fees documents sent to customers; and c) were not included on product pages, and in the "Legal" footer at the bottom of its website.	Letter
		Part 8	Between 25 February 2020 and 5 May 2022, a webpage displayed out of date information about the representative equivalent annual rates for its unsecured business overdrafts. Cause: operational error means one of the webpages displayed out of date information.	
Lloyds Banking Group plc	22 July 2022	Part 3	Between 15 February 2022 and 29 April 2022, information related to the latest Service Quality Indicators were not published on leaflets and on posters in 3 branches.	Letter
		Part 8	Between 22 April 2021 and 5 November 2023, the representative effective annual rate in relation to business banking overdrafts were not up to date on one webpage (showing 11.25% rather than 11.53%).	

Company	Date published	Relevant provision	Details	
Metro Bank plc	22 July 2022	Part 7	Between august 2017 and January 2022, 92 customers were charged more than the £60 Monthly Maximum Charge.	Letter
NatWest Group plc	22 July 2022	Part 2	Between 15 June 2021 and 19 August 2021, records of branch and ATM closures available through APIs were out of date, not reflecting 11 branch closures and 9 ATM closures.	Letter
		Part 10	Between 18 September 2021 and 2 February 2022 information shared with independent comparison tools on small business loans did not include the correct interest rates.	
HSBC UK Bank plc	28 April 2022	Part 2	At various points between 18 January 2021 and 20 January 2022. information on Kinetic Business Current Accounts and Kinetic credit cards were either not published at all or published incorrectly. This included information on: charges, effective annual rates, annual percentage rates and whether customers had access to any branches through Open Banking APIs.	Letter (
		Part 8	Information on Kinetic Business Current Accounts shared with third parties were inaccurate.	
		Part 10	Information shared with independent comparison tools on Kinetic Business Current Accounts and Kinetic Overdrafts were inaccurate.	
Barclays Bank UK plc	21 March 2022	Part 2	At various points between November 2018 and 11 August 2021, information on products and services made available through Open Banking APIs were inaccurate. This included information on: number of ATMs available to customers; branches available; values for unpaid cheque fees for BCAs; non-Sterling transaction fees for PCAs; foreign ATM and SEPA transaction fees for PCAs; copy statement fees for PCAs;	Letter

Company	Date published	Relevant provision	Details	
			not listing Select Cashback Commercial Credit Card; copy statement fees for Commercial Credit Cards; debit interest rates for SME lending products; and lending bands.	
Lloyds Banking Group plc	21 March 2022	Part 2	At various points between 20 March 2017 and 3 September 2021, certain information on products and services made available through Open Banking APIs were inaccurate. This included information on: bank branch data; SME loans; branch opening hours; mobile branch location and opening hours data for some of mobile branches; number of ATMS in Halifax network; value of Packaged Bank Account travel insurance details; interest rates for Club Lloyds Platinum credit account; cash withdrawn charges for Lloyds and Bank of England SME customers; switching cash incentives; links to T&Cs within the Open Banking APIs. Correct information was available more prominently elsewhere.	Letter
Barclays Bank UK	11 February 2022	Part 3	Service Quality Indicators relating to Overall Service Quality for Personal Current Accounts in Great Britain were not updated on the home page of its website between 16 August and 13 October 2021.	Letter
Tesco Bank	11 February 2022	Part 3	Published the Service Quality Indicators three steps away from its primary mobile app screen instead of within two steps between 24 July 2021 and 21 September 2021 (seen by 544 customers).	Letter
Monzo Bank Ltd	31 January 2022	Part 7	The Monthly Maximum Charges were not disclosed next to the Relevant Charges in its Fee Information document between 25 October 2018 and 19 November 2021.	Letter
Lloyds Banking Group	13 October 2021	Part 8	Contextual information on unsecured lending for SMEs was not published on one page of Lloyds Bank's website between June 2020 and	Letter

Company	Date published	Relevant provision	Details	
			March 2021 (but remained on other relevant webpages, including product pages).	
Santander UK plc	24 September 2021	Part 3	Northern Ireland data for Overall Service Quality and up-to-date Great Britain data for business current accounts was not published on the Corporate and Commercial home page between 23 April 2021 and 11 May 2021.	Letter
Monzo Bank Limited	22 June 2021	Part 5	Transaction Histories were not sent to customers when they closed their personal current accounts through the banking app between 1 March 2020 and 31 May 2021. This also meant that the requirement to have at least 95% of Transaction Histories sent to former customers within 10 working days was not met between 1 March 2020 and 31 May 2021.	Letter
NatWest Group	22 June 2021	Part 5	Transaction Histories were not sent to 903 former customers when they closed their personal current accounts between 14 November 2019 and 1 May 2020 because NatWest Group offered Transaction Histories on an opt-in basis (it should have sent them unless they opted out).	Letter
Virgin Money UK plc	22 June 2021	Part 5	Transaction Histories were not sent to 220 former customers who closed their personal current account or business current account between 1 January 2020 and 11 February 2021. Cause: a new product code was not incorporated into the table of products which drives the outputs for the Transaction History process.	Letter
Bank of Ireland UK Plc	22 June 2021	Part 5	1066 former customers did not receive a Transaction History when their personal current account or business current account was closed either within the 10 or 40 working days requirement during the periods of 24 March 2020 – 30 June 2020 and 1 August 2019 – 1 April 2021.	Letter

Company	Date published	Relevant provision	Details	
			Cause: a) the operational process for the provision of Transaction History was temporarily suspended; and b) as a result of a systems change the queue for sending Transaction Histories to former customers was not properly implemented.	
The Royal Bank of Scotland Group	28 May 2020	Part 6	Youth accounts that were moved to personal current accounts were not enrolled into the Programme of Alerts within 10 working days as required. 36,000 customers were charged for going into or attempting to go into unarranged overdraft without first sending an alert.	Letter
Metro Bank plc	20 April 2020	Part 6	Alerts that unarranged overdraft charges would be imposed did not include a warning that unarranged overdraft charges would be imposed; and some alerts were delivered after 10am. 128,564 customers were impacted.	Letter
Nationwide Building Society	6 February 2020	Part 6	Unarranged overdraft charges were imposed on approximately 70,000 customers without first being sent a warning that the charges would be incurred. Cause: impacted customers had been flagged as needing to contact Nationwide if they went into unarranged overdraft. The alert for these customers focused on contacting Nationwide, not the charges for unarranged overdraft usage.	Letter
HSBC Bank UK plc	29 November 2019	Part 6	From February 2018, overdraft alerts were not provided to approximately 115, 754 customers before charges were imposed for exceeding the pre-agreed credit limits. Causes: customers who triggered an alert between 10:45pm – 7:30am on weekdays and 10:45pm – 10am on weekends did not receive an alert because of HSBC's policy not to contact customers during unsociable	Directions

Company	Date published	Relevant provision	Details	
			hours. Also, HSBC's systems for storing mobile phone numbers were incompatible with the text alert system.	
Santander UK plc	29 November 2019	Part 6	Between February 2018 and July 2019, 6 x separate breaches - alerts were not provided to customers before charges were imposed for exceeding pre-agreed credit limits. Cause: technical and operational causes for each specific breach.	Directions
Nationwide Building Society	8 August 2019	Part 6	Between 2018 and 2019, approximately 320,971 customers did not receive an alert. This included customers who were charged for exceeding their pre-agreed limit, totalling £6,070,657. Cause: lack of robust procedures for understanding and complying with the Order.	Directions
Santander UK plc	24 May 2019	Part 6	Unarranged overdraft charges were imposed on approximately 20,000 (subsequently increased to 25,000) customers holding either an Everyday Current Account or an Essentials Current Account without first being sent a warning that the charges would be incurred. Cause: these products were omitted from the process of auto enrolment into alerts.	Letter
TSB Bank plc	2 March 2018	Part 6	Requested a delayed launch date in respect of Part 6 (implementation of overdraft alerts) for some existing customers until Q3 2018. Directions have been issued to specify steps to be taken to achieve full compliance.	Directions

Company	Date published	Relevant provision	Details	
Clydesdale Bank plc	29 January 2018	Part 5	Requested a delayed launch date in respect of Part 5 (provision of Transaction Histories on account closure) as compliance was not possible by the date stipulated in the Order.	Directions (To ensure implementation within an agreed timeline)
Royal Bank of Scotland Group plc	29 January 2018	Part 6	Requested a delayed launch date in respect of Part 6 (implementation of overdraft alerts) for a minority of customers as compliance was not possible by the date stipulated in the Order.	Directions (To ensure implementation within an agreed timeline)
Bank of Ireland Danske HSBC Lloyds Banking Group Santander	1 April 2019	Part 2	Directions issued to 5 banks who told the CMA they would be unable to deliver app-to-app functionality for open banking by the date specified in the RBMO. Directions were issued to stipulate the timeline for delivery of the app-to-app functionality.	Directions (To ensure implementation within an agreed timeline)
Bank of Ireland Barclays HSBC RBS	19 January 2017	Part 2	Directions issued to 6 banks who told the CMA they would be unable to deliver Open Data sets by the date specified in the RBMO. Directions were issued to stipulate the timeline for delivery of the outstanding data.	Directions (To ensure implementation within an agreed timeline)

Company	Date published	Relevant provision	Details	
Santander Nationwide				
The Co-operative Bank plc	14 August 2017	Part 7	Requested a delayed launch take in respect of Part 7 (the imposition of a Maximum Monthly Charge for Overdraft alerts) to allow an extended period of testing due to the scale of changes in their IT system.	Directions (To ensure implementation within an agreed timeline)

Breaches of Small and Medium sized Enterprises (SME) Banking Undertakings 2002

Company	Date published	Relevant provision	Details	
NatWest Group plc (NatWest)	31 August 2022	Clause 17	Between November 2016 and 15 May 2020, 956 Business Current Accounts were bundled with loans, totalling £600,000 in fees. Cause: a failure in the design of NatWest's EOBAO system.	Directions
HSBC UK Bank plc	30 March 2022	Clause 17	4 x breaches of undertakings. Between 2002 and 2021, 221 loan agreements containing a 'Relevant Termination Event' clause (which provides HSBC the right to terminate a borrower's loan if HSBC ceases to be the borrower's principal commercial bank) did not comply with clause 17.	Directions

Company	Date published	Relevant provision	Details	
			Cause: error in the coding of certain loan agreement templates.	
Danske Bank (a trading name of Northen Bank Limited)	12 November 2021	Clause 17	<p>Second breach. Between 4 May 2020 and 31 March 2021, relationship Managers incorrectly told 205 loan applicants under the Coronavirus Bounce Back Loan scheme that a Danske business current account was necessary to apply for a Bounce Back Loan which led to them opening the business current account.</p> <p>Cause: policy was noted on system, as considered an appropriate way to meet KYC and fraud checking requirements of the scheme within its timeline.</p>	Letter + Action Plan
Danske Bank (a trading name of Northen Bank Limited)	30 March 2021	Clause 17	From 4 May 2020 – Q1 2021, Danske required 305 SMEs who had a personal current account with Danske Bank to open a business current account in order for their re-submitted Bounce Back Loan application to be considered, and applying fees and charges for such BCAs.	Letter + Action Plan
Clydesdale Bank Plc	5 February 2021	Clause 17	<p>From 4 May – November 2020, required 55 SMEs which had a personal account with Clydesdale Bank to open or maintain a business current account as part of their application for a Bounce Back Loan.</p> <p>Cause: policy was considered an appropriate way to meet KYC and fraud checking requirements of the scheme within its timeline.</p>	Action plan
AIB Group (UK) plc	5 October 2020	Clause 17	<p>Between December 2019 and August 2020, bundled products together for 11 SME customers. Also breached previous directions.</p> <p>Cause: between these dates the Business Lending Policy did not include the warning to AIB NI staff not to require SME customers to open or maintain a BCA in order to open or maintain a business loan or business savings account.</p>	Letter

Company	Date published	Relevant provision	Details	
Lloyds Banking Group plc	8 September 2020	Clause 17	<p>From 8 May – 12 May 2020, required approximately 30,000 SME customers who had a personal current account to open a Lloyds business current account as part of their application for a Bounce Back Loan.</p> <p>Cause: policy was considered an appropriate way to meet KYC and fraud checking requirements of the scheme within its timeline.</p>	<p>Action plan</p> <p>Reflects specific COVID scenario.</p>
Barclays Bank UK plc	4 July 2019	Clause 17	<p>Between 2014 and 22 October 2018, customers with a BPA account were unable to move funds to/from non-Barclays' accounts and therefore could only be accessed via a Barclays BCA. Between 2010 and October 2018, terms and conditions of a NA account stated that "the Customer must hold a current account with Barclays in the same currency". This impacted 816 SMEs.</p> <p>Causes: the restriction on moving funds to/from a non-Barclays' accounts was an inadvertent consequence of an attempt to manage risk of fraud in relation to BPA. For NPA, the bundling was due to inadequate wording in the product literature.</p>	Directions
First Trust Bank	22 October 2014	Clause 17	<p>Loan facility letters provided to 6 SME customers incorrectly stipulated that a Business Current Account had to be opened for a specific lending scheme.</p> <p>Cause: inadequate training of staff dealing with SME customers.</p>	Directions

Annex 2 – Illustration of specific provisions of Market Investigation Orders in financial services that have been breached multiple times

Order	Relevant requirement	Firms who have breached
Retail Banking Market Investigation Order	Part 2 (open data)	<ul style="list-style-type: none"> • HSBC (July 2024) • Allied Irish Bank (July 2024) • Lloyds Banking Group (July 2024) • HSBC (January 2023) • Northern Bank Limited (November 2022) • Nationwide (November 2022) • Bank of Ireland (July 2022) • NatWest (July 2022) • HSBC (April 2022) • Barclays (March 2022) • Lloyds Banking Group (March 2022) • Failure to deliver open data by stipulated timeline: Bank of Ireland, Danske, HSBC, Lloyds Banking Group, Santander (UK) • Failure to deliver app to app by stipulated timeline: Bank of Ireland, Barclays, HSBC, RBS (now NatWest), Santander, Nationwide.
	Part 3 ((Service Quality	<ul style="list-style-type: none"> • Cooperative bank (August 2023) • NatWest (August 2023) • Bank of Ireland (July 2022) • Lloyds Banking Group (July 2022) • Barclays Bank (February 2022) • Tesco Bank (February 2022) • Santander UK plc (September 2021)
	Part 5 (Provision of Payment Transaction History)	<ul style="list-style-type: none"> • HSBC (July 2023) • TSB (July 2023) • Nationwide (July 2023) • Monzo (July 2022)

		<ul style="list-style-type: none"> • Monzo (June 2021) • NatWest (June 2021) • Virgin Money (June 2021) • Bank of Ireland (June 2021) • Clydesdale (January 2018)
	Part 6 (overdraft alerts)	<ul style="list-style-type: none"> • RBS (NatWest) (May 2020) • Metro (April 2020) • Nationwide (February 2020) • HSBC (November 2019) • Santander (November 2019) • Nationwide (August 2019) • Santander (May 2019) • TSB (March 2018) • RBS (NatWest) (January 2018)
	Part 7 (Maximum monthly charges)	<ul style="list-style-type: none"> • TSB (July 2024) • HSBC (July 2024) • HSBC (July 2022) • Metro (July 2022) • Monzo (January 2022) • Cooperative bank (August 2017)
	Part 8	<ul style="list-style-type: none"> • HSBC (July 2024) • Allied Irish Bank (July 2024) • NatWest (August 2023) • NatWest (November 2022) • Barclays (July 2022) • HSBC (July 2022) • Lloyds Banking Group (July 2022) • HSBC (April 2022) • Lloyds Banking Group (March 2022) • Lloyds Banking Group (October 2021)
Payment Protection Market Investigation Order 2011	Article 4 – provision of Annual Reviews	<ul style="list-style-type: none"> • Nationwide (May 2024) • Barclays (November 2022) • RBS (now NatWest) (August 2022) • NewDay Limited (October 2021)

		<ul style="list-style-type: none">• Lloyds Banking Group (September 2021)• Cardif Pinacle (February 2021)• Lloyds Banking Group (February 2021)• Cardif Pinacle (September 2020)• Lloyds Banking Group (July 2020)• Nationwide (July 2020)• Cardif Pinacle (July 2020)• Payment Shield (March 2020)• Nationwide (October 2019)• Santander (August 2019)• Lloyds Banking Group) (October 2018)• Barclays (August 2018)• PaymentShield (September 2017)• Aviva plc (January 2017)• Lloyds Banking Group (January 2017)• Santander (December 2016)• Barclays (April 2016)
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