

**Explanatory note to accompany The Northern Ireland  
PCA Banking Market Investigation Order 2008**

**(This note is not part of the Order)**

**Introduction**

1. On 15 May 2007, the CC published its report on its investigation into the market for PCA banking services in Northern Ireland (the Report). The Report set out a number of remedies to address the adverse effects on competition that it found. The CC has made an Order to give effect to these remedies.
2. The remedies are designed to help customers make informed choices about PCAs. They include a requirement for providing better and clearer information to Customers to help them understand Banks' PCA services, charges and interest rates. Other remedies require giving Customers at least 14 days' notice before deducting overdraft charges and interest from their account; and introducing improvements to the switching process to ensure Customers who switch banks do not incur costs in doing so.

**Possible consequences of not complying with the Order**

3. Section 167 of the Enterprise Act 2002 places a duty on any person to whom this Order applies to comply with it. Subject to the defences in the section, any person who suffers loss or damage due to a breach of this duty may bring an action.
4. Section 167 of the Act also provides that the OFT and the CC can seek to enforce this Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

**Review of this Order**

5. The OFT has a general duty to monitor the operation of the Order under section 162 of the Act. This includes the duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Article 14 and Schedule 3 of the Order requires a Bank on request to provide the OFT with information to allow it to monitor and review the operation of the Order.

**Status of this explanatory note**

6. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

**Structure of the Order**

7. The Order is divided into six parts. Part 1 contains: general provisions including specifying when certain obligations in the Order come into force; definitions that are used throughout the Order; and a provision on the delegated powers of direction.
8. Parts 2 and 3 of the Order address the seven remedies set out in the CC Report. Part 2 requires a Bank to ensure that certain types of its communications with its customers are easy to understand. Part 2 also sets out the circumstances in which a Bank must provide certain information to its Customers. Part 3 requires a Bank to

inform its Customers that they can switch to another Bank to obtain PCA banking services.

9. Part 4 sets out a mechanism for suspending a requirement in the Order for a particular Bank should it require further time in which to comply with the provisions of the Order.
10. Part 5 specifies when a Bank should provide information to the OFT and a Bank's duty to submit reports on its compliance with the Order to the OFT.
11. Part 6 specifies how the BCSB (and where relevant other Approved Bodies mentioned in part 5) is to be funded by the Banks for the costs it incurs in performing the functions in the Order.
12. The rest of this explanatory note deals with each of the articles in the Order.

## **PART 1 (General)**

### ***Article 1 (Citation and commencement)***

13. Article 1 has two functions. It gives the Order its name and it sets the dates on which the various provisions within the Order come into force. Except for Articles 5 and 6 and Articles 7 to 11 the Order comes into force on the Commencement Date which is 22 February 2008.
14. Articles 5 and 6 come into force on 1 July 2008. Articles 7 to 11 come into force on 1 April 2009. These dates are a departure from the dates indicated in the Report, which required the implementation of the remedies addressed by Articles 5 and 6 by 1 April 2008 and the remedies addressed by Articles 7 to 11 by 1 October 2008 at the latest.
15. The CC considers that there are 'special reasons' falling within section 138(3) of the Act for this departure from the Report. These include concerns raised by some banks in regard to the serious practical difficulties they would face in meeting the dates specified in the Report. The CC considers that these concerns are legitimate and therefore decided to put back the dates for implementation as specified in Article 1 of the Order.
16. The CC has also provided the Banks with the option of applying for a temporary suspension of provisions of the Order applicable to the individual Bank, the mechanism for which is set out in Articles 12 and 13.

### ***Article 2 (Interpretation)***

17. Article 2 contains a number of definitions applicable throughout the Order including a number of definitions associated with Charges and Interest. Where definitions apply only to a particular article of the Order, they are defined in that article.
18. *Ancillary Charge*: An Ancillary Charge is a Charge for the provision of an ad hoc service requested by a Customer regardless of whether the PCA has a credit or debit balance. An ad hoc service includes, for example, making a CHAPS payment (Clearing House Automated Payment System) or when a Customer asks the Bank to stop a payment that has previously been requested. It is expected that the Customer will be informed of the Ancillary Charge for the service upon making the request, and in most cases will pay for the Ancillary Charge at this time. Neither Authorized

Overdraft Charges nor Unauthorized Overdraft Charges are Ancillary Charges for the purposes of this Order. An arrangement fee for an overdraft would fall under the definition of a Maintenance Charge and not an Ancillary Charge.

19. *BBA and BCSB*: Both the definition of the BBA and BCSB include the possibility for the functions of these bodies to be taken over by a successor body. We would expect the OFT to clarify any ambiguity that may arise regarding the successor body of either organization.
20. *Written Communication*: A Written Communication is a communication in writing from a Bank to a Customer or potential Customer by any means and as such includes a communication made electronically such as by Short Message Service or by electronic mail.
21. *PCA*: The definition of PCA includes accounts held by individuals that offer all the facilities contained in the definition. The definition specifically excludes business accounts, basic bank accounts, foreign currency current accounts, offset/current account mortgages and offset/loan accounts (other than overdraft facilities). This means that not all types of bank account are covered in the Order.
22. *Customer*: A Customer is defined as a person holding a PCA (which had been available in Northern Ireland at the date of opening) and having a nominated address in Northern Ireland. The person's nominated address is the main contact address that the Bank holds for that person. In the event that the person holds a PCA which is attached to a physical branch of a Bank, that person is only a Customer for the purposes of the Order if that branch is located in Northern Ireland. For PCAs that are not attached to a physical branch (for example, Internet accounts and postal accounts), if a person had a nominated address in Northern Ireland at the time of opening his PCA, then that PCA would normally have been available in Northern Ireland at the date of opening.
23. *Bank*: A Bank is defined such that those banks having a small number of Customers in Northern Ireland will not fall within the definition of Bank and so will not be caught by the provisions of the Order.
24. The provisions of the Order place obligations on the Banks in relation to its Customers. Persons who have an account with a Bank covered by the Order but do not have a postal address in Northern Ireland will not be covered by the Order. The term a potential Customer is used in certain provisions of the Order and refers to any person that would be eligible to be a Customer.

### **Article 3 (Delivery of a Written Communication)**

25. Article 3 specifies the form of delivery of an Annual Summary or a Written Communication made to comply with Article 9 by a Bank to a Customer.

### **Article 4 (Powers of direction)**

26. Article 4 is made under section 87 of the Act as applied by section 164(2) of the Act.
27. The article gives the CC power to give directions to a person for the purpose of carrying out, or ensuring compliance with, the Order. The directions can be addressed to an individual or a company or can be addressed to the holder for the time being of an office in a company, for example, the secretary.

## **PART 2 (Information requirements)**

### **Article 5 (Duty to communicate clearly)**

28. Under Article 5 a Bank can only make Specified Written Communications that contain Standard Text if such Standard Text is easy to understand by the average Customer and/or the average potential Customer to whom the Written Communication is directed. Article 5 defines the terms 'Specified Written Communication' and 'Standard Text'. Specified Written Communication includes communications in writing made by a Bank to a Customer that are for the purpose of assisting a Customer to choose a PCA, that are made at the same time as when a Customer opens a PCA and when notifying a Customer of Charges and Interest that will be applied to his PCA. A Statement also falls within the definition of a Specified Written Communication. The terms and conditions of a PCA do not, for the purposes of this Order, fall within the definition of a Specified Written Communication. However, we note that other legislation, rules and guidance apply similar requirements (that information is easy to understand) to terms and conditions of a PCA (for example, The Unfair Terms in Consumer Contracts Regulations 1999 (see Regulation 7); and The Banking Code (see section 6)).
29. There are two stages in ensuring that a Standard Text is easy to understand. First such text should either be: certified as being easy to understand by an organization specializing in plain English; or, tested with Customers and found to be easy to understand. Second, the BCSB needs to confirm to the Bank that it is satisfied that the Standard Text is easy to understand. These two stages apply to each piece of Standard Text. The second stage does not require the BCSB to carry out further testing to consider whether or not the Standard Text is easy to understand, although the BCSB may need to review samples of the Standard Text. .The BCSB needs to be satisfied that the testing or certification has been carried out properly.
30. Testing Standard Text with Customers is achieved through an independent and expert market research agency testing a sample of the Bank's Customers and producing a report that states whether the average respondent found the Standard Text to be easy to understand.
31. The representative sample of the Bank's Customers with which the Standard Text may be tested will depend on the nature of the Specified Written Communication that the Standard Text will form part. Standard Text that will form part of a generic Specified Written Communication which is directed at all PCA Customers should be tested with a sample of Customers that is representative of the entire population of the Bank's PCA Customers, with respect to age, social grade and income. In contrast, Standard Text that will form part of a Specified Written Communication aimed at a specific segment of the Customer population (such as students or retired persons) should be tested with a sample of Customers that is representative of this Customer population.
32. Any market research organization employed for testing should meet relevant British Standards Institute or ISO standards, have experience of testing written communications for clarity and work in accordance with the Market Research Society Code of Conduct.
33. In reporting on whether the average respondent has found the Standard Text easy to understand, the market research organization should not apply a purely statistical assessment of the average respondent. Rather, the report should consider whether an acceptable proportion of respondents who reflect the average age, social grade and income of the respondent group have easily understood the Standard Text.

34. While a Bank is required to ensure Standard Text is either certified by an organization specializing in plain English or tested with a representative sample of the Bank's Customers, certification or testing in this way will not automatically mean it is easy to understand. Ultimately, the BCSB must confirm that it is satisfied that the Bank has complied with the requirement to test or certify that the Standard Text is easy to understand. We envisage that a dialogue would develop between the BCSB, the OFT and the Banks as to how best to achieve this second stage.
35. Where a Bank makes an immaterial change to Standard Text it is not required to retest the Standard Text or seek approval of the BCSB if it wants to use such Standard Text in a Specified Written Communication. Immaterial changes to Standard Text include the correction of typographical errors and changes to decorative graphics. Immaterial changes also include changes to figures and amounts relating to offer dates, Interest Rates, Charges and other fees which do not affect the overall meaning of the Standard Text (except the meaning in relation to those specific changes). For example, a brochure describing an account, including the fees associated with that account, that has been previously approved as being easy to understand, would not have to undergo further testing if changes are only made to the fees in that brochure.
36. Where a Bank does make a material change to Standard Text, paragraph 4 provides some scope for a simplified approval procedure. Under this procedure, the Bank can notify the BCSB of the proposed changes and the BCSB can approve the amended Standard Text as being easy to understand without requiring the Bank to retest the Standard Text.
37. The BCSB has the option, however, of requiring the Bank to retest the amended Standard Text. This may be the case where, for example, the BCSB considers that the changes made to the Standard Text are substantial or materially affect how a Customer may understand the Standard Text as a whole.
38. If the Bank does make a material change to Standard Text, it can choose to retest the amended Standard Text as described above and then obtain confirmation from the BCSB that it is satisfied that the Standard Text is easy to understand, without first having to notify the BCSB.

***Article 6 (Duty to provide details of Charges and Interest Rates to Customers when choosing a PCA and when opening a PCA)***

39. Banks are required to ensure that Customers are informed about Specified Charges and Interest Rates. The information to be provided includes the existence of and level of the Specified Charges and Interest Rates, the circumstances in which these would be incurred or applied, the time at which they would be applied and the way in which they would be applied. In the case of interest payments it will also include whether the interest is calculated on a daily, weekly or monthly basis. If discretionary policies exist as to how Charges and Interest Rates apply to Unauthorized Overdrafts, a Bank is required to note such existence but is not required to give specific details.
40. Paragraph 1 specifies that a Bank must provide this information together with any document or literature designed to assist a Customer when choosing to open a PCA. For the purposes of paragraph 1, direct marketing documents, poster, billboards and signs that market the PCA are not considered to be documents or literature designed to assist a Customer when choosing to open a PCA (these are instead dealt with under paragraph 3). It is sufficient that the information accompanies the documents or literature so long as this is clear that the information comes together with the

documents or literature. It is therefore not necessary that the information is incorporated within the document or literature. Paragraph 1 also specifies that a Bank must provide the information at the time when a Customer opens a PCA.

41. A Bank should also refer to the existence and location of the information in certain other documents—direct marketing documents, poster, billboards and signs that market the PCA. The Bank should also refer to the existence and location of such information in its oral marketing of a PCA which means an oral invitation or inducement to open a PCA.

#### ***Article 7 (Duty to provide information on the level of Charges and Interest Rates on Statements)***

42. Banks are also required to ensure that a Customer is informed about the Charges and Interest Rates specified in Schedule 1, including the existence of and level of these Charges and Interest Rates; the circumstances in which the Customer would incur these Charges and incur and/or receive Interest; and when and the way in which each of the Charges and Interest Rates would be applied as part of the Statement.
43. The information should be provided to each PCA Customer as part of each Statement. The information may be provided on the front or the back of the Statement, on a separate sheet of statement paper, or as part of the electronic communication (which can be provided by means of an electronic link clearly visible on the electronic Statement), provided the information is clearly part of the Statement.

#### ***Article 8 (Duty to provide an Annual Summary)***

44. Banks are required to provide a Customer with an Annual Summary for each active PCA. An active PCA means a PCA that continues to be open at the date of the Annual Summary and a transaction has occurred on that PCA or any Charge or Interest has been applied during the period covered by the Annual Summary. Where a Customer has switched between PCAs within a Bank or the Customer has multiple PCAs at a Bank, the Bank should provide the Customer with an Annual Summary for each PCA. Where a PCA is a joint account, it is sufficient that one Annual Summary is sent to the account holders and addressed jointly.
45. In accordance with Article 1, paragraph 2, the duty to provide an Annual Summary will come into force on 1 April 2009. The Annual Summary should summarize information relating to a Customer's PCA for the 12 calendar months preceding the date of the summary. The only exception to this is an Annual Summary made on or before 31 March 2010 which must cover a period of between 6 and 12 months preceding the date of the summary.
46. There is no requirement for the Annual Summary to cover a particular yearly period (ie from 1 January to 31 December). Nor is there a requirement for all of the Annual Summaries provided by a Bank to cover the same 12-month period. It is open to the Banks to choose the 12-month period to be covered by the Annual Summary.
47. The Banks are not required to provide a Customer with an Annual Summary where it is not possible to contact the Customer (for example, where the Customer has changed address and not provided the Bank with his new address) or otherwise where the relevant PCA is a dormant account under the terms of the Banking Code. In such circumstances, the Bank should apply its internal policies and where

relevant, the Banking Code, for dealing with Customers that cannot be contacted. This principle applies to all other information requirements in the Order.

48. The Annual Summary must among other things show the total amount of each individual Charge or Interest made or received (as relevant) on the Customer's PCA including those specified in Schedule 2. In addition, the level of each of the Specified Charges and Interest Rates as at the date of the Annual Summary must be included.

### ***Article 9 (Duty to notify a customer of overdraft charges and debit Interest)***

49. Banks are required to notify the Customer within one month of a Customer incurring an Authorized Overdraft Charge, an Unauthorized Overdraft Charge and/or debit Interest and send the Customer a Record of Charges and Interest. The notification may be sent together with a Record of Charges and Interest or in advance of it. If it is sent in advance, the notification must include the information set out in Article 6, paragraph (2) of the Order. A Record of Charges and Interest must cover a period of at least one month up to the date of the Record of Charges and Interest. This means for example that a Record of Charges and Interest can show the required information going back to the date of the last Statement issues by the Bank to the Customer. A Statement falls within the definition of a Record of Charges and Interest.
50. A Bank must not deduct an Authorized Overdraft Charge, an Unauthorized Overdraft Charge or debit Interest until at least 14 days have passed since the date of the Record of Charges and Interest that followed or accompanied the notification of the Charge or Interest except in the case where a Customer has requested the Bank to close the PCA, whereupon the Bank can make a deduction if account closure is less than 14 days since the date of the Record of Charges and Interest.

## **PART 3 (Switching)**

### ***Article 10 (Switching information provided in or with the Annual Summary)***

51. The requirement that a Bank specifies, on the Annual Summary, where the Customer can find further information on how to switch may be met by referring the Customer to the accompanying Switching Leaflet. The Switching Leaflet is a document that should explain in easy to understand language the operation of a Bank's switching process. This should be a generic document applying to all Banks.
52. Each Bank is required to use its best efforts to develop and maintain the Switching Leaflet together with all other Banks under the coordination of the BBA.

### ***Article 11 (Switching provision)***

53. Article 11 requires a New Bank to offer an Eligible Customer an Authorized Overdraft at an appropriate level. The New Bank should first ask the Eligible Customer whether he or she would like an Authorized Overdraft and if so will warn that Eligible Customer that the Bank will carry out a credit check. The New Bank is prohibited from applying or levying Interest or Charges on Authorized Overdrafts for a minimum of three months from the date the Eligible Customer opened the PCA with the New Bank.
54. In certain circumstances relating to the provision of Authorized Overdrafts the New Bank is also required to refund any Interest and/or Charges incurred on a PCA at the New Bank as a result of a failure in the switching process.

55. Article 11 also requires the Old Bank to refund any Interest and/or Charges incurred on a PCA at the Old Bank as a result of a failure in the switching process.
56. Failure in the switching process means any failure which occurs due to the switching process and results in the wrong amount being credited or debited to a Customer's PCA, and/or delays in the application of credit and/or debit transactions to a Customer's PCA. Such circumstances may include delays and errors in the setting up of direct debit or direct credit facilities.
57. The article will apply whenever a Customer uses a Bank's Switching Service. A Bank is obliged to refund any Charges incurred due to a failure of the Switching Service where the Bank itself has identified such Charges or where a customer has brought such Charges to a Bank's attention (regardless of whether that customer can prove that the charge arises because of a failure of the Switching Service as opposed to an error on the Customer's part).
58. Banks are required to refund such a Charge within a reasonable period, this is a period that is reasonable in the circumstance but is not expected to exceed 30 days from the date on which the Bank establishes that such a Charge has been incurred.

#### **PART 4 (Suspension of provisions of this Order)**

##### ***Article 12 (Application for suspension)***

59. Banks can apply to the CC for a temporary exemption from compliance with one or more of the obligations in Articles 5 to 10 of this Order if they consider that they will not be in a position to be compliant by the date those provisions of the Order come into force as set out in Article 1, sub-paragraph 2b) (ie by 1 July 2008 for Articles 5 and 6 and by 1 April 2009 for Articles 7 to 10).
60. A Bank seeking such exemption will have to provide, among other things, a statement of the steps already taken to comply with the relevant provisions and an opinion as to when compliance may be expected. The application for exemption must also be accompanied by a report from an independent expert or experts that reviews the application and accompanying material and assesses and concludes on the merits of the application. The independent expert or experts must be approved by the CC before reviewing the Bank's application. In deciding whether to approve the expert, the CC will take into account the independence of such expert or experts from the Bank and their expertise relevant to the subject matter of the application for suspension. It is envisaged that the CC will generally provide the Banks with its decision within five business days of having been notified of the identity and details of the expert or experts the Bank wishes to appoint.

##### ***Article 13 (Approval by the CC)***

61. The CC will consider any application made in accordance with Article 12 and will usually notify the Bank of its decision within 21 days of receiving the application. In deciding whether to approve the application the CC will consider the extent to which the Bank is taking steps to comply with the relevant provisions and the date by which it estimates it will be able to do so. The CC may approve an application for suspension subject to such conditions as it considers appropriate.

## **PART 5 (Supply of information and audit on compliance)**

### ***Article 14 (Supply of information to the OFT)***

62. This article requires a Bank to provide certain information to the OFT under certain circumstances. The information is for the purpose of enabling the OFT to monitor and review the operation of the Order or any provisions of the Order.

### ***Article 15 (Duty to submit Compliance Reports of compliance with the Order to the OFT)***

63. This article provides that the BCSB is an Approved Body for the purposes of carrying out a review of a Bank's compliance with the Order in accordance with Article 15. The OFT may want to extend the list of Approved Bodies to carry out Compliance Reports at a later date. It is expected that any costs associated with the Compliance Reports are determined on a bilateral basis between the Bank and the Approved Body carrying out the audit.
64. Banks are required to submit Compliance Reports (produced by an Approved Body) to the OFT covering every Review Period within two weeks of receiving the Compliance Report from the Approved Body.
65. The OFT has a general duty to keep under review the operation of the Order under section 162 of the Act. Nothing in the Order affects the OFT's duty to consider, from time to time, whether it is appropriate to advise that the Order should be varied or revoked by reason of a change of circumstances; nor does it affect the CC's ability to vary or revoke the Order on the basis of OFT advice under section 161.

### ***Article 16 (Funding of the BCSB)***

66. Article 16 envisages that the Banks will meet the costs of the BCSB (and where relevant any other Approved Body mentioned in Article 15) in performing its functions in the Order.