

# THE NORTHERN IRELAND PCA BANKING MARKET INVESTIGATION ORDER 2007

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On 26 May 2005 the Office of Fair Trading (OFT) in exercise of its power under section 131 of the Enterprise Act 2002 (the Act) referred the supply of Personal Current Account (PCA) banking services in Northern Ireland to the Competition Commission (CC) for investigation and report.

The CC investigated the matters referred to it pursuant to section 131 of the Act and concluded, in accordance with section 134(1) of the Act, that there are features of the market either alone or in combination which prevent, restrict or distort competition in connection with the supply or acquisition of any goods and services in Northern Ireland and, in accordance with section 134(2) of the Act, that an adverse effect on competition exists.

The CC found that there is a detrimental effect on customers resulting from the adverse effect on competition and considered, in accordance with section 134(4) of the Act whether (a) action should be taken by it for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or the detrimental effect on customers so far as it has resulted, or may be expected to result, from the adverse effect on competition and whether (b) it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the adverse effect on competition concerned or any detrimental effect on customers so far as it has resulted from, or may be expected to result from, the adverse effect on competition.

On 22 November 2007 the CC gave notice of its intention to make this order in accordance with paragraph 2 of Schedule 10 to the Act as applied by section 165 of the Act.

The CC has considered the representations it has received following publication of the Notice.

The CC makes this Order in performance of its duty under section 138 and in exercise of the powers it has in section 161(1) (3) (4) of, and paragraphs 1, 2, 10, 11 15, 18, 19, 17, 19, 21 and 22 of Schedule 8 to the Act, for the purpose of remedying, mitigating or preventing the adverse effect on competition and any detrimental effects on customers so far as they have resulted, or may be expected to result, from the adverse effect on competition specified in the report of the CC entitled *Personal Current Account Banking Services in Northern Ireland Market Investigation*.

## **PART 1**

### **General**

#### **Citation and commencement**

##### **1. Citation and commencement**

- (1) This Order may be cited as the 'Northern Ireland PCA Banking Market Investigation Order 2007'.
- (2) This Order shall come into force on [insert date of signature] except:
  - (a) article 5 and article 6 of this Order shall come into force on 1 July 2008; and
  - (b) articles 7 to 11 of this Order shall come into force on 1 April 2009.

#### **Interpretation**

##### **2. General interpretation, index of defined expressions etc**

- (1) In this Order:

<b>Act</b>	means the Enterprise Act 2002.
<b>Ancillary Charge</b>	means a Charge for an ad hoc service provided to a Customer at a Customer's request, regardless of whether the PCA has a credit or debit balance.
<b>Annual Summary</b>	means a Written Communication made in accordance with article 8 and article 10 that, summarizes information relating to a Customer's PCA for the 12 calendar months preceding the date of the summary except for an Annual Summary made on or before 31 March 2010 which must cover a period of between 6 and 12 calendar months preceding the date of the summary.
<b>Authorized Overdraft</b>	means a debit balance which is within a limit agreed between a Customer and a Bank.
<b>Authorized Overdraft Charge</b>	means a Transaction Charge or a Maintenance Charge incurred when a Customer goes into Authorized Overdraft.
<b>Authorized Overdraft Interest Rate</b>	means an Interest Rate applied on an Authorized Overdraft.
<b>BBA</b>	means the British Bankers' Association or any successor body to the British Bankers' Association.
<b>BCSB</b>	means the Banking Code Standards Board or any successor body to the Banking Code Standards Board.
<b>CC</b>	means the Competition Commission.
<b>Charge</b>	means a monetary amount applied to or levied on a PCA for the provision of a PCA banking service.
<b>Current Account Charge</b>	means any Charge payable on a regular basis regardless of whether the PCA has a credit or debit balance.
<b>Customer</b>	means a person, or in the case of a joint account the account holders together, holding a PCA with a Bank.

<b>Electronic Communication</b>	Has the same meaning as in the Electronic Communications Act 2000.
<b>Interest</b>	means a monetary amount levied to or earned on a PCA at regular intervals, which is calculated by applying the Interest Rate to the whole or any part of the PCA balance.
<b>Interest Rate</b>	means a rate in the form of a percentage that is applied to the whole or any part of the PCA balance to calculate the Interest.
<b>Maintenance Charge</b>	means a Charge for incurring an Authorized Overdraft or an Unauthorized Overdraft levied on a one off or regular basis.
<b>OFT</b>	means The Office of Fair Trading.
<b>PCA</b>	means a Personal Current Account, being an account marketed to individuals rather than businesses, which provides the facility: to hold deposits; to receive and make payments by cheque and/or debit card; to use automated teller machine facilities; and to make regular payments by direct debit and/or standing order.
<b>Specified Charges and Interest Rates</b>	means the Charges and Interest Rates specified in Schedule 1.
<b>Statement</b>	means a Written Communication which records the balance of the PCA and the transactions that occurred on that PCA during a specific time period, but does not include an instantaneous statement of balance (mini statement) obtained from an automated teller machine or other machine provided to produce mini statements at the request of the Customer.
<b>Switching Leaflet</b>	means the generic document developed in accordance with article 10, which explains the operation of the Banks' Switching Service.
<b>Switching Literature</b>	means the Switching Leaflet and any other document that advertises a Bank's Switching Service and any incentives to switch.
<b>Switching Service</b>	means the service that arranges for the transfer of facilities from a Customer's current PCA to a new PCA, including the transfer of direct debits, standing orders and other regular transactions.
<b>Transaction Charge</b>	means any Charge that may apply to a common transaction for a standard account service (including charges for setting up a direct debit or a standing order) which is not a Current Account Charge and not an Ancillary Charge.
<b>Unauthorized Overdraft Charge</b>	means a Transaction Charge or a Maintenance Charge incurred when a Customer goes into an Unauthorized Overdraft.
<b>Unauthorized Overdraft</b>	means a debit balance which exceeds a limit agreed between the Customer and the Bank or a debit balance if no such limit had been agreed.
<b>Unauthorized Overdraft Interest Rate</b>	means an Interest Rate applied on an Unauthorized Overdraft.
<b>Written Communication</b>	means a communication in writing (either hard copy or electronic) by a Bank to a Customer or potential Customer made by any means including by an Electronic Communication.

(2) The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

(3) 'Bank':

- (a) In this paragraph, a 'Corporate Group' means a parent undertaking and all its subsidiary undertakings together.
- (b) In this Order, a 'Bank' means an institution which offers PCAs to Customers and satisfies either of the conditions set out in sub-paragraph (c).
- (c) The conditions referred to in sub-paragraph (b) are that on the previous [insert date – first date order comes into force] the institution has registered with it:
  - (i) 10,000 or more PCAs with a postal address in Northern Ireland; and
  - (ii) 5,000 or more PCAs with a postal address in Northern Ireland and the institution is part of a Corporate Group which has registered with it 10,000 or more PCAs with a postal address in Northern Ireland.

### **3. Delivery of a Written Communication**

- (1) Unless the Customer notifies the Bank otherwise, a Written Communication referred to in articles 8 and 9 shall be communicated by the Bank by the same means as the Bank communicates the Statement to the Customer.
- (2) Unless the Customer notifies the Bank otherwise, the Switching Leaflet referred to in article 10 shall be communicated by the Bank by the same means as the Bank communicates the Annual Summary to the Customer.

## **Miscellaneous**

### **4. Powers of direction**

- (1) The CC may give directions falling within paragraph (2) to:
  - (a) a person specified in the directions; or
  - (b) a holder for the time being of an office so specified in any body of persons corporate or unincorporate.
- (2) Directions fall within this paragraph if they are directions:
  - (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
  - (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.
- (3) In paragraph 2 above 'actions' includes steps to introduce and maintain arrangements to ensure any director, employee or agent of a Bank carries out, or secures compliance with, this Order.
- (4) The CC may vary or revoke any directions so given.

## PART 2

### Information requirements

#### 5. Duty to communicate clearly

(1) In this article:

(a) a 'Specified Written Communication' means any of:

- (i) a Statement;
- (ii) a Written Communication that is made for the purpose of assisting a Customer or a potential Customer when choosing a PCA;
- (iii) a Written Communication that is made at the same time as when a Customer or a potential Customer is opening a PCA; and
- (iv) a Written Communication that is made for the purpose of pre-notifying a Customer of Charges and Interest.

(b) 'Standard Text' means a form of standard wording (including a template) that is used on multiple occasions by a Bank as a basis for its Specified Written Communications, including in: books; catalogues; leaflets; web pages; Statements; and letters.

(c) Standard Text shall be considered to have been 'tested with Customers' if:

- (i) the Standard Text has been tested with a sample of the Bank's Customers which is representative of the type of Customer to whom the Specified Written Communication containing that particular Standard Text will be directed;
- (ii) the test has been carried out by an independent and expert market research organization; and
- (iii) that market research organization has produced a report stating whether or not the average respondent found the Standard Text to be easy to understand.

(2) A Bank can only make a Specified Written Communication that contains Standard Text if such Standard Text is easy to understand by the average Customer and/or the average potential Customer to whom it is intended the Standard Text will be directed.

(3) Standard Text is only 'easy to understand by the average Customer and/or the average potential Customer' if:

(a) the Standard Text has been either:

- (i) certified as such by an independent organization specializing in plain English; or
- (ii) tested with Customers and found to be easy to understand; and

- (b) the Standard Text has been approved to the satisfaction of the BCSB as being easy to understand.
- (4) A Bank shall not make a Specified Written Communication that contains Standard Text that has been approved to the satisfaction of the BCSB as being easy to understand in accordance with paragraph 3 when such Standard Text has been materially changed, unless:
  - (a) such materially changed Standard Text is easy to understand by the average Customer and/or the average potential Customer in accordance with paragraph 3; or
  - (b) the Bank notifies the BCSB of the proposed changes to the Standard Text and obtains approval from the BCSB that such amended Standard Text is easy to understand to the satisfaction of the BCSB which the BCSB may give at its discretion with or without requiring the Bank to comply with the requirements set out in paragraph 3.
- (5) Whether there has been a material change to Standard Text for the purpose of paragraph 4 depends on all the circumstances but for the avoidance of doubt, does not include:
  - (a) the correction of typographical errors; and
  - (b) changes to a logo or other decorative graphics.
- (6) The costs associated with determining that Standard Text is easy to understand in accordance with paragraphs 3 and 4 including any reasonable costs of the BCSB incurred in performance of its functions under paragraphs 3(b) and 4 shall be borne wholly by the relevant Bank.

**6. Duty to provide details of charges and interest rates in marketing and in account opening**

- (1) In this article a 'Direct Marketing Document' means a Written Communication in the form of an advertisement or promotional message which is sent directly to Customers and/or potential Customers.
- (2) For the purposes of paragraphs 3 and 4, 'information' means:
  - (a) the existence of and level of the Specified Charges and Interest Rates applicable to a PCA;
  - (b) the circumstances in which a Customer would, as appropriate, incur or have applied to the PCA balance each of the Specified Charges and Interest Rates;
  - (c) the time when each of the Specified Charges and Interest Rates would be applied; and
  - (d) the way in which the Specified Charges and Interest Rates are applied to the PCA including whether discretionary policies exist as to how Charges and Interest Rates apply to Unauthorized Overdrafts.
- (3) A Bank shall provide the information mentioned in paragraph 2:

- (a) with a Direct Marketing Document relating to the supply of PCA banking services;
  - (b) in any document or literature marketing a PCA including those supplied in branches and online; and
  - (c) to the Customer at the time of opening a PCA.
- (4) A Bank shall refer to the existence and location of the information mentioned in paragraph 2 of this article contained in a document or literature mentioned in paragraph 3(b):
- (a) in its oral marketing of a PCA; and
  - (b) on posters, billboards and signs that market a PCA.

## **7. Duty to provide details of charges and interest rates on Statements**

- (1) A Bank shall include the information stated in article 6, paragraph 2 as part of each Statement.

## **8. Duty to provide an Annual Summary**

- (1) A Bank shall provide each Customer with an Annual Summary at least once in every 12 months.
- (2) The Annual Summary must show the total of each individual type of Charge or Interest made on the Customer's PCA for the 12-month period covered by the Annual Summary including:
- (a) the level and an explanation for the application of the Specified Charges and Interest Rates; and
  - (b) the information specified in Schedule 2.
- (3) The Annual Summary may include details of Ancillary Charges.
- (4) Where a Bank provides an Annual Summary that does not include details of Ancillary Charges, the Annual Summary must include a clear and prominent statement informing the Customer that they may also have incurred Ancillary Charges during the year and that details of these Ancillary Charges can be found on the Customer's Statements.

## **9. Duty to notify a customer of overdraft charges and debit Interest**

- (1) In this article 'a Record of Charges and Interest' means a Written Communication containing the same information as a Statement including the information specified in article 7 and covering a period of one month.
- (2) A Bank, within one calendar month of a Customer incurring an Authorized Overdraft Charge, an Unauthorized Overdraft Charge and/or debit Interest on a Customer's PCA, shall:
- (a) notify the Customer accordingly; and

- (b) send the Customer a Record of Charges and Interest.
- (3) Where the notification required in accordance with sub-paragraph 2(a) is not provided together with a Record of Charges and Interest, the Bank must provide the information required in article 6, paragraph 2 in or with the notification.
- (4) A Bank shall not deduct an Authorized Overdraft Charge, an Unauthorized Overdraft Charge and/or debit Interest from a Customer's PCA until at least 14 days have passed since the date of the Record of Charges and Interest that followed or accompanied the notification required in accordance with paragraph 2.

## **PART 3**

### **Switching**

#### **10. Provision of switching information**

- (1) The Annual Summary shall clearly and prominently contain wording that:
  - (a) makes it clear that the Customer can close their PCA and seek to obtain PCA services from a different Bank; and
  - (b) specifies where the Customer can find further information on how to do this.
- (2) At the same time and together with the provision of an Annual Summary, in accordance with article 8, paragraph 1, a Bank shall provide the Customer with a Switching Leaflet.
- (3) The Switching Leaflet mentioned in paragraph 2:
  - (a) shall be developed and maintained in accordance with the requirements set out in paragraph 4;
  - (b) shall be approved to the satisfaction of the BCSB as being easy to understand by the average Customer which approval the BCSB may give at its discretion with or without requiring the Banks collectively to comply with the procedure set out in paragraph 3 of article 5; and
  - (c) shall include:
    - (i) an explanation of the details of the current switching process including any changes expected to be made to the switching process in the following 6 months;
    - (ii) a statement explaining that using the Bank's Switching Service helps Customers to switch their PCA to another Bank; and
    - (iii) an explanation that Customers are not charged for switching.
- (4) The requirements mentioned in sub-paragraph 3(a) are that:
  - (a) each Bank will use its best efforts to develop and when necessary update the Switching Leaflet together with all other Banks under the coordination of the BBA;

- (b) each Bank will provide such assistance and resources for the development and updating of the Switching Leaflet as reasonably requested by the BBA (including any costs of the BCSB associated with the approval procedure in sub-paragraph 3(b)); and
- (c) each Bank will regularly review the Switching Leaflet (in any event at least once in every 6 months) to ensure that it reflects the Bank's current switching process and where the Switching Leaflet does not reflect this process the Bank will report this difference to the BBA with a view to updating the Switching Leaflet in accordance with subparagraph (a).

## **11. Switching provision**

- (1) In this article:
  - (a) a 'New Bank' means a Bank to which a Customer switches his PCA using the Switching Service; and
  - (b) an 'Old Bank' means a Bank from which a Customer switches his PCA away using the Switching Service.
  - (c) a reference to an 'Eligible Customer' is a reference to a Customer switching to a New Bank using the Switching Service, who would be eligible for an Authorized Overdraft at the New Bank in accordance with the New Bank's usual credit assessment criteria.
- (2) A New Bank will offer an Eligible Customer an Authorized Overdraft at a level that takes into account the expected number and level of transactions the Eligible Customer will make on the relevant PCA.
- (3) If an Eligible Customer accepts an Authorized Overdraft offered by a New Bank in accordance with paragraph 2, the New Bank will not apply or levy any Interest and/or Charge on such Authorized Overdraft facility for a period of at least three months from the date the Eligible Customer opened the PCA with the New Bank.
- (4) In the circumstances set out in paragraph 5, a New Bank shall refund any Interest and/or Charge incurred on a PCA held at the New Bank as a result of a failure in the switching process carried out in accordance with the Switching Service, to the Customer, within a reasonable period of time regardless of whether the Interest and/or Charge were incurred as a result of an error of the New Bank.
- (5) The circumstances are where:
  - (a) an Eligible Customer declines an Authorized Overdraft offered by a New Bank in accordance with paragraph 2; or
  - (b) a Customer is not eligible for an Authorized Overdraft.
- (6) An Old Bank shall refund any Interest and/or Charge incurred on a PCA held at the Old Bank as a result of a failure in the switching process carried out in accordance with the Switching Service, to the Customer within a reasonable period of time, regardless of whether the Interest and/or Charge were incurred as a result of an error of the Old Bank.
- (7) A Bank shall include, in its Switching Literature, a reference to:

- (a) the availability of an Authorized Overdraft in the circumstances provided for in paragraph 2; and
- (b) the refund of any Interest and/or Charge provided for in paragraphs 4 and 6.

## **PART 4**

### **Suspension of provisions of this Order**

#### **12. Application for suspension**

- (1) A Bank may make an application to the CC for the suspension of any of the relevant provisions of this Order if it believes that it will be unable to comply with them.
- (2) An application for a suspension must:
  - (a) be made in writing;
  - (b) be made no later than 1 February 2009;
  - (c) identify which relevant provisions it is applying to have suspended; and
  - (d) must be accompanied by the materials mentioned in paragraph 3.
- (3) The materials shall include:
  - (a) an explanation of the reasons as to why the Bank believes that it will be unable to comply with the relevant provisions;
  - (b) a statement describing the steps taken to comply with the relevant provisions;
  - (c) an opinion as to the date compliance with the relevant provisions may be expected, and
  - (d) any other information required by the CC, including, for example, expert and audited reports.
- (4) In this article a 'relevant provision' means those contained in articles 7 to 10.

#### **13. Approval by the CC**

- (1) The CC shall, consider any application for a suspension made in accordance with article 12, and notify the Bank of its decision within 21 days of receiving the application (or a longer period of time if required by the CC and notified to the Bank within 21 days of the application being received).
- (2) In deciding whether to approve the application, the CC shall have regard, among other things, to 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.
- (3) The CC's approval may be given subject to such conditions as it considers appropriate.
- (4) Where the CC approves the application it shall publish a notice of approval.

- (5) A notice of approval shall identify:
- (a) the Bank;
  - (b) the relevant provisions of the Order which have been suspended; and
  - (c) where appropriate, the dates on which the relevant provisions will cease to be suspended.
- (6) Where the CC publishes a notice of approval, it may also publish (whether or not at the same time), any information provided to it under article 12, paragraph 3.
- (7) The CC may exclude from the information it publishes in accordance with paragraph 6, any matter which it considers it would be inappropriate to publish, having regard to the considerations mentioned in section 244 of the Act.

## **PART 5**

### **Supply of information and submission of reports on compliance to the OFT**

#### **14. Supply of information to the OFT**

- (1) Schedule 3 shall have effect.

#### **15. Duty to submit reports on compliance with the Order to the OFT**

- (1) In this article:

- (a) an 'Approved Body' means the BCSB or any other body approved by the OFT from time to time to carry out a review of a Bank's compliance with this Order in accordance with this article;
- (b) 'Review Period' means each of the following periods:
  - (i) [insert date of signature] until 31 December 2008;
  - (ii) 1 January 2009 until 30 June 2009;
  - (iii) 1 July 2009 until 30 June 2010;
  - (iv) all subsequent yearly periods starting on 1 July and ending on 30 June the following year; and/or
  - (v) any other period of time notified by the OFT to the Bank; and
- (c) a 'Compliance Report' means a report produced by an Approved Body that describes and details a Bank's compliance with the Order covering a Review Period.

- (2) A Bank shall submit to the OFT a Compliance Report for each Review Period produced by an Approved Body within two months following the last date of the relevant Review Period.

Signed by authority of the CC

.....

Christopher Clarke  
*Group Chairman*  
Competition Commission  
[insert date]

## **Schedule 1**

### **Specified Charges and Interest Rates**

- (a) Interest Rates applicable to relevant balance limits in credit;
- (b) Current Account Charges;
- (c) Transaction Charges applicable to balances in credit;
- (d) Authorized Overdraft Interest Rates;
- (e) Authorized Overdraft Charges;
- (f) Unauthorized Overdraft Interest Rates; and
- (g) Unauthorized Overdraft Charges.

## Schedule 2

### Information to be included in the Annual Summary

- (a) all Current Account Charges that have been applied to the PCA broken down by type of Charge;
- (b) all Transaction Charges that have been applied when the PCA was in credit;
- (c) the amount of Interest earned on PCA balances that were in credit;
- (d) when the PCA had an Authorized Overdrafts:
  - (i) Interest incurred on PCA balances that were in debit;
  - (ii) all Maintenance Charges applied to the PCA; and
  - (iii) other relevant Charges; and
- (e) when the PCA had an Unauthorized Overdrafts:
  - (i) Interest incurred on PCA balances that were in debit;
  - (ii) all Maintenance Charges applied to the PCA;
  - (iii) Transaction Charges; and
  - (iv) Other relevant associated Charges.

### **Schedule 3**

#### **Provision of information to the OFT**

1. Any person to whom this Order applies is required to provide to the OFT any information and documents reasonably required for the purposes of enabling the OFT to monitor and review the operation of this Order or any provisions of this Order.
2. Any person to whom this Order applies may be required by the OFT to keep and produce those records specified in writing by the OFT that relate to the operation of any provisions of this Order.
3. Any person to whom this Order applies and whom the OFT reasonably believes to have information which may be relevant to the monitoring or review of the operation of any provisions of this Order may be required by the OFT to attend and provide such information in person.
4. The OFT may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the OFT in the discharge of its functions under or in connection with this Order.