

CC PPI Market Investigation - Response to Draft Order

The Royal Bank of Scotland Group plc (“RBS”) welcomes the opportunity to review the Competition Commission’s (“CC”) draft order (the “Draft Order”) and explanatory note (the “Explanatory Note”) published on 8 July 2009. RBS’s comments on the Draft Order are set out below.

1 Application of the Order to Standalone PPI/Short Term Income Protection

RBS welcomed the CC’s comments during its briefing session of 20 July 2009 that it would give further thought to the application of the Order to short term income protection products. RBS looks forward to receiving further guidance from the CC in the Order and/or the Explanatory Note and, if helpful, would be pleased to provide further input to the CC’s assessment in this regard.

2 Conflict with other financial regulation

As a general point, RBS notes that changes to the PPI and credit sales processes required by the Order will mean that changes may need to be made to other financial services legislation in order to avoid conflict between different regimes.

In particular, RBS is concerned by the potential for conflict between the Order and the Consumer Credit Act 1974 (the “CCA”) and, more specifically, requirements around the form of consent for PPI required in certain regulated consumer credit agreements under the Consumer Credit (Agreements) Regulations 1983. RBS considers that such conflict is likely to give rise to uncertainty within the industry regarding the way in which the CCA regime should be applied. This can, in turn, be expected to lead to consumer detriment.

RBS therefore requests that the CC liaises with the Department for Business, Innovation and Skills (who is responsible for this aspect of the CCA) in order to ensure that the legislation and the Order are compatible, as well as any other regulators where there is potential conflict between the Order and other legislation.

3 Article 2

RBS has the following comments in relation to certain definitions at Article 2 of the Draft Order.

3.1 Credit

RBS requests clarification in the Order and/or the Explanatory Note that the reference to “guarantee” in the definition of “Credit” does not mean that, in the case of guaranteed loans, the Order will apply to guarantors, but is limited to transactions with the debtor.

3.2 Credit Sale

RBS welcomes confirmation in the Order and/or the Explanatory Note that the meaning of “bound unconditionally” for the purposes of concluding a mortgage credit sale will include mortgage offers which are issued with certain conditions attached for satisfaction by the borrower (including, for example, a mortgage offer for a property which has yet to be built and which is therefore conditional on the borrower confirming that a satisfactory survey has been obtained once the property has been built).

3.3 Stand-Alone PPI

RBS is unclear about the CC's rationale for limiting the "safe harbour" to six months post-sale. The "link" between the credit and PPI sales processes will be broken as a result of the point-of-sale prohibition after which point any PPI sale will be necessarily standalone in nature. Therefore, RBS considers that a further six month period following the point-of-sale prohibition period, before which a PPI sale can be deemed to be sold on a standalone basis, is excessive and disproportionate. However, if the CC considers that a further period is necessary, RBS submits that a more proportionate "safe harbour" should apply, for example a period of two months. As RBS has already explained in previous submissions, the longer the safe harbour period lasts, the less likely that a credit arranger will be incentivised to compete for its credit customers in the standalone PPI market.

4 Article 3

4.1 Schedule 1b

RBS requests confirmation that, in the absence of alternative prescribed statements for standalone PPI and short term income protection adverts, providers may adjust the wording of Schedule 1b according to whether it is standalone PPI or short term income protection which is being advertised. For example the prescribed statement for short term income protection products would read: *"There are other providers of Short Term Income Protection, which is not the only product designed to protect you against loss of your income. For unbiased information about insurance, please visit the website at www.moneymadeclear.fsa.gov.uk."*

5 Articles 8 and 9

5.1 Article 8.2: Reasonable Grounds

RBS is very concerned by the scope of the "reasonable grounds" set out at Article 8.2, in particular where the credit and PPI discussions take place separately. As currently drafted, RBS believes that the "reasonable grounds" risk capturing generic credit conversations and queries received from customers which are not indicative of a credit application being made within seven days. RBS can imagine a number of scenarios where an innocuous (and potentially anonymous) conversation about credit could take place between a provider and a consumer which technically falls within Article 8.2 but which, in practice, is little more than a general enquiry about a credit product. For example:

- Article 8.2(a) would be met where a customer asks a customer sales advisor about the maximum level of credit that is available for a particular credit product, or the level of credit that a customer might be offered based on their salary. If that customer then buys PPI within seven days of the general enquiry, it seems that a provider would be in breach of Article 8;
- Article 8.2(c) would be met if a customer makes a very general enquiry about the typical APR for a loan product. If that customer buys PPI within seven days of their enquiry, it seems that a provider would be in breach of Article 8.

RBS does not consider that the "reasonable grounds" are sufficiently substantial to alert a credit arranger to the likelihood of a credit application. Moreover, RBS can see no realistic way in which providers can be expected to systematically record all credit enquiries falling within the scope of Article 8.2 (particularly where those enquiries are anonymous and/or

entirely separate from any discussion about PPI) meaning that the risk of inadvertent breach of this obligation is significant.

Therefore, RBS requests that further thought is given to the application of Article 8. In RBS's view, the only way in which to ensure compliance with this obligation is to allow providers to ask a customer to confirm that at the time of the PPI sale he or she has not had a conversation about applying for credit in the past seven days. This would also be in line with the CC's observations at paragraph 10.130 of the Final Report (regarding the analogous situation for intra-group transactions). RBS therefore requests that provision is made for this option in the Order.

5.2 Article 8 and 9: Inadvertent Breach

While RBS accepts that providers must use reasonable efforts to check the eligibility of a customer with regard to the prohibitions set out at Articles 8 and 9, there may be occasions where a provider will not be aware of a prior credit application discussion or a prior credit sale because the prior transaction has not yet registered on the provider's system (in particular given that customers use a variety of channels to transact). For example, a customer may purchase credit in-branch and then, later that day, purchase PPI online. In such circumstances, at the time of the PPI sale, a provider's system may not have recorded the credit sale due to the short period of time which has elapsed between transactions. This means that it would be difficult for a provider to verify that the prior transaction had taken place and thus prevent a technical breach of the point-of-sale prohibition.

In order to avoid an inadvertent breach of this nature, RBS requests that the Order recognises such situations by referring to PPI being "knowingly" sold by a provider so that the provisions of Articles 8 and 9 read: (i) "...the Credit Arranger shall not knowingly conclude the sale of a PPI Policy for the Credit discussed with the Consumer..."; and (ii) "The following persons shall not after the start of a Credit Sale knowingly conclude a PPI Policy with a Consumer...".

In addition, RBS requests that provision is made in the Order for a provider to discharge its obligations under Articles 8 and 9 upon receiving customer confirmation that a prior transaction or credit application discussion has not taken place.

5.3 Article 9.3

Further to the CC's comments during its briefing session of 20 July 2009 that Article 9.3 will be clarified to refer to insurance policies, RBS requests that this obligation is limited to insurance policies only.

6 Article 13

6.1 Schedule 5(c)(2)

RBS considers that the volume of applications required under Schedule 5(c)(2) is unduly burdensome and therefore requests that the number of applications required for each PPI product type and channel is reduced to ten applications. RBS considers that this number of applications will still be sufficient to ensure that a comprehensive mystery shopping exercise can be carried out.

6.2 Schedule 5(c)(4)

Further to the OFT's comments during the CC's briefing session of 20 July 2009 regarding the statement "Any one verified non-compliant mystery shop will constitute evidence of non-compliance with the Order" (namely that the OFT does not expect to find a firm in breach of the Order as a result of one or two failed mystery shops), RBS requests that this statement is removed from the Order. Alternatively, RBS requests that the CC confirms in the Explanatory Note that a single non-compliant mystery shop will not be treated, in practice, as a breach of the Order.

7 Pro forma schedules

With reference to the pro forma annual reviews (Schedule 3) and personal quotes (Schedule 4) RBS has the following comments:

7.1 Personal Quote: Short Term Income Protection Marketed at Credit Point-of-Sale

RBS welcomes confirmation in the Order and/or the Explanatory Note that Schedule 4(e) can be used as the personal quote for short term income protection products which are marketed during a credit sale.

While RBS understands that short term income protection products cannot be sold at the credit point-of-sale, we assume that Schedule 4(e) can be used as the pro forma quote for such products which are subsequently sold, given that: (i) the product is standalone; and (ii) in any event, there is no relevant credit information which can be used to populate the credit section of Schedules 4(a) - 4(d). As explained to the CC on a number of occasions throughout the enquiry, short term income protection products will not be linked to a specific credit agreement (even if it is marketed alongside credit) because it will relate to an individual's income rather than a specific credit agreement. Therefore, it would be inappropriate to use Schedules 4(a) - 4(d) for short term income protection products because key information, such as the credit APR, would not be available.

However, if the CC does not agree with RBS's view in this regard, RBS requests detailed guidance from the CC regarding the rationale for requiring that Schedules 4(a) - 4(d) should be used for short term income protection products marketed during the credit sale and, in particular, how the credit section can be populated.

7.2 Schedules 3(c) and 4(c)

RBS considers that inclusion of the "credit limit" figure in the CCPPI personal quote and annual review is inappropriate. The cost of CCPPI is linked to the customer's actual outstanding balance and not the customer's credit limit (as evidenced in the PPI section of the form where cost is based on a typical outstanding balance of £1,000). RBS is therefore concerned that a subsequent reference to credit limit in the credit section will be confusing for credit card customers given that the cost of PPI is linked to the balance and not to the credit limit. Therefore, RBS requests that this requirement is removed.

8 Article 14

First, RBS requests confirmation from the CC that Article 14.1 relates to a provider certifying, as part of its compliance report required by Article 12, that marketing material used over the past

twelve months is 'easy to understand', rather than a requirement on providers to certify that marketing material is 'easy to understand' prior to its use in the following year.

Second, RBS is concerned that the scope of this obligation is unnecessarily wide. As currently drafted, the requirements apply to all forms of marketing material and all content within that marketing material. RBS considers that this requirement goes beyond what is necessary to ensure that providers' PPI marketing material is 'easy to understand' and therefore requests that the following amendments are made to the obligation:

- the obligation is limited to key marketing statements and standard text only, rather than all marketing material. RBS does not consider that it is necessary to include peripheral text within the scope of the obligation; and
- where key statements and standard text are repeated throughout a provider's marketing material for the year, it is only necessary to test a sample of the provider's materials in order to ensure compliance with this obligation.

In addition, RBS considers that the CC's requirement at Article 14.2 (that material must be certified using an independent organisation specialising in plain English or that an independent market research agency must test the material with consumers) goes beyond that which is necessary to achieve the objective that marketing material is 'easy to understand by the average Customer and/or average potential Consumer'. In doing so, this creates an unnecessary expense for providers. RBS considers that it is sufficient that providers test material with consumers without necessarily having to have recourse to a third party.

In this regard, RBS would also point out the further protection afforded by the strict reporting requirements under Article 12.5 and also the FSA's "Treating Customers Fairly" regime which requires that PPI providers ensure that consumers are provided with clear information on all PPI marketing material, meaning that PPI marketing material must already be written clearly and using commonly understood language. As such, RBS requests that Article 14.2(b) is revised to read as follows: "tested with Consumers and found to be easy to understand".

9 Suspension provisions

Noting the suspension provisions provided for in the Northern Ireland market investigation order, RBS welcomes inclusion of a similar suspension mechanism in the Order. While providers are able to consider the content and application of the remedies during the current consultation process, given the complexity of the PPI remedies (which are more substantial than the remedies required in the Northern Ireland market investigation where the suspension provision was exercised), certain remedies can only be fully tested once the Order comes into force (for example the annual reviews). As such, it is very difficult to foresee exactly what issues may arise during the implementation process and whether such issues could cause delay to the implementation timetable. Therefore, RBS considers that it would be prudent to provide a suspension provision in this case.

10 Confidentiality of Information

To the extent that RBS provides confidential information in order to comply with its obligations under the Order, RBS requests that this information remains confidential and that the CC clarifies the position on confidentiality in the Order.