

SHOP DIRECT GROUP FINANCIAL SERVICES LIMITED

RESPONSE TO PUBLIC CONSULTATION ON DRAFT ORDER

INTRODUCTION

1. This is Shop Direct Group Financial Services Limited's ("SDGFS") response to the Competition Commission's (the "Commission") public consultation on the draft Payment Protection Insurance Market Investigation Order 2009 ("Draft Order"). SDGFS reserves the right to make further comments on any further drafts of the Order published by the Commission.
2. As the Commission is aware, SDGFS is an intervener in support of Barclays Bank plc in *Barclays Bank plc v Competition Commission* (CAT). The relief sought by Barclays includes the quashing of the Final Report, including the imposition of the point of sale prohibition. Therefore, SDGFS' response to this consultation has assumed that the Final Report stands in its current form. In light of the proceedings in the CAT, nothing in this response should be construed as support for or acceptance of the imposition or operation of any of the remedies, and in particular, the point of sale prohibition.
3. SDGFS attended the briefing session with the Commission on 20 July 2009, where the Inquiry Chairman requested that responses to the consultation should include suggested practical alternatives, where possible. This response has been prepared on that basis, and SDGFS is happy to discuss any of its suggestions or concerns with the Commission.
4. Overall, SDGFS' concerns can be categorised as follows:
 - 4.1 Elements of the Draft Order and its operation give rise to regulatory conflicts for SDGFS. For instance, it would not be possible for SDGFS to comply with some aspects of the Draft Order without at the same time breaching its FSA obligations. For example, providing customers with conflicting and confusing information would be a clear breach of SDGFS's TCF obligations.
 - 4.2 The Draft Order imposes obligations that will create a seriously unfavourable customer experience. This may result in Retail PPI customers being confused and choosing to terminate their entire shopping relationship with SDGFS. The Commission should take all necessary steps to avoid this unintended consequence.

4.3 The Draft Order is overly prescriptive and does not sit comfortably with FSA principles-based regulation. Furthermore, it is not "future-proof" - the Draft Order requires the provision of specific information at a point in time that will not be relevant should a customer's circumstances change in the future. Information that becomes out of date will be of no use to customers. It is also likely to result in complaints, or at least increases in customer enquiries.

5. SDGFS' comments on the specific provisions in the Draft Order are set out below.

PART 1 - ARTICLE 2

6. Substantive comments on the definitions in the Draft Order will be dealt with in SDGFS' comments on the Articles in which the definitions are used.

PART 2 - ARTICLE 3

Definition of Marketing Statement

7. The definition of Marketing Statement is too broad to be capable of producing a practical and meaningful result in Retail PPI. It does not reflect the way in which the Retail PPI and home shopping markets operate and will have unintentional adverse consequences for home shopping customers. SDGFS has identified two adverse effects of this broad definition.

8. First, in the home shopping market, promotional statements about PPI are included in direct mail, inbound and outbound telephone calls, promotional emails, catalogues and seasonal publications, websites, other promotional literature and media advertisements. All of these communications would be Marketing Materials. Within these Marketing Materials, PPI is advertised and promoted in a number of different ways. For example, in home shopping catalogues or on websites customers will be directed to the financial services pages by the use of "signposts" with wording such as "*shopping insurance can provide peace of mind - see page...*". Annex 1 contains a screenshot from the Littlewoods website showing an advertisement for shopping insurance, with the headline "Worried about what's around the corner?". Annex 2 shows a typical signpost (in the bottom right corner) from a catalogue. Due to the wide definition of "Significant benefits of PPI" in Schedule 1 of the Draft Order, these would both clearly be Marketing Statements, so would give rise to a requirement to "display prominently" all the Article 3 disclosures.

9. As defined in Article 3.9, "*prominently means sufficiently obvious that a Consumer would take notice when looking at or listening to the Marketing Material and no less prominently*

than the Marketing Statement itself". This implies that each "signpost" must be accompanied by the information required by Articles 3.1 and 3.2. This is wholly impractical as it would significantly disrupt the format of the catalogue or website by increasing the size of the signpost dramatically to include all the necessary wording. Clearly this would restrict the space available to retailers to promote their merchandise, or force retailers to remove signposts from their catalogues or websites and reduces the advertisement of PPI contrary to the objectives of the remedies package. Again, this would appear to give rise to a requirement to include the Article 3 disclosures. This would be unnecessarily onerous.

10. Therefore, for Retail PPI the definition of Marketing Statement ought to exclude statements such as these, to allow catalogues and websites to continue to sign-post shopping insurance and simply be obliged to refer the customer to the relevant financial services pages, which would then include the full information required under Article 3.
11. The Order should mirror the rules for other similar financial products (e.g. credit and extended warranties). For example, The Supply of Extended Warranties on Domestic Electrical Goods Order 2005 allows suppliers to include a statement in a catalogue referring customers to further relevant information printed elsewhere in the catalogue.
12. Secondly, the definition of Marketing Statement is so broad that it would be impossible for SDGFS to mention the existence of shopping insurance in an Oral Communication without making a Marketing Statement. Having made a Marketing Statement, SDGFS would then be obliged to make all of the disclosures required by Article 3, even if the customer immediately stated that they had no interest in purchasing PPI. This would inevitably increase the length of the call (and consequently the cost of the call for the PPI provider) for no purpose. More importantly, customers with no interest in purchasing PPI would be irritated by receiving information for which they had no use. In order to avoid this problem, there should be an exception in Article 3, to make it clear that the PPI Provider is only obliged to make the disclosures where the consumer expresses an initial interest in purchasing Retail PPI, and the information should be provided before the conclusion of any PPI contract, in the same way as similar FSA requirements.

Expressing the policy benefit and the monthly cost per monthly benefit

13. The following comments also relate to the information to be provided in the Personal Quote and Annual Review, including the requirements to describe the policy benefits and to express the cost per monthly benefit.

14. In relation to the obligation under Article 3.1, SDGFS has explained to the Commission on numerous occasions that there is no standard monthly cost for every £100 of Monthly Benefit for its shopping insurance product. It is entirely dependent on the terms of the underlying credit agreement, which vary considerably. Consequently, it is not possible to calculate a single figure that will represent the monthly cost per £100 of Monthly Benefit for a particular customer.
15. A customer with PPI may purchase a variety of goods on different repayment terms. For goods on 20 week terms, the Monthly Benefit will be 20% of the outstanding balance. For goods purchased on 156 week terms, the monthly benefit will be approx 3% of the outstanding balance. The Monthly Benefit for a longer repayment term is smaller because the individual monthly repayments are smaller. Other purchases may be on "buy now, pay later" terms, in which case the monthly benefit in the event of a claim would be zero during the initial no payment period, and would increase during the payment period.
16. All of these Monthly Benefit figures will vary during the life of the trading relationship with the customer, depending on the nature of their shopping purchases and any variations to the credit terms or repayment terms. A given customer may make some purchases on shorter repayment terms and other purchases on longer repayment terms, so the Monthly Benefit as a proportion of the total credit balance will vary accordingly.
17. Therefore, because the Monthly Benefit will be impossible to predict at the outset, it will be impossible to provide a cost per £100 of Monthly Benefit. Trying to do so will result in multiple variables having to be provided to the customer in the disclosure that will make it impossible for customers to make valid comparisons between providers. Customers may also complain if the actual Monthly Benefit paid (at the point of any claim) and the cost of it is different from that which was provided in any Marketing Material. To avoid these issues, Retail PPI providers would be forced to change either their credit offering or PPI benefit payments, or both. This will result in more standardised products and, therefore less competition and ultimately choice for consumers in relation to both credit and PPI. It is essential that this problem is resolved.
18. Cost per Monthly Benefit is a relevant metric for types of PPI where the repayments, and therefore the Monthly Benefit, are fixed at the outset. However this does not apply to Retail PPI and the Personal Quote (and Annual Review) should be amended accordingly.
19. Given the similarities between the aims of the Order (i.e. to enable customers to compare different forms of PPI) and the equivalent objectives for other financial services products (e.g.

different credit offers), SDGFS agrees that a common customer metric is required. As defined, the cost per £100 of Monthly Benefit does not achieve this, so SDGFS proposes that where this cost cannot be calculated at the time of provision of the relevant information under Article 3, in the Personal Quote, or in the Annual Review, it is expressed as a "Typical Cost". This Typical Cost would be calculated on the same basis as the Typical APR, i.e. the rate at which at least 66% of customer claims are expected to be paid.

ARTICLE 4

Timing Issues

20. The Commission has amended Article 4.1(b) to reflect the comments made by SDGFS in its response to the informal consultation on the Draft Order that it would not be possible to send an Annual Review within 12 months of the commencement of the policy. However, the change has not been made to Article 4.2, which still requires Annual Reviews to be sent "*at any time within 12 months of the date of commencement of this Article...*". This is unrealistic. If a customer took out a PPI policy the day before commencement of the Article, it would not be possible to collate a full year of data in relation to their account and provide the Annual Review **within** twelve months of commencement of the Article. This time limit should be amended to "within 13 1/2 months" to allow six weeks to produce and send the Annual Review to customers after the twelve month period has expired. The same amendment should be made to Article 4.1(b) to allow six weeks to produce and send the Annual Review. This is the minimum time needed internally.
21. In addition, the two week timeframe (in Articles 4.1 and 4.2) for sending subsequent Annual Reviews to customers is too short. SDGFS would not be able to produce and distribute Annual Reviews in this time, so this should be amended to allow for six weeks.
22. Finally, the obligation in Article 4.2 does not appear to apply to Personal Loan PPI and there is no rationale for this apparent discrimination. This should be addressed.

Inclusion with monthly statement

23. Article 4.4 requires the Annual Review to be provided "*separately to any information on the Credit Agreement...*". It is unclear quite what this means. However, if it means that it cannot be sent with, say, the normal monthly customer statement this would be entirely arbitrary and be far more restrictive than the Consumer Credit Act requirements in relation to annual credit statements. These annual credit statements can be, and are, sent with monthly account

statements (separate documents within the same envelope) and this avoids the risk of customers treating any unexpected mailings as junk mail. There is no reason to treat the Annual Review differently, and more harshly. It unnecessarily increases SDGFS' costs, which could result in increased prices to customers.

24. If the Commission's concern is that customers may link the availability of credit with the purchase of Retail PPI¹ then this is an unwarranted concern. Firstly, the Annual Review is sent 12 months after the purchase of PPI which will be at least 12 months after the credit was taken out. It is inconceivable that customers would link the purchase of PPI with credit acceptance at that stage. In any event, in the Final Report the Commission found that there was no risk of customers 'linking' the availability of credit with the purchase of PPI for Retail PPI. Therefore, there is no reason to prevent the Annual Review from being provided at the same time as the customer's normal monthly statement.

Schedule 3(d) - Form of Annual Review

25. SDGFS sets out below its comments on the actual text of the Annual Review form.
26. Firstly, the words in the shaded box at the top of the document, "*cheaper or more appropriate cover may be available from other providers*", are untrue and misleading. The use of the word "cover" implies that this statement relates to "cover" for the customer's home shopping account with SDGFS. As the Commission is aware (and as found by the Commission in the Final Report), for a home shopping account with variable balance, there is currently no other appropriate alternative cover to Retail PPI. The only other possible alternatives do not track the balance or provide cover in the exact same way. The only other options are short term IP or some form of Stand-Alone PPI, both of which will leave the customer under or over insured as they will be rely on the customer's judgement about his or her insurance needs. In addition, the reference at the end of this sentence will guide customers to the FSA's comparison tables on its website. There is currently no comparison table for Retail PPI but if there were then this statement would be highly misleading and wrong for the customer as there is simply no point in it comparing PPI from other home shopping providers as alternative cover for their balance with SDG. Home shopping providers cannot provide PPI for a credit balance that they do not hold. Therefore, direction to any such Retail PPI tables

¹ Final Report, para 10.311

would be a gross error in this document. The Commission cannot require SDGFS to make an incorrect or misleading statement to its customers.

27. Furthermore, if the result of comparison with other home shopping providers led to the customer cancelling its entire shopping relationship (e.g. for goods and credit) with SDG then the Commission will have detrimentally affected other markets as a result of its Order. It must avoid this.
28. Consequently, the words should be removed. The sentence "Payment Protection Insurance is not the only product..." could remain and if the Commission still wants to direct customers to the FSA's comparison tables then the link can be included in this sentence. This will enable the customers to see information on other types of PPI available at the very least; albeit that (even on the Commission's own findings) there are and will be no other suitable alternatives.
29. SDGFS is also concerned that this sentence could be viewed by the FSA as giving advice as it suggests that SDGFS has knowledge of these other products and recommends them. It is quite likely that a customer may ask a question about these other products or providers, and it would be impossible to respond satisfactorily to these questions. This risks providers straying into advised sales and the Order must allow providers to operate in either an advised or non-advised sales capacity.
30. Secondly, SDGFS does not consider it necessary to make the statement "*You should check this form to make sure that all the recorded details are correct, otherwise your insurance cover may be affected.*" It is also misleading to imply that a mistake on the Annual Review would affect the PPI cover itself. Again, this requirement is not mentioned in the Final Report and there is no need for it in the context of Retail PPI, even if it has application for other forms of PPI. SDGFS is concerned that customers could find this statement threatening and confusing.
31. Thirdly, as SDGFS has previously explained on several occasions, and for the reasons set out above in relation to the Personal Quote, it is not possible to calculate a single value of monthly cost for every £100 of Monthly Benefit. The Monthly Benefit for an individual customer will vary according to the credit terms for that customer and will result in multiple variations of this metric needing to be included in the form. This cannot be the Commission's intention. For this reason, the monthly cost per £100 of Monthly Benefit is not a meaningful metric for Retail PPI accounts; it will confuse customers and may mislead them. It should be removed from the Annual Review for Retail PPI. Again, this problem must be addressed.

32. Finally, there is no need to attach a policy summary in addition to the summary contained in the quote, and no relevant finding in the Final Report requiring this. It is simply an additional cost. The purpose of the Annual Review is to provide customers with "*information..... to assist consumers to compare the cost of their PPI policy with alternative policies*".² The information in Schedule 3(d) is sufficient to do this without the addition of a copy of the policy summary.
33. Moreover, the FSA's ICOBS requirement to produce and provide customers with a policy summary did not come into force until the FSA regulated general insurance from January 2005. SDGFS has a significant number (approximately [CONFIDENTIAL]% of current PPI policyholders) of customers who took out a range of PPI products before January 2005 (i.e. pre-regulation) and a policy summary (as defined by the Commission³ by reference to the ICOBS definition) has never been produced for those PPI products. It would not be possible to produce a policy summary for these customers as (for example) the terms of their agreements do not include a right of access to the Financial Ombudsman Service, which is an ICOBS requirement for a policy summary. However, SDGFS could produce a précis of these customers' policies but this would not be defined by reference to ICOBS. The definition of policy summary on page 20 (paragraph 6) of the Draft Order would, therefore, need to be amended.

ARTICLES 5 AND 6

34. In addition to disclosing Claims Ratios, SDGFS considers that it would be more appropriate to also disclose claims acceptance rates to customers. This will present a more accurate picture of the value of the cover to customers. Claims ratios by themselves will not be easily understood by customers as they do not present a clear picture of the value of a particular policy. They will vary dramatically between product types (which will have different business models) and between individual providers with a different customer base and demographic, and offering different product structures. Claims administration costs will also vary. This will make bare comparisons of ratios meaningless. Any information published by the FSA should include a clear statement that a Claims Ratio is not necessarily an accurate measure of the

² Final Report, para 10.301

³ See page 20 of Draft Order

value of a product as it is highly dependent on the underlying features of the cover and the demographic of customers etc.

35. Claims acceptance rates are more valuable to customers as they show the likelihood of a future claim being accepted. This is of practical importance to customers, and is much more likely to be understood. SDGFS considers that an obligation to disclose claims acceptance rates should be added to Article 5 and 6, and that the FSA should be required to include claims acceptance rates in any comparison tables published.

ARTICLE 7

Scope of general obligation

36. It is not clear from Article 7.1 in the Draft Order what constitutes "offering to sell PPI". For the reasons set out at paragraph 8 above, the definition of Marketing Statement would catch almost any promotional statement referring to PPI made by a home shopping retailer, so on a natural reading of Article 7.1, and given that PPI is advertised widely in its catalogues, on its websites and in other communications to customers, SDGFS would be required to send a Personal Quote to any customer who had seen a Marketing Statement, regardless of whether they had expressed an interest in PPI. This is completely unworkable, and must be modified so that only customers who have commenced the Credit Sale process should be sent a PPI quote.
37. Moreover, the general obligation would require SDGFS to send a Personal Quote to customers who had specifically stated that they had no interest in purchasing PPI, or who did not satisfy the basic eligibility criteria for the product. This would confuse and aggravate customers, and would adversely affect the underlying relationship with the customer for the sale of goods, which can not be the Commission's intention. The draft must be amended to deal with this point.

Provision of Personal Quote

38. The definition of Stand-Alone PPI makes it clear that a Credit Arranger will also become a Stand-Alone Provider in relation to any sale of PPI to any customers six months or more after the conclusion of the Credit Sale.
39. Given that PPI will be offered for sale at that point, Article 7.2 would therefore require a PPI Provider, when selling PPI to a customer more than six months after the Credit Sale, to send a Personal Quote in the form set out in Schedule 4(e) e.g. as a Stand-Alone Provider. This is

completely inappropriate for a Retail PPI Provider as it would not be able to provide the information required in Schedule 4(e). It is not possible for a Retail PPI Provider to calculate a fixed "Annual cost of Payment Protection Insurance" in advance, as it will not know what the customer's credit balance will be. Similarly, it cannot quote a "Monthly cost of Payment Protection Insurance" without knowing in advance the monthly credit balance. It is also not accurate to refer to "Amount of monthly income or repayments protected" in the context of Retail PPI and varying balances.

40. The Commission itself found that Stand-Alone PPI and short-term IP are not substitutes for Retail PPI and therefore the quote in a Stand-Alone Provider format is not possible. Furthermore, SDGFS cannot actually provide its customers with Stand-Alone PPI or short term IP. It only sells Retail PPI and, therefore, will only ever be sending customers a Retail PPI Personal Quote.

Schedule 4(d) - Form of Personal Quote for Retail PPI

41. As with the Annual Review, the words in the shaded box at the top of the document, "*cheaper or more appropriate cover may be available from other providers*", are problematic for the same reasons set out above. This must be addressed.
42. In addition, it is unclear why Retail PPI providers are obliged to include information relating to a customer's employment status and age in the Personal Quote and Annual Review. This information is not required by the pro forma statements for other forms of PPI and is not relevant given that SDGFS' cover adapts whenever a customer's circumstances change.
43. Schedule 4 does not currently allow for four-weekly statement cycles, as operated by SDGFS. Clarification of this, in similar terms to paragraph 3 of Schedule 3, should be added to Schedule 4. Alternatively, the definition of 'month' in Article 2.2 could be amended to include four-week cycles.

Monthly Benefit

44. As explained above, it is not possible to calculate a monthly cost per £100 of monthly benefit in a meaningful way for Retail PPI, because the benefit will vary according to the credit terms, the repayments made and according to the type of insured event. It is not possible to predict in advance the credit a customer may take, or their repayments so it is not possible to predict what the cost of the monthly benefits would be to that customer in the event of a

claim. To complete this matrix would involve providing multiple variations to customers which will confuse and mislead them.

Combined APR

45. It is also inappropriate to include a 'combined APR' for Retail PPI. The Final Report states that provision of a combined APR is "subject to resolution of any practical issues associated with including this measure". There is a clear practical issue in relation to Retail PPI, as the vast majority of SDG's customers buy goods with credit at 0% APR. It would be highly misleading and confusing to these customers to receive a Personal Quote with a combined APR far in excess of this due to the effect of the PPI premium. For example, a customer who purchases goods over 20 or 52 weeks at 0% APR with a PPI premium of 1.98% on the monthly outstanding balance would have to be notified of a "combined APR" of 27.85%. This would interfere with the retail and credit markets, as the "combined APR" would discourage customers from taking purchasing goods and taking credit. In addition, the Consumer Credit (Total Charge for Credit) Regulations 1980 exclude a premium under an optional contract of insurance when calculating an APR, so the APR on the customer's credit agreement would not include the optional PPI premium. Again, this would cause significant customer confusion.
46. In addition, given the fact that the credit element of this calculation is 0%, the statement that this is a combined APR has no meaning. All the calculation represents is an annualised expression of the PPI as though it is interest despite the fact that it is the purchase price of another product. This is totally wrong and should not be included.
47. Furthermore, paragraph 10.181 of the Final Report provides that for Retail PPI, an APR is not required if it is not known at the time of the Personal Quote. For SDGFS, the APR will never be known at this stage, as the APR will vary throughout the relationship, according to the terms on which the customer takes (and subsequently, if appropriate, varies) his credit.
48. Finally, given the Commission's finding that there is no waterbed effect for Retail PPI combined APR is meaningless. It is only capable of having any relevance in circumstances where there is a waterbed effect on credit and PPI prices. Therefore, this box should be removed from the Personal Quote pro forma for home shopping companies.

Bundled and Unbundled Product

49. It is also not clear whether it is necessary to provide a separate Personal Quote for the bundled PPI Product. If so, the Personal Quote would need to provide the total price payable for the

bundled product to avoid misleading or confusing customers about their outgoings. A completely new form would need to be devised for this. Customers would then have two separate quotes that they would not find easy to reconcile, and would not find easy to use with the FSA's comparison tables.

50. Customers only need to be able to compare pure balance protection policies for the purposes of the Commission's remedies package, and as such we assume the obligation is only to provide a quote for the balance protection. However, this would clearly lead to customer confusion as the Personal Quote would bear no resemblance to the details provided about the bundled product.

PART 3 - ARTICLE 9

Scope of the Prohibition

51. It is clear from Paragraph 23 of the explanatory memorandum that the Prohibition Period is not applicable to PPI sales more than six months after the Credit Sale. However, this has not been reflected at all in the drafting of Article 9 and it is necessary to have some clear provision in the Order reflecting this.
52. Although it is clear that a PPI Provider becomes a Stand-Alone Provider after six months if it sells PPI at that time, the definition of Stand-Alone PPI means that the provider also continues to be treated as a Credit Arranger for the purposes of the Order. This means that it is still apparently subject to the Prohibition Period. This is clearly nonsensical. As such, there should be a specific carve-out for all Stand-Alone Providers (i.e. including PPI Providers who are deemed to have become Stand-Alone Providers).
53. In addition, it is unclear from where the six month cut-off time is derived. Given that a Credit Arranger ceases to be such as soon as the Credit Sale is complete, there seems to be no reason why the Prohibition Period should apply to any sales made after this point.
54. If the point of sale advantage continues for any length of time after the Credit Sale is complete (which is clearly what is envisaged by the Commission as a result of the second element of the Prohibition Period) then the POSP could never be an effective remedy as it could never eradicate an advantage that continues to exist. The concept of an effective Prohibition Period, and a "safe harbour" reached only after six months suggest two mutually inconsistent views of the nature of the point of sale advantage. Nevertheless, it must be right that the point of sale advantage does not carry on ad infinitum (and in truth not beyond the

period during which the credit is arranged) and as such SDGFS agrees that there should be a provision in the text of the Order giving effect to Note 23 of the Explanatory Memorandum in the text of the Order.

55. However, there is no conceivable rationale for the safe harbour waiting time extending as long as six months. SDGFS would propose a cut off period of no more than one month after completion of the Credit Sale, at which point a provider will have ceased to be a Credit Arranger (as defined in the Draft Order) in any event.

Retail PPI Exception

56. Paragraph 10.108 of the Final Report sets out the Commission's decision that for Retail PPI, the prohibition period should commence when the consumer opens a retail credit account, or, if later, the provision of a personal PPI quote. However, the definition of Prohibition Period in the draft Order states that it commences at the conclusion of the Credit Sale or upon the provision of a Personal Quote. In the case of the Prohibition Period starting at the conclusion of the Credit Sale Period the seven day prohibition is actually longer for Retail PPI providers because the conclusion of the Credit Sale Period is defined in the Order as when the Consumer receives "*confirmation in a Durable Medium that the Credit Provider is bound unconditionally to provide the Credit*". In the case of Retail PPI, the credit account will usually be opened over the phone or on the internet, and credit is provided unconditionally at that point. However, confirmation in a Durable Medium may not be received until several days later. This oversight has the effect of extending the Prohibition Period by these extra days. The draft Order should be amended so that in the case of Retail PPI, the Prohibition Period starts when the credit account is opened rather than when the written confirmation is received. This would then be consistent with Paragraph 21 of the Explanatory Note. This amendment is necessary to give effect to the Commission's finding in paragraph 10.108 and 10.147 of the Final Report that the Prohibition Period should start when the Consumer opens a credit account, rather than (as for other forms of PPI⁴) at the point when the consumer is provided with confirmation in a durable medium that credit will be provided.

PART 5 - ARTICLE 13

⁴ Final Report, paragraph 10.105

57. Paragraph 4 of schedule 5c states that "*any one verified non-compliant mystery shop will constitute evidence of non-compliance with the Order*". This threshold is unrealistic, given the wide-ranging operational changes that PPI Providers will need to implement to satisfy the Order and the difficulties involved in complying with FSA rules as well as the Order. There should be a grace period during which minor transgressions are tolerated, and a threshold for the significance of any non-compliance, below which very minor transgressions would not constitute evidence of non-compliance.

ARTICLE 14

58. Article 14 requires PPI Providers to report and obtain independent verification annually that the PPI Marketing Material is "*easy to understand by the average Consumer and/or the average potential Consumer*". Firstly, this appears to be a simple duplication of TCF requirements, so appears to be unnecessary.
59. More importantly, SDGFS is concerned that it will be impossible to provide any such report as a direct result of the obligations imposed by the Draft Order. For the reasons set out above, and in particular in relation to the provision of the Personal Quote and Annual Review, the information provided to Consumers will be confusing and misleading. It is not realistic to expect an "independent organization specializing in plain English" (and it is unclear what sort of organisation the Commission has in mind here) to certify that the relevant material is easy to understand because customers will simply not find it easy to understand. As the Order stands at present, the information would be extremely complex and inevitable fairly unintelligible.
60. The Commission should remove this obligation and can rely on TCF obligations to cover this concern.