

**THE NORTHERN IRELAND PCA BANKING MARKET
INVESTIGATION ORDER 2011**

Contents

	<i>Page</i>
PART 1	3
General	3
Citation and commencement.....	3
1. Citation and commencement.....	3
Interpretation.....	3
2. General interpretation, index of defined expressions etc	3
Miscellaneous	6
3. Powers of direction.....	6
PART 2	6
Information requirements	6
4. Duty to communicate clearly	6
5. Duty to provide details of Charges and Interest Rates to Customers when selecting a PCA	6
6. Duty to notify a Customer before deducting overdraft charges and debit Interest ..	7
PART 3	7
Switching.....	7
7. Provision of switching information	7
8. Switching provision	8
PART 4	9
Supply of information and submission of reports on compliance to the OFT.....	9
9. Supply of information to the OFT.....	9
10. Duty to submit reports on compliance with the Order to the OFT	9
Schedule 1	11
Specified Charges and Interest Rates	11
Schedule 2.....	12
Provision of information to the OFT	12
Schedule 3.....	13
Template Compliance Report.....	13

1. 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.
2. 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.
3. 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 (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.
4. On 22 February 2008 the CC made the Northern Ireland Banks PCA Market Investigation Order 2008 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, 3, 10, 15, 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*.
5. In May 2010, the OFT advised the CC pursuant to [section 162](#) of the Act that the coming into force of the Consumer Credit Directive and the Payment Services Directive constituted a change of circumstances making it appropriate to vary the Northern Ireland Banks PCA Market Investigation Order 2008. The CC considered the OFT's advice and found that, pursuant to [section 161\(4\)](#) of the Act, it was appropriate to vary the Northern Ireland Banks PCA Market Investigation Order 2008 by revoking it and making a new Order which reflected the change in circumstances.
6. On 10 January 2011, the CC in accordance with paragraph 2 of [Schedule 10](#) to the Act as applied by [section 165](#) of the Act, gave notice of its intention to revoke the Northern Ireland Banks PCA Market Investigation Order 2008 and make a new Order, the Northern Ireland Banks PCA Market Investigation Order 2011.
7. The CC has considered the representations it has received following publication of the Notice.
8. The CC makes this Order in performance of its duty under [section 138](#) and in exercise of the powers it has in [section 86\(1\) to \(5\)](#) and [section 87](#) (each applicable by virtue of [section 164](#)), [section 161\(1\), \(3\) and \(4\)](#) of, and paragraphs 1, 3, 10, 15, 19, 21 and 22 of [Schedule 8](#) to, the Act.

The Order

The CC makes this Order in performance of its duty under [section 138](#) and in exercise of the powers it has in [section 86\(1\) to \(5\)](#) and [section 87](#) (each applicable by virtue of [section 164](#)), [section 161\(1\)](#), (3) and (4) of, and paragraphs 1, 3, 10, 15, 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 2011'.
- (2) This Order shall come into force on [*insert the date*] which is the date this Order is signed.

Interpretation

2. General interpretation, index of defined expressions etc

- (1) In this Order:

Act	means the Enterprise Act 2002.
Ancillary Charge	means a Charge for an ad hoc service provided to a Customer at a Customer's request.
Authorized Overdraft	means an explicit agreement between a Customer and a Bank whereby the Bank makes available to the Customer funds which exceed the current balance in the Customer's PCA.
Authorized Overdraft Charge	means a Transaction Charge or a Maintenance Charge incurred when a Customer has or goes into an Authorized Overdraft.
Authorized Overdraft Interest Rate	means an Interest Rate applied on an Authorized Overdraft.
BBA	means the British Bankers' Association or any successor body to the British Bankers' Association.
CC	means the Competition Commission.
Charge	means a monetary amount payable by a Customer (deducted from a PCA balance) to a Bank, for the provision of a PCA banking service.

Current Account Charge	means any Charge payable by a Customer to a Bank on a regular basis (whether or not the PCA has a credit balance, a zero balance or a debit balance).
Electronic Communication	has the same meaning as in the Electronic Communications Act 2000.
Interest	means a monetary amount charged (in the case of debit interest) or earned (in the case of credit interest) on a PCA at regular intervals, which is calculated by applying the Interest Rate to the whole or any part of the PCA balance.
Interest Rate	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.
Maintenance Charge	means a one-off or periodic Charge payable by a Customer to a Bank for incurring or maintaining either an Authorized Overdraft or an Unauthorized Overdraft.
Marketing Communication	means a communication which promotes or markets a PCA to Customers and/or potential Customers and does not include a document that is provided to comply with a consumer credit statutory requirement.
OFT	means The Office of Fair Trading.
Specified Charges and Interest Rates	means the Charges and Interest Rates specified in Schedule 1 .
Statement	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.
Switching Leaflet	means the generic document developed in accordance with Article 7, which explains the operation of the Switching Service.
Switching Service	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.
Transaction Charge	means any Charge payable by a Customer to a Bank for the provision of an account service by a Bank (including charges for setting up a direct debit or a standing order) and which is not a Current Account Charge, not a Maintenance Charge and not an Ancillary Charge.
Unauthorized Overdraft	means a tacitly accepted overdraft whereby a Bank makes available to a Customer funds which exceed the current balance in the Customer's PCA or the agreed overdraft facility.
Unauthorized Overdraft Charge	means a Transaction Charge or a Maintenance Charge incurred when a Customer goes into an Unauthorized Overdraft or gives an instruction for a payment or withdrawal that the Bank

declines to honour because the Customer does not have sufficient funds in his account.

Unauthorized Overdraft Interest Rate means an Interest Rate applied on an Unauthorized Overdraft.

Written Communication means a communication in writing (either hard copy or electronic) by a Bank to a Customer or a potential Customer made by any means including by an Electronic Communication.

(2) In this Order 'PCA' means:

(a) 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; but does not include:

- (i) a basic bank account as described in The Banking Code March 2005 or any subsequent publications of The Banking Code if relevant;
- (ii) an account in which money is held on deposit in a currency other than the official currency of the United Kingdom; and
- (iii) an account in which credit funds are held and offset against mortgage debt or a loan (other than an overdraft facility).

(3) 'Customer'

(a) In this Order 'Customer' means any person who holds a PCA or in the case of a PCA held jointly, the persons holding the account together, and who satisfies the conditions mentioned in sub-paragraph (b).

(b) The conditions are that:

- (i) the person has a nominated address in Northern Ireland;
- (ii) the person holds a PCA which was available in Northern Ireland at the date the PCA was opened; and
- (iii) in the event that the person holds a PCA which is attached to a physical branch, that branch is located in Northern Ireland.

(4) 'Bank'

(a) In this Order, a 'Bank' means an institution which:

- (i) offers PCAs to any person; and
- (ii) has registered with it:
 - 10,000 or more Customers; or
 - 5,000 or more Customers and the institution is part of a Corporate Group which has registered with it 10,000 or more Customers.

- (b) In this paragraph, a 'Corporate Group' means a parent undertaking and all its subsidiary undertakings (as defined in section 1159 of the Companies Act 2006 or any amendment to such definition) together.
- (c) Whether an institution falls within this definition of a 'Bank' will be assessed on the basis of Customer numbers as at 1 January each year, and any institution which falls within this definition will be treated as a Bank for the purpose of this Order for the year following this assessment.
- (5) The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.

Miscellaneous

3. 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

4. Duty to communicate clearly

- (1) A Bank shall ensure that a Marketing Communication is in easily understandable words and in a clear and comprehensible form.

5. Duty to provide details of Charges and Interest Rates to Customers when selecting a PCA

- (1) A Bank shall provide the following information with any Marketing Communication designed to assist a Customer when selecting a PCA:
- (a) the existence of and level of the Specified Charges and Interest Rates applicable to the PCA;

- (b) the circumstances in which each of the Specified Charges and Interest Rates would apply to the PCA;
 - (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.
- (2) A Bank will comply with the requirement in Article 5(1) above if it:
- (a) provides the information in branch or online; and
 - (b) refers to the existence of the information and where such information can be found:
 - (i) in any Marketing Communication made in writing which is sent directly to Customers and/or potential Customers;
 - (ii) in any oral Marketing Communication; and
 - (iii) on any posters, billboards and signs that market a PCA.

6. Duty to notify a Customer before deducting overdraft charges and debit Interest

- (1) Except as provided for in paragraph 2, 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 that the Customer was notified by the Bank of incurring an Authorized Overdraft Charge, an Unauthorized Overdraft Charge and/or Interest debited to his PCA.
- (2) Where a Customer requests a Bank to close his PCA, a Bank may deduct an Authorized Overdraft Charge, an Unauthorized Overdraft Charge and/or debit Interest from that Customer's PCA at any time following the date of the request.

PART 3

Switching

7. Provision of switching information

- (1) A Bank shall notify a Customer annually in a clear and prominent way on a Statement or other Written Communication which summarizes information relating to a Customer's PCA for the preceding 12 months:
 - (a) that a Customer can close the PCA and seek to obtain PCA services from a different Bank; and
 - (b) where the Customer can find further information on the process of how to do this.
- (2) At the same time, 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 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 six 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; and
 - (c) each Bank will regularly review the Switching Leaflet (in any event at least once in every six 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 sub-paragraph (a).

8. Switching provision

- (1) In this article:
- (a) a 'New Bank' means a Bank to which a Customer switches his PCA using the Switching Service;
 - (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; and
 - (d) 'Switching Literature' means the Switching Leaflet and any other document that notifies a Bank's Switching Service and any incentives to switch.
- (2) A New Bank will offer an Eligible Customer an Authorized Overdraft at a level applying the New Bank's usual credit assessment criteria.
- (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 or not the Interest and/or Charge were incurred as a result of an error by 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 or not the Interest and/or Charge were incurred as a result of an error by 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

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

9. Supply of information to the OFT

- (1) [Schedule 2](#) shall have effect.

10. Duty to submit reports on compliance with the Order to the OFT

- (1) In this article:
 - (a) 'Review Period' means yearly periods starting on 1 July and ending on 30 June the following year; and/or any other period of time notified by the OFT to the Bank; and
 - (b) a 'Compliance Report' means a report that describes and details a Bank's compliance with the Order covering a Review Period.
- (2) A Bank shall submit a Compliance Report to the OFT annually within 8 weeks of the end of the Review Period including the information set out in [Schedule 3](#) and in a format agreed with the OFT.

Signed by authority of the CC

Peter Freeman
Group Chairman
Competition Commission
[insert date here]

Consultation Draft

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) For Authorized Overdrafts: Interest Rates and Charges by way of a representative example;
- (e) Unauthorized Overdraft Interest Rates; and
- (f) Unauthorized Overdraft Charges.

Consultation Draft

Schedule 2

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.

Schedule 3

Template Compliance Report

Compliance Report for [insert Bank name]

We, [insert names], confirm on behalf of [insert Bank name] that during the year to 30 June [20XX] [insert Bank name] has complied with The Northern Ireland PCA Banking Market Investigation Order 2011 (the Order).

Compliance with requirements

1. During the Review Period:
 - (a) all Marketing Communications were made in easily understandable words and in a clear and comprehensible form, consistent with Article 4;
 - (b) all Marketing Communications complied with the requirements of Article 5;
 - (c) deductions on all Authorized Overdraft Charges, Unauthorized Overdraft Charges and/or debit Interest from a Customer's PCA were made consistent with the provisions of Article 6;
 - (d) all Customers received the switching information provided for in Article 7; and
 - (e) in all cases, the switching provisions in Article 8 were complied with.

Customer complaints

2. During the Review Period, the following Customer complaints were received with respect to the requirements of the Order:

[Example table]

<i>Nature of complaint</i>	<i>Number of complaints live at the start of the Review Period</i>	<i>Number of complaints made in the Review Period</i>	<i>Number of complaints resolved by Bank in the Review Period</i>	<i>Number of complaints withdrawn by complainant in the Review Period</i>	<i>Number of complaints referred to the Financial Ombudsman Service in the Review Period</i>	<i>Number of complaints outstanding at the end of the Review Period</i>
Clarity of Marketing Communications for PCAs, including the way in which Specified Charges and Interest Rates are set out (Articles 4 and 5)						
Notification of Authorized Overdraft Charges, Unauthorized Overdraft Charges and/or debit Interest from a Customer's PCA (Article 6)						
Provision of annual switching information (Article 7)						
Switching provisions (Article 8)						

[Add any commentary on the figures in the table. For example, explaining the nature of the complaints under each Article and any more general complaints received from consumer bodies]

Interpretation

- Words used in this Compliance Statement have the meanings given by the Order.

FOR AND ON BEHALF OF [NAME OF BANK]

Signature:

Name:

Title: Compliance Officer

Date:

Signature:

Name:

Title: Chief Executive of Retail Business (with responsibility for Northern Ireland)

Date:

Consultation Draft