

**Explanatory Note to accompany the
Payment Protection Insurance Market Investigation Order 2009**

(This note is not part of the Order)

Introduction

1. On 29 January 2009, the Competition Commission (CC) published its report on its investigation into the market for payment protection insurance (PPI), except store card PPI, to non-business customers in the UK. The report set out a package of remedies to address the adverse effects on competition that it found. The CC has made an Order to give effect to these remedies.
2. The remedies package is designed to open up the market to greater competition and to help customers make informed choices about PPI. It consists of:
 - (a) a prohibition on selling PPI at the point of sale of the credit and for a specified period afterwards ('the point-of-sale prohibition');
 - (b) an obligation to provide a Personal PPI Quote ('the Personal PPI Quote');
 - (c) an obligation to provide information about the cost of PPI and 'key messages' in PPI Marketing Material ('information provision in marketing material');
 - (d) an obligation to provide information to the Office of Fair Trading (OFT) and the Financial Services Authority (FSA) for monitoring and publication; and an obligation to provide information about Claims Ratios to any person on request ('provision of information to third parties');
 - (e) a recommendation to the FSA that it uses the information provided to it to populate its PPI Comparison Tables;
 - (f) an obligation to offer Retail PPI separately from Merchandise Cover where both are offered together as a bundled product ('unbundling retail PPI from merchandise cover');
 - (g) a prohibition on the selling of Single-Premium PPI policies ('single-premium prohibition'); and
 - (h) an obligation to provide an Annual Review of the cost of PPI and a reminder of the consumer's right to cancel ('Annual Review').

Possible consequences of not complying with the Order

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

5. The Order applies to any PPI Provider who in the UK provides PPI to a Consumer.

Review of this Order

6. The OFT has a general duty to monitor the operation of the Order under section 162 of the Act. This includes the duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. Article 12 and Schedule 6 of the Order require PPI Providers to provide the OFT with information to allow it to monitor and review the operation of the Order.

Status of this explanatory note

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

Structure of the Order

8. The Order is divided into six parts. Part 1 contains general provisions, which include specifying when Articles in the Order come into force, definitions that are used throughout the Order and the scope of application of the Order.
9. Part 2 contains the Information Requirements which are the obligations to provide certain information about PPI in Marketing Materials, to provide the Annual Review and the Personal PPI Quote, to provide information to the FSA and to provide information on Claims Ratios on request.
10. Part 3 contains the Prohibitions, which are the prohibition of the sale of PPI before the sale of Credit, at the point of sale of Credit and for a specified period after the sale of Credit and the prohibition of requiring payment by Single Premium. This part also contains the exception to the prohibition after the sale of Credit for certain Consumer-initiated transactions.
11. Part 4 contains the requirement to offer Retail PPI separately when it is offered as part of a package of insurance including Merchandise Cover.
12. Part 5 contains the compliance obligations which are to submit a Compliance Report, to appoint a Compliance Officer, to report on the clarity of Marketing Material and to conduct a mystery shopping exercise.
13. Part 6 sets out the CC's powers to make directions as to compliance.
14. The rest of this explanatory note deals with each of the Articles in the Order.

Part 1—General

Article 1 (Title, commencement and application)

15. Article 1 gives the Order its name and it sets out when the Articles come into force. The Order comes into force on the date it is signed with Articles 1, 2, 12, 13, 14, 15 and 16 commencing on that date. Articles 3 and 5 come into force six months from the date of the Order and Articles 4, 6, 7, 8, 9, 10 and 11 come into force 12 months from the date of the Order.

Article 2 (Interpretation)

16. Article 2 contains the definitions applicable throughout the Order. Where special terms apply only to a particular Article, they are defined in that Article. Some key definitions are outlined below.
17. PPI and the individual types of PPI such as Credit Card PPI (CCPPI), Personal Loan PPI (PLPPI), second-charge mortgage PPI (SMPPI) and first-charge Mortgage PPI (MPPI) are defined for the purposes of the Order. Short-Term Income Protection Insurance (Short-Term IP) is defined separately and for the purposes of this Order PPI includes Short-Term IP.
18. PPI Provider is defined along with the individual categories of provider which are Distributor, Intermediary, Stand-Alone Provider and Short-Term IP Provider.
19. Terms which are used in the prohibition of the sale of PPI at the point of sale of Credit are defined. Because this prohibition applies to a Distributor or Intermediary selling or arranging Credit for a Consumer, the collective term 'Credit Arranger' is used. The prohibition also applies to an Associate of a Credit Arranger which is defined separately.
20. The sale of Credit involves a number of stages and the definition of the Credit Sale reflects that by defining the process rather than the individual stages.
21. Neither the commencement or conclusion stages in the Credit Sale are separately defined, as these stages are not consistent across all Credit Sale processes. For example, in the case of the conclusion of the Credit Sale (when the Credit Provider is bound unconditionally to provide the Credit), in some cases this may occur when the Credit Agreement or other documents are signed by both the Credit Provider and the Consumer; in others, it may be when the Credit Provider alone has signed the Credit Agreement. In other cases it may be at a stage before the Credit Agreement is signed, for example when the Consumer has received a firm or fixed offer from the Credit Provider, or it may be when a Consumer is able to use an account to purchase goods or when funds are made available for the Consumer to draw upon.
22. The Prohibition Period is the period after the Credit Sale during which neither the Credit Arranger nor an Associate may sell PPI to the Consumer or contact the Consumer to sell PPI but may provide a Personal PPI Quote. The Prohibition Period commences at the conclusion of the Credit Sale and concludes at the later of either:
 - (a) seven consecutive days following the conclusion of the Credit Sale commencing on the day of the conclusion of the Credit Sale; or
 - (b) seven consecutive days following the receipt by the Consumer of a Personal PPI Quote commencing on the day of receipt of the Personal PPI Quote.
23. The definition of Stand-Alone PPI should be noted. It includes sales of PPI by a Credit Arranger six months after the Credit Sale. This allows a Credit Arranger to market PPI to a Credit Consumer who may have declined an earlier offer without triggering the Prohibition Period.
24. Key terms in the Information Obligations are defined. The obligation to make a Prescribed Statement or an Additional Statement applies when a Marketing Statement has been made in Marketing Material.

25. A Marketing Statement is not defined as such but is made when Marketing Material contains any items of information which are listed in Schedule 1. Marketing Material is a defined term and may take the form of a Written or Oral Communication and may be Direct or Indirect, all of which are defined terms.
26. Other definitions are drawn from the glossary in the report or accepted industry definitions such as those in the FSA Handbook glossary and credit legislation.

Part 2—Information requirements

Article 3 Obligation to provide information about PPI

27. Article 3.1 requires that the price of PPI must be given using the common price metric and for key messages to be included in PPI Marketing Material.
28. The Order reflects the decision in the report to develop a common currency for PPI. All PPI Providers are required to disclose the cost of PPI expressed as monthly cost for every £100 of Monthly Benefit. Monthly Benefit is a defined term.
29. Article 3.2 sets out the additional price disclosure obligations for providers of CCPPI and Retail PPI. For these, price must be disclosed in terms of monthly cost for every £100 of Monthly Benefit and monthly cost for every £100 of outstanding balance.
30. The key messages which are required to appear in Marketing Materials containing a Marketing Statement are set out in the sub-schedules of Schedule 1. Schedule 1a sets out the Prescribed Statement a Distributor or Intermediary is required to make and Schedule 1b sets out the Prescribed Statement a Stand-Alone PPI Provider or Short-Term IP Provider is required to make.
31. Article 3.3 requires an Additional Statement which is set out in Schedule 2 to be made if a policy pays a Monthly Benefit for less than 12 months. Article 3.4 provides that this obligation does not apply to Retail PPI Policies in which the total outstanding balance is always cleared within 12 months of making a claim.
32. Article 3.5 provides that where an Intermediary sells a Distributor's or Stand-Alone Provider's PPI Policies, the Intermediary may rely on the Distributor's or Stand-Alone Provider's Marketing Material. However, when an Intermediary sells a PPI Policy which is available only from that Intermediary or through an Intermediary Network, that Intermediary or Intermediary Network is responsible for ensuring that the Marketing Material is compliant.
33. The remainder of Article 3 deals with ensuring that key messages are given prominence in Marketing Material and sets out what prominence means. Article 3.9 provides that these information obligations apply in addition to any other statutory or regulatory advertising requirements which may apply.

Article 4—Obligation to provide an Annual Review

34. Article 4 sets out the requirements for the Annual Review.
35. Article 4.1 sets out when an Annual Review must be sent for all PPI Policies paid by Monthly or Annual Premium which commence on or after the date when the Article comes into force.

36. For PPI Policies which have an annual renewal date or are paid by Annual Premium, the Annual Review must be sent not less than two weeks and not more than four weeks before the renewal date or payment due date as the case may be.
37. For PPI Policies which are paid by Monthly Premium, the first Annual Review must be sent at any time during the 13 months following the commencement of the PPI Policy and each subsequent Annual Review shall be sent within two weeks of the anniversary of that date. The period of 13 months was selected to enable PPI Providers to send an Annual Review covering PPI payments over a full 12-month period.
38. Article 4.2 sets out when an Annual Review must be sent for each of the specific types of PPI Policies set out in the Article which are current at the date of commencement of the Article.
39. Article 4.3 sets out the circumstances when an Annual Review does not need to be sent.
40. Article 4.4 provides that the Annual Review may not be sent together with any information relating to the Credit but it may be included with PPI Policy renewal documents and other information relating to the PPI.
41. Article 4.5 sets out the form of Annual Review each type of PPI Policy must use and these are set out in Schedule 3 along with instructions to complete which indicate where there is flexibility in the format.
42. Article 4.6 provides that where a PPI Policy has been sold by an Intermediary, the obligation to send the Annual Review falls on the party which maintains an ongoing relationship with the PPI consumer, which is generally the Distributor, Stand-Alone Provider or Underwriter but may also be the Intermediary. It also sets out which form in Schedule 3 must be used.
43. Article 4.7 provides that the Annual Review may be sent electronically but only at the Policyholder's specific request. PPI Providers are not prevented from asking a Policyholder about the preferred form of receipt of the Annual Review, but may not send it electronically unless the Policyholder has made that specific request.

Article 5—Obligation to provide information to the FSA and the OFT

44. Article 5.1 requires PPI Providers to give data to the FSA and in the format the FSA may need in connection with the preparation of and publication by the FSA of the PPI Comparison Tables.

Article 6—Obligation to disclose claims ratios

45. Article 6.1 requires a PPI Provider to disclose Claims Ratio data to any person on request and Article 6.3 sets out how the request may be satisfied including by publishing this data on a website and directing enquiries to that site.
46. Article 6.2 sets out how Claims Ratio data must be disclosed and that disclosure must be accompanied by explanation in plain English setting out how it has been calculated. The requirement that the explanation be in plain English may be satisfied by certification from an independent organization specializing in plain English. PPI Providers who meet the compliance reporting thresholds in Article 12 are required to

include confirmation that this requirement has been satisfied in the Compliance Report.

47. It is not necessary that each PPI Provider develop this explanation separately. Standard wording which has been developed by a representative industry body and certified as meeting the plain English requirement may be used.

Article 7—Obligation to provide a personal PPI quote

48. Article 7.1 provides that where a PPI Provider makes a Marketing Statement to a Consumer during a Credit Sale or when offering to sell PPI, the PPI Provider is required to give a Personal PPI Quote.
49. Article 7.2 refers to the format of the quote which is set out in Schedule 4 with a specific format depending on the type of PPI. The associated notes indicate where flexibility in the format is permitted.
50. Article 7.3 provides that a quote must remain valid for at least 14 days commencing on the date of receipt of the quote by the Consumer; it may remain valid for longer.
51. Article 7.4 sets out the deeming provisions for the date of receipt by the Consumer of the Personal PPI Quote where it is not given in person or by recorded receipt.

PART 3—The prohibitions

Article 8—Prohibition on the pre-sale of PPI

52. Article 8 sets out the prohibition on a Credit Arranger selling PPI before a Consumer has applied for Credit where Credit has been discussed with the Consumer and the Credit Arranger has reasonable grounds to believe that the Consumer will make an application within seven days of the discussion. There is no restriction on giving a Personal PPI Quote at that time.
53. Article 8.2 sets out the circumstances when there are reasonable grounds to believe that a Consumer will make an application for Credit.

Article 9—Prohibition on sale of PPI after commencement of a Credit Sale

54. Article 9.1 sets out the prohibition on the sale of PPI at the point of sale of credit and for the specified period after. It provides that where a Credit Sale has commenced, ie when the Consumer has applied for Credit, neither the Credit Arranger nor an Associate of the Credit Arranger may sell PPI to the Consumer until the end of the Prohibition Period which is the later of either seven days after the conclusion of the Credit Sale or seven days after the Consumer receives a Personal PPI Quote.
55. An Associate of the Credit Arranger is defined as either any business mentioned by the Credit Arranger to the Consumer during the Credit Sale for the purposes of buying PPI or any business the Credit Arranger gives or allows access to information concerning a particular Credit Agreement for the purposes of selling PPI.
56. In both cases a Commercial Referral Relationship needs to exist between the Credit Arranger and Associate. A Commercial Referral Relationship which is defined to exist where there is an arrangement whereby the one party receives a payment or other benefit from the other as a result of the Consumer purchasing PPI.

57. Article 9.2 sets out the exemption from the prohibition for consumer-initiated transactions and the conditions which must be satisfied for this exemption to apply.
58. Although the means of initiating the transaction are limited to the telephone or the Internet, there is no restriction on the means which can be used to conclude the PPI Policy.
59. The party selling the PPI must have received confirmation that the Consumer has received the quote before the agreement is concluded. There is no restriction on how the Credit Arranger may receive that confirmation.
60. There is no requirement to verify to the OFT that these conditions have been met before making a sale but a person relying on the exemption must be able to satisfy the OFT that all the conditions were met should the OFT subsequently ask them to do so.
61. Article 9.3 contains an anti-avoidance measure which deems an arrangement that has the same effect as a PPI Policy and the sole or dominant purpose of the arrangement is to avoid the operation of the Order to be a PPI Policy and subject to this Order.
62. Article 9.4 provides that the Prohibition Period applies only on the first occasion that the Consumer is offered PPI for a specific Credit Agreement. It does not apply if the maximum amount of Credit available to the Consumer on a Credit Card or Retail Credit Account is varied or a Credit Card is replaced, as these events do not constitute a new Credit Sale.

Article 10—Prohibition of payment of PPI by single premium and requirement to pay a rebate

63. Article 10.1 sets out the prohibition on requiring payment by Single Premium.
64. The remainder of the Article sets out the requirements that only a Monthly or Annual Premium may be charged for a PPI Policy; payment for a PPI Policy to cover a loan which is 12 months' duration or less may be only by way of Monthly Premium; and the prohibition on inclusion of administration, set-up or termination charges in the price of any PPI Policy.
65. Article 10.4 provides for a pro-rata/proportional rebate to be paid when a Consumer terminates a policy paid by Annual Premium in the course of year.

Part 4—Requirement as to separate supply

Article 11—Obligation to offer Retail PPI separately when sold in a package of insurance

66. Article 11 sets out the requirement to offer Retail PPI as a separate policy where PPI is offered as part of a package containing Merchandise Cover.

Part 5—Supply of information and submission of reports of compliance

67. Articles 12 to 15 set out the compliance requirements.

68. Article 12 sets out how to determine if a PPI Provider is required to submit a Compliance Report, and if so when the Compliance Report must be submitted and the contents of the Compliance Report.
69. Article 12.1 provides that PPI Providers who attained certain specific GWP amounts in 2007 are required to submit a Compliance Report to the OFT on the first anniversary of the Order coming into force and then for each six months thereafter for two years. After that time the Compliance Report must be submitted annually on the anniversary of the Order coming into force. If GWP falls below the 2007 levels, then there is no obligation to submit a Compliance Report under this Article but the obligation may arise under Article 12.2 subsequently.
70. Article 12.2 provides that commencing on the second anniversary of the Order coming into force, if a PPI Provider achieves the specific GWP amounts set out in the Article in a preceding year, the PPI Provider will be required to submit a Compliance Report annually on the date corresponding with the anniversary of the Order coming into force.
71. Article 12.3 provides that commencing on the first anniversary of the Order coming into force a PPI Provider which does not achieve the GWP amounts set out in Articles 12.1 or 12.2 but attains a total annual GWP of £10 million or more in a preceding year must submit an annual breakdown of GWP by each PPI Product Type, Stand-Alone PPI and Short-Term IP to the OFT annually on the anniversary of the date of the Order coming into force. When the GWP amounts in Article 12.2 are reached these requirements will lapse in favour of the Compliance Report obligations.
72. Article 12.4 provides that where two or more PPI Providers are members of the same corporate group, only one Compliance Report needs to be submitted on behalf of all but the compliance information required by Schedule 5 must be identified separately.
73. Article 12.5 provides that the Compliance Report may be prepared either by an Independent Party for the PPI Provider or by the PPI Provider in which case it shall include a certificate signed by an Independent Party that the Compliance Report is true and correct. In either case, the Compliance Report must contain a certificate signed by a director and an independent non-executive director, and in the case of unincorporated providers the appropriate alternative stating that the persons or person signing are satisfied that the Compliance Report has been prepared in accordance with the requirements of the Order and the PPI Provider has complied in all material aspects with the requirements of the Order for the reporting period and can reasonably be expected to do so.
74. The Combined Code on Corporate Governance¹ provides for independent non-executive director representation on the audit committee and that committee's functions include reviewing internal control and risk management systems. When certification on behalf of the company that certain financial or other obligations have been met is required, it is not unusual for members of the audit committee to be delegated the power to sign the certificate.
75. Where a PPI Provider is not incorporated, the certification requirement falls on two partners both of whom are FSA Authorised Persons or in the case of a sole trader the person authorized by the FSA.

¹Financial Reporting Council. The Combined Code of Corporate Governance. June 2008.
[www.frc.org.uk/documents/pagemanager/frc/Combined Code June 2008/Combined Code Web Optimized June 2008\(2\).pdf](http://www.frc.org.uk/documents/pagemanager/frc/Combined%20Code%20June%202008/Combined%20Code%20Web%20Optimized%20June%202008(2).pdf).

76. The contents of the Compliance Reports are set out in Schedule 5.
77. Article 13.1 sets out the obligation to conduct a mystery shopping exercise for those PPI Providers reaching certain GWP thresholds in addition to any other compliance requirements. The report on the mystery shopping exercise must be included in the Compliance Report.
78. The requirements for the mystery shopping exercise are set out in Schedule 5c.
79. Article 14.1 provides for PPI Providers reaching certain GWP thresholds to include a report on the clarity of their Marketing Material in the Compliance Report. This requirement may be satisfied either by a report from an independent organization specializing in plain English stating that it is easy to understand or by having the Marketing Material tested in consumer focus groups by an Independent Market Research Agency and being found to be easy to understand.
80. Article 15.1 provides for the appointment of a Compliance Officer and notification of the appointment and name of the person given to the OFT within 21 days of the Order coming into force. There is no restriction on who can be a Compliance Officer other than being a natural person. The duties are set out in Article 15.2.

Article 16—Powers of direction

81. Article 16 is made under section 87 of the Act as applied by section 164(2) of the Act.
82. The Article gives the CC power to give directions to a person for the purpose of carrying out, or ensuring compliance with, the Order. The directions can be addressed to an individual or a company or can be addressed to the holder for the time being of an office in a company, for example the Secretary.

Compliance—Schedule 5(c)

83. The sample size for mystery shopping of 60 shops for each large, multi-sales channel PPI Distributor has been set to give a reasonable level of confidence that non-compliance with the Order will be detected. If 5 per cent of the Distributor's overall sales were non-compliant, this size of sample would achieve a 95 per cent probability that at least one of the sample mystery shops would also be non-compliant.