

20 March 2015

BBA RESPONSE TO JOINT COMMITTEE CONSULTATION PAPER ON GUIDELINES FOR CROSS-SELLING PRACTICES – JC/CP/2014/05

1. The British Bankers' Association ('BBA') welcomes the opportunity to respond to the Joint Committee Consultation Paper on guidelines for cross-selling practices ('Draft Guidelines').
2. The BBA is the leading trade association for the UK banking sector with more than 230 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking.
3. We have the largest and most comprehensive policy resources for banks in the UK and represent our members domestically, in Europe and on the global stage. Our network also includes over 80 of the world's leading financial and professional services organisations. Our members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses.

Executive Summary

4. In United Kingdom retail banking, packaging of products is most closely associated with added value or packaged accounts. Customers pay a monthly fee and receive a range of benefits such as fee free and interest free overdrafts, mobile phone and travel insurance, vehicle breakdown assistance and home emergency insurance, in addition to the facilities of a full-facility 'free if in credit' current account.
5. Common examples of cross-selling include content and service providers offering telephony and internet products alongside a core television service, or mobile telephony and television to broadband and fixed line telecom customers; and energy companies selling gas, electricity and related services such as boiler and electrical installation and repair services. Examples of cross-selling are also evident in more basic retail transactions, such as when Amazon suggests additional complimentary products to the customer when an online purchase is made. Retail banking is no different. When customers look to purchase a mortgage, banks may also offer home contents insurance, building insurance, or life insurance (to cover the outstanding mortgage balance in the event of the death) at the same time.
6. Offering products together in this way provides customers who need them with a range of benefits. Customers can save time and effort as they do not have to purchase each of the different products individually or at different times of the year with different renewal dates. Customers also benefit from the convenience of a single point of contact, such as when they need to claim on an insurance component. From a providers' point of view, there are often fixed costs of serving customers and low incremental costs of providing additional services when an existing relationship is already in place. This cost saving is often reflected in the price offered to customers who take more than one product or service. Therefore, BBA considers it is important to recognise that bundling and tying practices are not inherently anti-competitive or detrimental to consumers. Such offerings will often provide clear benefits to customers, from a financial and convenience perspective.
7. Consideration should be given to the principle of proportionality with regard to product complexity and risk. The effects of a particular bundling, or tying arrangement are necessarily

circumstance specific. Therefore BBA considers that the ESAs may be better placed to consider specific guidance around tying or bundling behaviour that is aimed at areas where evidence-based concerns has been raised, rather than seeking to address the issue through high-level supervision guidelines.

8. BBA considers it essential that these Draft Guidelines are both flexible enough to align with existing Member State legislative provisions which have successfully addressed specific issues with the tying and bundling of certain products and services, including information disclosure, training and competency requirements, and sales and incentives. Similarly, any Draft Guidelines must be consistent with the approach of the “level 1” regulation such as the Payment Accounts Directive and the restated Insurance Mediation Directive.
9. At worst, inconsistency with level 1 regulation and existing member state legislation will prevent tying and bundling practices which could result in smaller firms having to leave the market, or act as a disincentive or blocker to potential new entrants to the market, resulting in less competition and higher prices for customers. Alternatively, it may result in the withdrawal or substantial amendment of products or services which are currently of benefit to customers.
10. It is clearly extremely important that transparency measures are genuinely meaningful for consumers in helping them understand products, compare them and shop around. BBA supports efforts to ensure disclosure and price transparency that enhances the scope for customers to make proactive and informed purchase decisions. However, it is critical that such disclosure is helpful and benefits the customer by informing their purchase decision. Our concern is that the proposals in some of the guidelines require individual component price disclosure where disclosure is unhelpful to the customer’s purchasing decision or likely to confuse the customer through overloading customers with information, resulting in them not fully understanding the features and cost of the product.
11. For example, disclosure of a price for each component of a bundled or tied offering may not be possible where elements of the offering are tailored for the purposes of that offering, and are provided by third parties – such as with packaged bank accounts. Providing customers with a breakdown of individual costs as well as an overall cost could be confusing and impact negatively on customer understanding. As drafted, the guidelines could result in an ‘artificial’ price being given to consumers, for example where the prices of products or services purchased in bulk by providers are simply not available directly to consumers. When the UK regulators looked into similar proposals, they concluded that “the disclosure of individual premiums may not be meaningful to consumers...[and] may therefore distort competition in the standalone insurance market.”
12. In particular, BBA has some notable concerns about the content of the Draft Guidelines:
 - a. the scope of application is too broad, particularly due to the descriptions applied to terms such as “tied offering”, “bundled offering”, “component”, and “package”;
 - b. specific Member State practices may be unintentionally impacted by the guidelines, such as packaged current accounts which offer insurance products that are purchased by the firm in bulk;
 - c. certain proposals would not provide benefit to customers, and risk causing confusion, such as the proposal that firms should provide a customer with the price and all relevant costs in relation to both the package and of its component products;
 - d. the scope of the disclosure obligations in respect of the same components in a package being offered by other firms;
 - e. the guidelines do not distinguish between advised and non-advised sales, which risks forcing firms to have to sell on an advised basis or, inadvertently mislead customers into thinking they are; and
 - f. the proposal that firms should allow for components in a package to be ‘unbundled’, this does not reflect the way packaged components are structured and priced.

Question 1: Do you agree with the general description of what constitutes the practice of cross-selling?

13. BBA considers that the use of the term 'cross-selling' to generically describe the practices of 'bundling' and 'tying' is confusing. Consumers would understand the term 'cross-selling' to mean the practice of selling additional separate products or services at the point where a customer purchases, or intends to purchase, a core product. This interpretation includes circumstances where two or more products are sold quite separately and where there is no intention by the firm to sell or market those products as a distinct package. To avoid confusion, and to provide certainty, BBA suggests that 'cross-selling' should not be used as an umbrella term to describe practices of 'tying' and 'bundling'.
14. BBA is concerned that the proposed application of a tied or bundled offering is too broad, and risks capturing situations that are not intended to be brought within scope. As currently drafted, a tied or bundled offering risks capturing situations in retail banking where a customer chooses to purchase two or more products/services from a firm, but where the firm has not taken any steps to tie or bundle the products together for sale in a 'package'. BBA considers it vital that the scope does not capture situations where products are related in some way, but the customer has simply elected to purchase both from the same firm while being under no obligation to do so (e.g. mortgage product and term assurance policy).
15. Within corporate banking, there are also a number of established, relationship-based conventions that see an informal and non-binding combination of activities. However, customers are never contractually obliged to transact or do business with firms, and in the wholesale market there is typically full, all-in price transparency. Instances of combined services include:
 - a. access to banks' balance sheets via corporate lending or through Repo funding is often provided in expectation of being granted opportunity to bid for the client's ancillary income eg FX hedging. Note this expectation is mutual in that clients expect to be able to borrow if they do their FX and swaps with a firm.
 - b. banks provide liquidity across the complexity spectrum – from illiquid to vanilla – to allow clients to undertake sophisticated hedging strategies in anticipation of being able to bid for the whole range of that business.
 - c. asset swaps: whilst this is a bundle of bond and swap, the price of the combined structure is often better than the sum of the parts when both components are bought in one bank. In effect this would seem to reflect the policy objective of the consultation.

These examples illustrate the relationship basis that underpins the current corporate banking model, and, significantly, the mutuality of expectations.

16. BBA would also highlight that there are circumstances in retail banking where providers offer a number of insurances or other products and service in a package, which either cannot be purchased separately from the provider on a standalone basis or cannot be easily quantified (such as access to offers or discounted rates when purchasing other products and services). It is unclear whether such products and services would fall within the definition of a tied or bundled package (or the insurances as a "component product"). In particular, it would be challenging to provide a meaningful 'price' to consumers for such products and services. BBA considers that more flexibility should be provided to ensure these 'optional extra' structures are not in scope.
17. Furthermore, BBA considers that the description of "components" as 'products/services constituting the tied or bundled package' risks unintended consequences. For example, a regular 'free in credit' bank account could at first glance be considered a package of products/services made up of components such as internet banking, cheque processing, direct debits, although we would not agree with such an interpretation. Another good example of this is banker's drafts, which for Anti Money Laundering purposes, must be processed through a

current account. The banker's draft itself is a distinct, ancillary service to that of a current account, but the account is crucial for this service to be provided. It would be extremely difficult for firms to cost out and allocate a price to such banking services. There is also no apparent benefit to the customer, although the risk of causing confusion to them is high.

Question 2: Do you agree with the identified potential benefits of cross-selling practices?

18. BBA agrees with the identified potential benefits associated with the sale of packaged products - the key benefits to customers notably including cost savings, ease, and convenience.
19. BBA also emphasises that existing rules which require a robust sales process will ensure that any tied or bundled offering is suited to that customer and meets their needs. As part of that process, the individual components should be highlighted to the customer to ensure customer awareness and to avoid duplication.
20. In respect of the disclosure on the component products, existing rules require that the customer will also receive an annual eligibility statement which serves as a reminder of the components within the package, and of the qualifying requirements in relation to those benefits. Such continued disclosure prompts the customer to consider whether the policies and benefits within the package are still suitable for their needs.

Question 3: Do you agree with the identified potential detriment associated with cross-selling practices?

21. While the purchasing decision for a tied or bundled offering can be more complex, we do not agree that all of the consumer harms listed will result from the sale of a packaged bank account. This is because there are existing solutions available to consumers to avoid detriment.
22. Taking the packaged bank account as an example, current regulations in various Member States require firms to take adequate steps to ensure that the sales process includes all relevant information for the customer about the tied or bundled product. Customers are informed about their eligibility for the insurance benefits included so that they can make an informed decision as to whether the product is suitable for their needs. The Financial Conduct Authorities' rule book contains specific rules around information disclosure, assessing customer demands and needs and suitability prior to sale as well as post-sale continuing information requirements. The purpose of these rules is to ensure that customers understand the package and whether it is suitable for their needs before purchase and continue to check that it remains suitable for these needs post sale.
23. Specifically these requirements include:
 - a. during the sales process for packaged bank accounts, customers are taken through all the Key Exclusions and Limitations of the product component to ensure the customer is informed before they purchase the product;
 - b. customers will receive an Annual Statement of Eligibility, which highlights to customers all exclusions relating to the benefits on their package; and Annual Summaries are issued to customers on a yearly basis, which outline all fees paid by customers over the course of the year relating to their bank account.

Firms have made significant investment in their sales process and after-sale customer communications to ensure that the detriment does not occur.

24. In addition, firms conduct extensive consumer research, both separately and as part of an annual review process, to ensure that packaged products provide good value for money to customers. Firms also continually monitor their sales process, conducting mystery shopping and outcome testing to ensure that the controls around the assessment of customer demands and needs and the suitability of sales are adhered to. Firms also use product monitoring (including claims information and complaints data) to ensure usage of customer benefits and

value for customers. When a benefit is not being utilised, this highlights the need for potential review of this benefit to understand why usage is low and whether changes are required to prevent customer detriment.

25. Customers are able to cancel these packaged bank accounts at any time, and there is no charge for cancellation. In addition, where packaged bank accounts include insurance products, they are subject to specific regulatory rules.

Question 4: Please comment on each of the five examples in paragraph 13, clearly indicating the number of the example to which your comment(s) relate.

26. In general, BBA agrees that the examples all demonstrate detrimental behaviour. However, we do not see the examples of monetary detriment (1 – 3) or reduced mobility (4) applying to packaged accounts.
27. BBA agrees that Example 1 would be detrimental to the customer.
28. BBA considers that Example 2 needs to recognise that costs may change over time due to rising costs, and will be reflected in monthly or annual fees for the product. However, appropriate processes within firms should mitigate detriment to customers, such as internal governance that ensures customers are being treated fairly, appropriate communication of changes to the customer in a timely manner, and the right for the customer to cancel the agreement. As previously discussed, Annual Summaries and Annual Statements of Eligibility also provide customers with timely reminders and enable them to assess whether the product continues to be beneficial for them.
29. BBA considers that it is unnecessary in Example 3 to force premium or fee refunds where a monthly fee is collected, as pre-payment is not an issue.
30. BBA seeks more clarity as to what constitutes ‘disproportionate’ in Example 4. For example, in the case of packaged bank accounts, customers can cancel at any time and would only be charged a pro-rata fee for the duration that they have enjoyed the benefits.
31. BBA agrees that Example 5 can occur, but a robust sales process will mitigate such risks through identifying situations and preventing an inappropriate sale proceeding. Specifically, sales processes highlight to customers where they may hold duplicate cover. Similarly, firms will encourage customers to review the products they hold, to ensure they are not holding cover which is not needed. Furthermore, the Annual Statement of Eligibility will highlight all key exclusions relating to the benefits on the package to the customer.

Question 5: Please comment on the proposed guidelines 1 and 5 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

32. BBA supports the first requirement of Guideline 1 to provide customers with the price of tied or bundled package, as it helps to enable the customer to make an informed purchase decision. However, BBA does not support the requirement to provide the customer with the price of the component products in the package.
33. The rationale for our position is as follows:
 - a. Packaged bank accounts can include a range of benefits, which makes it difficult to allocate a relevant price to each component of the package. For example, when a bank account is packaged with an insurance product, the customer will have access to a range of insurance and non-insurance benefits for the price of a single monthly fee. The provision of an arbitrary price that does not reflect the true standalone price of each component product would not improve a customer’s ability to compare either different packaged bank accounts or the component if purchased on a stand-alone basis.

- b. There is no direct 'per customer' price for the insurance product component in a packaged account. The insurance is purchased in bulk by the firm, so the price they secure will simply not be available to consumers on the open market. On this basis, it is not evident that the customers' purchasing decision would benefit from disclosure of a price for individual components within a package, where the component products are not available to be purchased separately from the firm. If information was required to be given in relation to products available separately but only from other providers, such disclosure could also complicate the sales process, as it would be difficult for the firm to establish whether the components in their offering matched in precise terms the product available separately through a third party supplier.
 - c. The aggregate amount that the firm will pay to the insurer is not simply linked to the number of customers that purchase the policy. There are various other factors that can influence the price, such as the number and value of claims made throughout the year. As the cost of the individual component cannot be accurately calculated, disclosure of a price risks being inaccurate, meaningless and likely to cause confusion. In addition, as the insurance product component would not remain constant, consumers could potentially be overloaded with too much information when being informed of the cost fluctuations born by the firm. Such disclosure, would also add to the burden of documentation received by customers, and increase processing costs for firms.
 - d. When the Financial Services Authority in the United Kingdom looked into these issues, they concluded that "any charge for policies may be difficult to identify as a premium in the traditional sense and therefore may not be meaningful to consumers". They added that "disclosure of the premium may therefore distort competition in the standalone insurance market and would not help consumers compare an element of the package with what they might pay for an equivalent standalone policy. This could lead to unintended negative consequences in the stand alone market".
 - e. It is unclear how firms allocate a price to components of a package with benefits that will vary depending on customer behaviour, such as rewards programmes, point's schemes, or preferential rates on other financial products. BBA considers that it is very difficult to assess a fair value for the benefit, since for some customers their benefit would be of high value, whereas for other customers the benefit would be less valuable.
 - f. There would also be a real danger that customers could perceive this information as advice on the different policies or product types available in the market place. Sales staff could inadvertently stray into giving advice and particularly in Digital sales rather than being better informed, customers could end up being confused by the information presented.
 - g. Disclosure of the relevant costs associated with the purchase of package and its component products risks being anti-competitive, by necessitating firms reveal in whole or in part the profit margin of the firm or the cost to the firm of the package and its component products.
34. BBA seeks clarity on the intended scope of "all relevant costs" to assist understanding of the full impact of this requirement.
35. In the United Kingdom, to assist customers in comparing the benefits, cost and value of a packaged account, firms must already provide customers with clear information on the monthly cost of the account and full information on the key benefits and exclusions for each component. In particular, firms are already subject to extensive disclosure requirements in relation to the components that make up packaged bank accounts, through ICOBS, BCOBS, CONC, and the Payment Services Regulations.

36. Given that there is a real risk that disclosure of the price of individual components in a package would be more likely to confuse customers than help them make an informed choice, BBA seeks the following amendment to Guideline 1:

Competent authorities supervising firms which distribute a tied or a bundled package should ensure that customers are provided with the price of the package. When a component of the package is also available to the customer to purchase separately from that firm (either directly or as a third party offering), the consumer should be made aware of this, and should be provided with the price of the component if purchased separately from that firm on request.

Question 6: Please comment on the proposed guidelines 2, 3, 4 and 6 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

37. In relation to the aspects of these guidelines that reiterate the requirement for firms to provide information on price and all relevant costs of the package and each of its component products, please see comments and concerns in our response to Question 5.
38. BBA agrees that, as part of the sales process of tied or bundled packages, customers should receive relevant information in good time that is accurate, understandable, not misleading, and communicated with the appropriate prominence.

Question 7: Please comment on the proposed guideline 7 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

39. BBA agrees that customers should be properly informed whether it is possible to also purchase the same individual components of a package separately from that same firm.
40. However, BBA is concerned that if this guideline extends to informing customers about separate products available from other firms, then this risks being construed as the provision of advice. Such an approach would also raise practical challenges such as how a firm would provide an up to date comparison of cost and cover levels in relation to products provided by other firms, on a like for like basis.
41. BBA also agrees that the use of the active 'opt out' option may result in detrimental outcomes. Providers should make very clear that it is the customer's choice to select a tied or bundled offering and it should be made clear to customers where the products are available separately from the provider or, in the case of packaged bank accounts, that there are accounts available that do not come with the tied or bundled components. Existing regulatory rules within the sales process already make provision for this in relation to bank accounts.

Question 8: Please comment on the proposed guideline 8 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

42. BBA supports the assertion that firms should assess the demands and needs of customers before selling tied or bundled products, and that this requirement should be part of sales process steps to assess the appropriateness of the product for the identified demands and needs of the customer.
43. BBA notes that these requirements, as well as post sale requirements, are already contained in relevant FCA rulebooks including ICOBS, BCOBS, CONC, and reflect existing packaged account sales processes.

Question 9: Please comment on the proposed guidelines 9 and 10 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

44. BBA agrees that internal policies and processes within firms should serve the interests of customers and deliver good customer outcomes. This should include appropriate staff training to ensure that staff understand the components within a package and can communicate the relevant information to customers in an appropriate way. Furthermore, staff incentives should support good customer outcomes.
45. BBA considers that training and competence regimes, both mandatory and internal are preferable to formal qualifications, which have been demonstrated to be relatively ineffective.

Question 10: Please comment on the proposed guideline 11 as well as the corresponding examples, stating clearly in your response the guideline paragraph number to which your comment relates.

46. BBA agrees that customers must be able to exercise their rights where 'cooling-off periods' or post-sale cancellation rights apply to one of more components of a package. However, BBA is concerned that as components in a package have been designed and priced to be sold together, any requirement to allow cancellation of certain components of the package would prove unworkable in practice. As explained in our response to question 5 above, a fee is charged for a package as a whole and firms cannot accurately assess the cost or price for the individual components of the package.
47. BBA considers that such a requirement would be misleading for consumers and probably result in the majority of firms leaving the market, as banks do not price their packaged accounts in this way. The impact of enforcing these requirements, which is likely to result in fewer firms offering packages, would be detrimental for customers given the price and convenience benefits previously mentioned.

Question 11: Please provide any specific evidence or data that would further inform the analysis of the likely cost and benefit impacts of the guidelines.

48. BBA notes that one of the key themes in the Joint Committee Consultation Paper on guidelines for cross-selling practices is that firms should provide a customer with the price and all relevant costs in relation to both the package and of its component products.
49. BBA notes that this theme conflicts with the consultation findings of the competent authority in the United Kingdom when they considered the matter of packaged bank accounts in their Consultation paper CP11/20 (October 2011) and in their final conclusions set out in CP12/17 (July 2012).
50. In particular, the Financial Services Authority noted that "any charge for policies may be difficult to identify as a premium in the traditional sense and therefore may not be meaningful to consumers". Similarly, the noted that the feedback they received on their consultations "generally agreed with this view". In particular, in their response to CP 11/20, the Financial Services Consumer Panel said that "it would not be appropriate to separately disclose the cost of individual policies within a packaged bank account".
51. FSA Consultation paper CP 11/20 set out the reasons why disclosure of the price and all relevant costs of the components within a package is inappropriate:

3.6 Although we agree that price transparency is important for consumers, we think it is unlikely that not having a breakdown of the insurance premiums will have affected the consumer's decision to choose a packaged bank account, and also that it is unlikely that consumers will have suffered any recoverable loss as a result of a firm not complying with ICOBS 6.1.13R when selling packaged bank accounts. Taking this into account, seeking to ensure compliance with this rule (for these sales) would not be proportionate or achieve a better outcome for consumers. Our reasons are set out below.

- a) To be effective, the disclosure of the premium for individual policies must be relevant to the consumer making a decision, i.e. they can use it to compare and shop around. But our consumer research indicates that, in considering a packaged bank account, the consumer is focused on the overall price. So, whether or not the consumer knows that the individual monthly insurance premium is £5 a month/£60 a year, they can still only purchase it as part of a bundle which costs £15 a month/£180 a year.
- b) Any premium disclosure must also be meaningful and not artificial. The banks bulk-buy the insurance cover from insurers and the cost to them is an aggregated premium for the book of business. This will change from time to time, factoring in commercial arrangements such as profit sharing and the fact that not all customers will use all of the bundled insurance policies, i.e. a number of customers will either be ineligible or have no need for the policies. In calculating the account fee there may also be cross-subsidies. The combination of these factors means that the disclosure of individual premiums may not be meaningful to consumers. Disclosure of the premium may therefore distort competition in the standalone insurance market and would not help consumers compare an element of the package with what they might pay for an equivalent standalone policy. This could lead to unintended negative consequences in the stand alone market.
- c) Many consumers are able to superficially compare the option of taking the packaged bank account with bundled insurance policies, or taking a non-fee based current account and keeping their insurance cover separate. The superficial assessment of value is often based on one or two of the products in the bundle that interest the consumer most. When these are insurance policies the consumer compares the monthly account fee with the cost of buying relevant standalone insurance cover. For example: I pay £5 a month for my mobile phone insurance and £10 a month for my car breakdown cover so a monthly account fee of £15 or less seems like good value with added convenience. For these consumers, it is unlikely that a breakdown of the premium for each insurance policy in the package would alter their behaviour or improve their decision-making as they are aware of the market price for the policies they want/need.
- d) It is likely that the insurance policies are not the main reason for the purchase, e.g. the customer may choose a packaged bank account because it offers them a preferential mortgage, loan or overdraft rate. Whether or not they have a breakdown of the insurance premiums would have no impact on their decision to buy.
- e) There is evidence, in terms of consumer behaviours, to suggest that a breakdown of the insurance premiums would add to the complexity of the decision-making process and lead to information overload for many consumers, particularly those who find it difficult to understand financial matters generally.