

**COMPETITION COMMISSION PAYMENT PROTECTION
INSURANCE MARKET INVESTIGATION: REMITTAL OF THE
POINT OF SALE PROHIBITION REMEDY BY THE COMPETITION
APPEAL TRIBUNAL**

PROVISIONAL DECISION

AND

**SUPPLEMENTARY NOTICE OF POSSIBLE REMEDIES UNDER RULE 11 OF THE
COMPETITION COMMISSION RULES OF PROCEDURE: RETAIL PPI**

DATED 14 MAY 2010

SDGFS' RESPONSE

4 June 2010

NON- CONFIDENTIAL VERSION

INTRODUCTION

1. SDGFS has reviewed the Commission's Provisional Decision on the Remittal of the Point of Sale Prohibition published on 14 May 2010 (the "Provisional Decision") and the Commission's Supplementary Notice of Possible Remedies for Retail PPI (the "Supplementary Remedies Notice") published on the same date.
2. In this document SDGFS sets out its responses to the Commission's Provisional Decision and the Supplementary Remedies Notice.
3. SDGFS also refers back, where necessary, to the Commission's findings in its Report on Payment Protection Insurance dated 29 January 2009 (the "2009 Report").
4. In addition SDGFS relies on:
 - 4.1 the Oxera report dated 4 June 2010, attached at Annex 1 to this response, which is an independent expert report dealing with the existence and extent of a waterbed effect in relation to Retail PPI and the provision of credit and the sale of goods to SDG's customers; and
 - 4.2 the Oxera report dated 11 May 2010 attached at Annex 2 in relation to the effect of the imposition of the POSP.
5. At the outset it is worth bearing in mind the following key facts about SDG and SDGFS' business:
 - 5.1 SDG sells merchandise via catalogues and over the internet;
 - 5.2 SDGFS provides financial services products (including Retail Credit, Retail PPI and a range of other general insurance products and service contracts) to SDG customers;
 - 5.3 The overwhelming majority of merchandise sold by SDG is on credit obtained from SDGFS, although customers can use their own credit or debit card;
 - 5.4 Merchandise is either purchased from one of SDG's "embedded" brands or from one of its "direct brands". In relation to "embedded" brands the cost of credit is built into the price of the goods and payment is spread over a number of weeks (usually 20 or 52 weeks, depending on transaction value). This accounts for approximately [CONFIDENTIAL] of SDG's sales. In relation to "direct" brands, goods purchased using SDGFS credit will be charged to a credit account which is interest bearing, but which in most cases allows for an interest free option over 3 months, or in the case of higher value goods, over longer periods.

THE COMMISSION'S PROVISIONAL DECISION

6. In its summary section of the Provisional Decision the Commission describes what work it undertook on the remittal of the POSP and its summary conclusions following its reconsideration of the proportionality of the POSP. Not all the work undertaken related to Retail PPI and nor do all the conclusions reached. However, SDGFS notes the following summary conclusions¹:
- 6.1 *"We found that the barriers to searching for retail PPI associated with retail PPI being bundled with merchandise cover had reduced for the time being in light of the largest provider i.e. SDGFS offering an unbundled policy"* (Summary paragraph 5);
 - 6.2 *"We also saw new evidence which suggested that, in practice, PPI customers did not place significant value on the ability of credit card PPI and retail PPI policies to track outstanding balances; however, as no part of the remedy package actually addresses this feature, we did not need to decide whether this remains a feature"* (Summary paragraph 5);
 - 6.3 *"New survey evidence showed that many retail PPI customers would prefer a balance which does not vary by month"* (Summary paragraph 8);
 - 6.4 *"These pieces of new evidence convinced us that the incumbency advantage held by retail PPI providers, by their ability to tailor insurance premiums to outstanding credit balance was not significant"* (Summary paragraph 8);
 - 6.5 *"For retail PPI, new evidence regarding customers' likelihood of searching led us to conclude that we could not be confident that the package would be substantially effective"* (Summary paragraph 10);
 - 6.6 *"For retail PPI we were not sure whether the remedy package would produce adverse effects which were disproportionate to the aim"* (Summary paragraph 12); and
 - 6.7 *"For retail PPI we cannot yet conclude that we should require the introduction of the remedy package including the POSP, and we have published a new Notice of Possible Remedies in order to gather views on what remedies might form a proportionate package which either would be substantially effective in remedying the AEC, or would mitigate the detriment identified"* (Summary paragraph 13).
7. SDGFS considers the Commission's Supplementary Notice of Remedies in more detail below and, in particular, bears in mind the Commission's question (in Summary paragraph 13) of *"what remedies might form a proportionate remedy package which either would be substantially effective in remedying the AEC, or would mitigate the detriment identified"*.

THE IMPACT OF DEVELOPMENTS IN THE MARKET (SECTION 5 PROVISIONAL DECISION)¹

SDGFS also notes the more detailed reasons for the summary conclusions as set out in paragraphs 8.5 to 9.14

8. In paragraph 5.2 of the Provisional Decision the Commission notes that, in its 2009 Report, it found four features of the relevant market that resulted in an AEC. In relation to Retail PPI these features of the market are as follows²:
- 8.1 Distributors failed to compete on price and quality in order to actively seek to win customers;
 - 8.2 There are barriers to search for stand-alone PPI or short term IP products, and barriers to expansion by other retail PPI providers, in particular stand-alone PPI providers, due to:
 - 8.2.1 *The way information is presented to customers on terms and conditions;*
 - 8.2.2 *The bundling of retail PPI with credit accounts and merchandise cover;*
 - 8.2.3 *The limited scale of stand-alone provision; and*
 - 8.2.4 *The time taken to obtain accurate information on benefits.*
 - 8.3 There are barriers to switching to alternative providers, and barriers to expansion by other retail PPI providers, in particular stand-alone PPI providers due to:
 - 8.3.1 *Terms which risk leaving customers uninsured for a short period of time;*
 - 8.3.2 *The bundling of merchandise cover with Retail PPI cover; and*
 - 8.3.3 *The lack of access to consumers' balance information (which is a barrier to switching and expansion); and*
 - 8.4 The sale of Retail PPI at the point of sale, and the continued exclusive access to credit accounts by distributors, restricts the extent to which other providers can compete effectively.
9. The Commission concludes, in paragraph 5.28 of the Provisional Decision, that there have been some changes to the market since the 2009 Report but that the features of the market leading to an AEC remain and, therefore, the AEC (as originally found) remains.
10. However, following a further consideration of the Commission's provisional conclusions, SDGFS considers that these features are either altered, or are no longer a significant concern or are capable of being effectively (and proportionately) addressed by the use of the information provision remedies such as the proposed by the Commission at Option 2 in the Supplementary Remedies Notice.
11. Therefore, it is not obvious there is still a need for a remedies package of the kind proposed by the Commission in its Supplementary Remedies Notice.
12. SDGFS sets below in more detail how these features of the market have been altered, or have significantly lessened in terms of consumer detriment, as a result of the Commission's provisional findings in the Provisional Decision.

Failure to compete

² See paragraph 6.187 of the Commission's 2009 Report

13. In paragraph 5.3 of the Provisional Decision the Commission finds that it still sees no indication that distributors are actively seeking to win customers from their rivals.
14. However, this is unsurprising in light of the Commission's findings that customers already consider their retail PPI premiums to be low³.
15. Moreover, this feature could only be remedied by the encouragement of customers to shop around for alternative products such that this generated further competition between retail PPI distributors.
16. SDGFS' view is that the only remedy that is actually potentially capable of encouraging customers to shop around, and which is not overly onerous, is the information provision remedy (Option 2).

Barriers to search

17. As set out above the Commission found, in its 2009 Report, that there were barriers to search arising out of:
 - 17.1 The way information is presented to consumers;
 - 17.2 The limited scale of stand-alone provision;
 - 17.3 The bundling of Retail PPI with merchandise cover; and
 - 17.4 The time taken to obtain accurate information on benefits.
18. In relation to the barrier to search set out in paragraph 17.1 above this would be effectively, and proportionately, remedied by the information provision remedy (Option 2). Customers can be provided with simplified information about the Retail PPI policies in the catalogues and on the website.
19. Moreover, this provision of information would be the only way of dealing with the barrier to search in 17.2 above.
20. In relation to the barrier to search at 17.3 above the Commission has found that this has reduced in size (at least for the time being) due to SDGFS now offering an unbundled Retail PPI product⁴. Therefore, it is not obvious that this continues to require a remedy at all.
21. Therefore, any barriers to search that might continue to exist are unlikely to lead to any material customer detriment such that there is a need to impose a substantial remedies package. SDGFS considers that the information requirement remedy (Option 2) is in practice the only potentially effective, and proportionate, remedy to address these concerns.

Barriers to switching

22. As set out above, the Commission found, in its 2009 Report, that there were barriers to switching arising out of:
 - 22.1 Terms which risk leaving customers uninsured;

³ See paragraph 8.13 Provisional Decision

⁴ See paragraph 5.13 Provisional Decision

- 22.2 The bundling of merchandise cover with Retail PPI; and
- 22.3 A lack of access to customers balance information.
23. In light of the Commission's findings in the Provisional Decision in relation to the lack of access to balance information (i.e. that in light of the evidence it received it is no longer certain that this is a feature of the market that would give rise to an AEC⁵) it is now, in fact, only seeking to remedy the barrier to switching in paragraph 22.2 above.
24. However, for the reasons set out above, the Commission has found that the bundling of merchandise cover with Retail PPI is now less of a concern given the fact that SDGFS is offering an unbundled product. Moreover, the GFK research demonstrates that customers in fact want to have a bundled product.
25. Therefore, it is unclear that any remedies are needed in relation to the barriers to switching that the Commission identified in its 2009 Report.

Point of Sale Advantage

26. SDGFS notes the Commission's finding, in paragraph 5.25, that the point of sale advantage ("POSA"), and ongoing incumbency advantage in the case of Retail PPI providers, remains in place and distributors continue to hold an effective monopoly over the sale of PPI to their own credit customers such that this feature of the market (causing an AEC) remains⁶.
27. However, SDGFS notes that this finding appears to contradict with the Commission's summary conclusion in paragraph 8 of the Provisional Decision that "*New summary evidence showed that many Retail PPI customers would prefer a balance which does not vary by month.....[these new pieces of evidence] convinced us that the **incumbency advantage held by Retail PPI providers by their ability to tailor insurance premiums to outstanding credit balances was not significant**" (emphasis added).*
28. More importantly, the conclusion in paragraph 5.25 of the Provisional Decision also contradicts the Commission's conclusion in paragraph 8.20 of the Provisional Decision that "*there was a limited preference for PPI products where the premium tracks the credit balance and that **as a result stand-alone products which do not track balances could be effective substitutes for these policies**" (emphasis added).*
29. Therefore, it is not clear what incumbency advantage the Commission is referring to in paragraph 5.25 of the Provisional Decision. Moreover, the fact that stand-alone products which do not track the balance (e.g. short term IP products) are now considered by the Commission to be effective substitutes must mean that a POSA no longer remains or requires remedying. This is because short term IP is not linked to the credit sale and, thus, can be purchased at any time. Therefore, the sale of credit, and the ability to buy Retail PPI at the same time, cannot give Retail PPI providers any advantage over short term IP providers.

CONCLUSIONS ON THE PROVISIONAL DECISION AND FEATURES OF RETAIL PPI MARKETS LEADING TO AN AEC

⁵ Paragraph 5.21 and 5.22 Provisional Decision

⁶ See paragraph 5.25 Provisional Decision

30. In light of the Commission's findings (as set out above) SDGFS notes the Commission's provisional view that it is not sure that its original package of remedies, including the POSP, would not produce adverse effects which would be disproportionate to its aim. SDGFS agrees that this is the correct view.
31. Moreover, for the reasons set out above, to the extent that there remains an AEC to be remedied or mitigated this AEC is no longer significant or material in terms of consumer detriment and what is left is capable of being dealt with, proportionately, by the information provision remedy.
32. The reason for SDGFS' conclusion is that the AEC findings have been significantly altered, and eased, by the Commission's findings that:
- 32.1 *"To customers paying small monthly premiums, retail PPI is not a significant monthly outlay, and therefore not something to which they pay much attention, or for which they would be likely to seek a better deal"*⁷;
- 32.2 *"The new evidence did suggest that in practice, customer inertia, driven by low balances, would be an important issue for the effectiveness and proportionality of the remedy package including the POSP"*⁸;
- 32.3 *"We noted that the largest retail PPI provider, SDGFS, now offers an unbundled PPI product, which indicated to us that the barrier [to switching] had reduced somewhat, at least for the time being"*⁹; and
- 32.4 *"Stand-alone products which do not track balance could be effective substitutes for these [retail PPI] policies"*¹⁰.
33. The Commission can, therefore, take comfort from the fact that it has now found that Retail PPI providers no longer have an effective monopoly over their customers and that customer inertia, driven by low premiums, must mean that its original AEC findings have been considerably eased in their seriousness.
34. Finally, the Commission's provisional finding that Retail PPI prices are still too high are dealt with below in relation to the proposed price cap remedy (Option 9).

RETAIL PPI SUPPLEMENTARY REMEDIES NOTICE

35. SDGFS sets out below its responses to the individual remedy options proposed by the Commission in its Supplementary Remedies Notice.
36. However, for the reasons set out above the Commission's Provisional Decision gives rise to a conclusion that there is little, if anything, in the form of an AEC or consumer detriment that requires the imposition of a remedies package in relation to Retail PPI.

⁷ Paragraph 8.13 Provisional Decision

⁸ Paragraph 8.14 Provisional Decision

⁹ Paragraph 5.23 Provisional Decision

¹⁰ Paragraph 8.20 Provisional Decision

37. Nevertheless, subject to the exact details of the proposals, the imposition of some low cost and proportionate remedies, if they were likely to give rise to some consumer benefit following their implementation, could be appropriate.
38. For instance, SDGFS would, subject to the further comments below, see potential value in Option 2, 3 and 7. These are all information based remedies and SDGFS acknowledges that customers can be better served by the provision of clear and easy to understand information (at the right time and in the right documents) about the policies they are purchasing and a reminder about the existence of websites such as the “moneymadeclear” site, provided the information is concise and to the point, and avoids the pitfalls of information overload.

Option 1 - Prohibition on selling PPI at the credit point of sale combined with the provision of a personal quote.

39. SDGFS agrees with the CC that the imposition of the remedies package, and as part of this the imposition of the POSP and personal quote remedy, would not be effective in encouraging sufficient competition between providers to outweigh the costs associated with imposing POSP.
40. Furthermore, the imposition of the POSP could not be done in any limited way such that it would only target the very limited (and unquantified) number of customers that might want to search around such that it would be effective in terms of encouraging a limited number of retail PPI customers to search.
41. If it were imposed (in a blanket way) in order to relate to those customers only then it would be grossly disproportionate as it would lead to significant loss of sales for SDGFS and considerable unmet demand. Attached at Annex 2 is a report prepared by Oxera prior to the publication of the Provisional Decision setting out what the consequences would be of imposing the POSP. These conclusions remain relevant should the Commission consider imposing the POSP solely for the purposes of encouraging a tiny number of customers to potentially shop around.

Option 2 - Information provision in marketing materials

42. In relation to Option 2 in the Supplementary Remedies Notice the Commission refers back to paragraphs 10.182 to 10.222 of the 2009 Report, which set out what information PPI providers were to be obliged to provide their customers with.
43. Retail PPI providers were required to disclose to their customers the following information:
- 43.1.1 The monthly cost of PPI per £100 of monthly benefit;
 - 43.1.2 That PPI is optional and available from other providers;
 - 43.1.3 That information on PPI, alternative providers and other forms of protection products can be found on the FSA’s moneymadeclear website; and
 - 43.1.4 The monthly cost of PPI per £100 outstanding balance.
44. This information was required to be disclosed in all marketing materials. However, what constituted “marketing materials” was not defined in the 2009 Report.
45. The purpose of the remedy was, as set out in paragraph 10.184 of the 2009 Report, to encourage customers to search for, and compare, alternative policies.

46. The Commission now invites views on whether this measure would be effective in enabling those customers that are interested to search for alternative PPI products and to raise awareness of those products.
47. In relation to the current proposal SDGFS notes that the Commission's view, at paragraph 17 of the Supplementary Remedies Notice, that the costs associated with this measure are low. In principle, SDGFS agrees with the Commission that the provision of certain information (in a targeted way) from Retail PPI providers would result in a lower cost to SDGFS than the imposition of any of the other remedies.
48. To the extent that there are some customers that would consider searching for alternatives (albeit that these customers are very limited) then this remedy might allow them do so. However, it would need to be targeted in a way that customers would actually take notice and should also **only** include messages that are easily understood by customers.
49. For example, the GFK research finds that customers do not typically read, in detail, the policy documents sent to them by their Retail PPI provider and some customers do not even open such mailings (see pages 8 and 9 of the GFK research published in April 2010).
50. Therefore, any requirement to provide customers with information in marketing materials should be limited to the documents that customers will actually read e.g. the catalogues, and on the website.
51. Furthermore, SDGFS should not be required to provide this information to customers over the telephone when they discuss the purchase of PPI. As the Commission has recognised PPI is a tertiary product. Therefore, customers will already have seen the catalogues and the websites and will, therefore, be likely to have seen the information about PPI. On this basis it would not be necessary to also provide this information over the telephone at the point of sale and any lengthy explanations to customers over the telephone would only confuse customers and is likely to cause SDGFS to risk either or both of the following:
 - 51.1 straying into an advised sale, which it cannot do as it operates on a non-advised basis; and/or
 - 51.2 breaching FSA Principles 6 and 7 which require firms to take account of the information needs of its customers and to treat them fairly.
52. In summary, the information that SDGFS is required to disclose should be limited to information and communicated at a time and in a way that Retail PPI customers will readily understand and appreciate.
53. For instance, an explanation of the cost, to a customer, of £100 of monthly benefit will have little or no meaning in light of the fact that (as the Commission has found) the monthly premiums are low. The premiums are low because the credit balances are typically low and the concept of needing or getting £100 of monthly benefit will not resonate with SDGFS' customers, and will risk confusing them as to the benefits under the policy.
54. As SDGFS previously explained to the Commission it would also be very difficult, if not impossible, to actually calculate a monthly cost per £100 of benefit as customers will often have a purchased different items on a number of different credit terms and the balances on these will fluctuate constantly. This makes it a meaningless comparison metric.
55. Therefore, for the reasons set out above this remedy may well be unnecessary and/or ineffective such that it is disproportionate.

Option 3 - Provision of information to the OFT and the CFEB for monitoring and publication and obligation to provide information about claims ratios to any party on request.

56. In relation to Option 3 the Commission refers back to paragraphs 10.223 to 10.242 of the 2009 Report to explain what is required from Option 3.
57. Essentially, PPI providers are obliged to:
- 57.1.1 Provide comparative data to the CFEB (previously the FSA) for the purposes of populating price comparison tables;
 - 57.1.2 Provide information to the OFT, upon request, for the purposes of monitoring compliance with any remedies package; and
 - 57.1.3 Provide aggregate claims ratios to anyone that requests them.
58. The Commission now requests views on whether the measure would be effective in enabling those Retail PPI customers that are interested in searching for alternatives to compare PPI products and raise awareness of alternatives. The Commission considers that this remedy would be low cost.
59. As set out above, the Commission has found that the vast majority of Retail PPI customers are unlikely to search for alternative products due to the low premiums.
60. Therefore, it would appear that this remedy will not be effective as the vast majority of Retail PPI customers will not in fact search for alternatives.
61. However, SDGFS acknowledges that, in principle, the development of independent reference sites could be beneficial for customers if they wish to compare products. Nevertheless, the information that is provided for populating these websites should include information on the very different nature of the products and providers and should not focus solely on price when this is not a sufficient comparator for very different types of products.
62. On the basis that the information to be provided to the CFEB and the OFT was strictly limited to what was necessary and useful for customers SDGFS recognises that this remedy may have a low cost attached to it.
63. However, SDGFS does not also agree with the proposal that it should be required to provide claims ratios to any person on request. These ratios will not enable customers to compare PPI products as they will not have any real meaning in light of the fact that claims ratios are dependent on many variables such as customer demographics, product features and benefits , underwriting policies etc.
64. Therefore, the provision of claims ratios would have to be so caveated as to be ineffective in enabling customers to search.

Option 4 - Prohibition on the selling of single premium policies

65. This prohibition does not apply to SDGFS as it does not sell any single premium Retail PPI policies and nor does it levy any charges on consumers for administration costs, set up or early termination of Retail PPI policies.

Option 5 - A requirement to unbundle Retail PPI from merchandise cover

66. In relation to Option 5 the Commission refers back to paragraphs 10.278 to 10.301 of the 2009 Report which set out the requirement for Retail PPI providers to also offer customers PPI separately when offering them a bundled PPI and merchandise cover policy.
67. The Commission now invites views on whether this would enable Retail PPI customers that are interested in searching for alternatives to compare PPI products.
68. Firstly, SDGFS does not believe that any such remedy is necessary in light of the Commission's recognition that it now offers an unbundled policy and that, as a consequence, any barrier to searching that may have existed has been significantly reduced.
69. Secondly, it is not clear that there are in fact any customers that would like the option to purchase the PPI element of the bundled product separately. The GFK research finds that consumers would prefer to purchase a bundled policy of merchandise cover and balance protection (see page 10 and page 13 at 3.4.2). Therefore, any requirement to unbundle the policies will deprive consumers of their preferred choice of policy and be likely to lead to unmet demand.
70. It is also not clear that an unbundling remedy is necessary given the views of the vast majority of Retail PPI customers on the likelihood (or otherwise) of searching due to the low premiums.
71. On this basis, this remedy is unlikely to produce any benefits for customers.
72. It would also be very costly to offer the unbundled product to customers over the telephone as it would involve a lengthy explanation of the different options which would significantly increase the call time. For instance, in addition to already being required (under ICOBS) to provide customers with three different sets of pricing information¹¹ this remedy would also require SDGFS to provide customers of SDG's embedded brands a description of the monthly cost per £100 of benefit for its 20, 52, 104 and 156 week terms for both the bundled and the unbundled product. This could result in SDGFS being required to provide customers with up to 14 different price descriptions.
73. SDGFS' customers would be highly likely to find all these different descriptions and options confusing when it was explained to them over the telephone or set out in the catalogues/ or on the website.
74. In addition, the requirement to also offer customers an unbundled product would also be likely to cause SDGFS serious difficulties in meeting its FSA obligations to make non-advised sales. For instance, explaining to customers that the bundled product would cost more than the PPI element alone would be likely to risk being an advised sale because customers would not understand why there was a difference in what they were getting without SDGFS explaining that there is a qualitative difference in the two products.
75. Allowing for these serious reservations, the only variant of this remedy which SDGFS could consider as being relatively low cost and proportionate is a variation that would only require SDGFS to market the different options in its catalogues and on its website and only require it to sell a customer an unbundled product if it was requested by the customer. This would be a

¹¹ SDGFS is required to tell its customers (1) the monthly percentage rate for PPI (i.e. 1.98%); (2) the monthly equivalent (i.e. £1.98 per £100); and (3) the average monthly based price (i.e. £5.94 based on typical £300 balance)

more effective remedy as it would be on the basis of a customer request and would lead to less cost and risk to SDGFS such that it would be more likely to be proportionate.

Option 6 - Obligation to provide an annual review

76. In relation to Option 6 the Commission refers back to paragraphs 10.302 to 10.322 of the 2009 Report. These paragraphs set out the requirements in relation to the content of any annual review to be provided to customers and at what point it would be required.
77. SDGFS notes the Commission's current view that it is not sure that the costs of introducing this remedy would not outweigh its benefits in relation to Retail PPI and now invites views on whether an obligation to provide an annual review should be targeted to customers who have paid Retail PPI premiums over a certain level.
78. Whilst SDGFS notes the GFK research and the Commission's conclusions that some consumers (with higher balances) may search around it is plain from the GFK research that these customers would only do this if a 50% plus saving would be obtained. However, there is no suggestion or evidence in the Provisional Decision to suggest that such a saving would be offered by any stand alone or short term IP providers that may exist. In fact the Commission finds that stand alone providers are unlikely to market their products to Retail PPI customers. Therefore, it is clearly unlikely that any saving would be on offer to make the remedy necessary or effective for those customers that might consider searching for alternatives.
79. It is also not necessary to provide an annual review as SDGFS' customers can cancel their PPI policies at any time, without penalty, and their monthly statements include a separate line showing the PPI premium that the customer has paid for the last month's credit balance. Customers are, therefore, getting a more frequent reminder of the cost of their policy and one which meets their monthly budgeting needs. . As such, it is plainly unnecessary to require SDGFS to send an additional, annual, statement to customers setting out exactly the same information in aggregate form as they have already had.
80. Therefore, it would serve no purpose to provide an annual review even on a targeted basis to consumers with Retail PPI premiums over certain levels.
81. Moreover, this would be complex and would result in significant cost to SDGFS that would be unlikely to outweigh any possible, very limited, benefit of a small minority of consumers searching. SDGFS envisages that having to develop a capacity to compute total premiums per annum for all customers, and then target statements at only the tiny percentage in excess of the de minimis level would be little different in cost from the originally proposed remedy, and indeed may well be more expensive as a result of having to segment the customers and limit communications to only a small number, rather than simply to mail all of its customers, .
82. It is also far from clear how far this discrimination between customers would be compatible with FSA TCF principles.

Option 7 - Obligation to remind consumers of their cancellation rights and of key messages

83. Option 7 is a new proposal that was not contained in the Commission's 2009 Report and SDGFS notes that the Commission is considering whether this remedy should be implemented as an alternative to the POSP and personal quote,
84. Whilst SDGFS sees no fundamental difficulties in providing this information to consumers it should note that, as set out above, its view is that there is in fact no longer a POSA in relation

to Retail PPI as a result of the Commission's findings that Retail PPI customers would prefer a fixed monthly payment and the consequence of this being that short term IP is, therefore, likely to pose a competitive constraint on Retail PPI providers.

85. The Commission should also note that there is in fact no penalty for SDGFS' customers cancelling their Retail PPI policy at any time and that the cooling off period is simply a statutory time within which consumers can get a refund of their first monthly premium payment. Therefore, it is questionable whether, this remedy is necessary let alone whether the value of this would exceed the cost.
86. Moreover, it is unlikely that, given the Commission's findings in relation to Retail PPI, consumers would use this information to search for alternative products such that this obligation would improve competition in the market.
87. Nevertheless, subject to certain qualifications in relation to the way in which SDGFS should provide this information to consumers, there is no difficulty with this in principle.
88. For example, SDGFS should only be required to provide this information to customers in the policy documents sent out after a policy is taken out and in the customer's first monthly statements. It would be entirely disproportionate to require SDGFS to send this information out in the form of a solus marketing as the costs of doing this would far outweigh the potential benefits to customers.
89. For example, the cost of sending out solus mailings (of a letter and information leaflet) to [CONFIDENTIAL] customers per month (which would be a reasonable assumption of the amount of customers to be mailed) would be in region of [CONFIDENTIAL] per month. However, the cost of including an additional insert sheet to customer's monthly statements would be [CONFIDENTIAL] for [CONFIDENTIAL] customers.
90. Providing this information in policy documents, and in monthly statements would also, most importantly, be more likely to ensure that consumers actually read the information as the GFK research shows that most consumers (at best) only scanned the documentation they were sent and some consumers had either filed it away without reading it at all or had thought it was junk mail, or post that they did not need to read, and it was thrown away.
91. In relation to the Commission's proposal in paragraph 29 of the Remedies Notice SDGFS refers back to the points made above in relation to the provision of targeted annual reviews. To the extent that it was required to implement Option 6 on a targeted basis, and then send out on annual basis the information set out in Option 7, this would only be effective and proportionate if it was done by sending customers the information in their first monthly statement sent out after the anniversary of taking out the policy. This would ensure customers saw the information and that it was provided in a low cost way in order to prevent the costs exceeding the very limited benefit of this.

Option 8 - Obligation to renew Retail PPI policies annually on an opt in basis

92. This is also a new remedy that the Commission previously, quite rightly, rejected prior to the 2009 Report.
93. SDGFS notes the Commission's consideration of this potential remedy and its view that, in theory, it might increase the competitive pressure on distributors.
94. However, SDGFS would note that in reality the Commission has now found that, in light of the low premiums, consumers are unlikely to search for alternative policies. As such, there is

little chance of competition for stand alone policies being enhanced irrespective of whether consumers are required to opt in to their policy on an annual basis or not.

95. In this regard it is unlikely that the remedy would achieve any increase in competitive pressure as a result of consumers searching and switching.
96. On the contrary, it would in fact give rise to a significant risk of leaving many customers uninsured as they would not be likely to open or properly understand any mailings regarding the need to (on the basis of the GFK research explained above in relation to Option 2) opt back in to their Retail PPI policy. In order for SDGFS to ensure that customers continued to benefit from the insurance (that customers believe is valuable to them) they would need to incur significant costs in telephoning customers on an outbound basis in order to ensure that policies did not lapse and customers were not left uninsured. However, the decision maker contact rate, and the likelihood of actually speaking to customers, would be very low. The details of this are set out in Section 3.2 of the Oxera Report at Annex 2 which demonstrates that, as with the POSP, many customers would not be contacted and reminded to opt in if they wanted to renew their policy. Clearly this would leave many customers uninsured through no choice of their own.
97. Moreover, the cost of this remedy would be likely to be the same if not more than the cost of the POSP in light of the need to keep trying to contact customers to ensure that they did opt back in to their policies. The Commission has also already found that the POSP would be ineffective and it is hard to see that this remedy would be any different in its effectiveness.
98. It would probably in fact be worse as it is also likely that this process would lead to serious complaints whenever a customer made a claim only to find that the policy had been cancelled without his or her consent. Whilst SDGFS would expect that customers who opt in within the time period would enjoy continuity of cover (these being monthly policies), it not clear that this would also be the case for customers who failed to opt in before expiry of their previous cover, but when finally contacted and reminded choose to do so after a gap in cover of several days or weeks. Likewise, complaints would be generated if there was a break in cover and this was treated as a new policy by insurers such that wait periods came into force again.

Option 9 - Price caps

99. Again, this is a new remedy that the Commission had previously rejected in the 2009 Report.
100. The Commission's current rationale for considering the imposition of a price cap is that it would directly address the consumer detriment associated with high Retail PPI prices and that it might bring prices closer to competitive levels while other remedies took effect to remedy the AEC.
101. SDGFS strongly objects to the imposition of a price cap on the basis that it is plainly not necessary in light of the Commission's findings that customers consider Retail PPI to be a low cost product.
102. Moreover, it would be seriously disproportionate in terms of the loss of relevant consumer benefits.
103. In relation to relevant consumer benefits (e.g. a waterbed effect) SDGFS notes the Commission's statements in the Provisional Decision to the effect that it was essentially unclear as to what SDGFS previously submitted in relation to whether a waterbed effect existed thereby producing a relevant consumer benefit that would mitigate the AEC finding of high prices.

104. SDGFS also notes the Commission's invitation, in its Supplemental Remedies Notice, for *"well evidenced submissions on the nature, scale and the likelihood of [any such consumer benefits] and the potential impact of any possible remedies on any such benefits"* (see paragraph 11 of the Supplemental Remedies Notice).
105. In light of this SDGFS has commissioned Oxera to undertake further work on the question of a waterbed effect and Oxera's report on this is attached at Annex 1 to this response. Oxera's conclusions can be summarised as follows:
- 105.1 [CONFIDENTIAL]
- 105.2 [CONFIDENTIAL] ;
- 105.3 [CONFIDENTIAL] ;
- 105.4 [CONFIDENTIAL] ; and
- 105.5 [CONFIDENTIAL]
106. In addition, as set out above, in light of the Commission's findings that Retail PPI prices are low (at least premiums are not high enough to generate consumer interest in shopping around), it is not clear to SDGFS how a price cap could be justified or said to be necessary. Customers clearly take the view that Retail PPI premiums are low and this would suggest that there is no need to further reduce prices.
107. In any event, there would be a number of significant difficulties with a price cap as follows:
- 107.1 Individual caps would be required for each product (and each new or modified product) depending on insured events and benefits or any amendment of cost or benefit;
- 107.2 Individual caps would be required for each provider depending on the providers specific costs;
- 107.3 Different sales approaches of providers (e.g. JD Williams and SDGFS) imply different cost and profitability levels;
- 107.4 Different (individual) price caps for different providers would be liable to distort competition;
- 107.5 There would be a need for constant review/revision if circumstances change, for instance in a falling market;
- 107.6 There would also be a need to keep under review the effect of variations in claims ratios (e.g. increased claims and increased claims costs) resulting from the general economic conditions; and
- 107.7 The cost and complication of the price cap merely to deal with the situation where the level of premiums is not high enough to generate competition will not incentivise consumers to shop around.
108. The consequences of the imposition of a price cap would be significantly detrimental for the following reasons:

- 108.1 It would in reality chill the market for the development of short term IP policies that were directed at Retail PPI customers because:
- 108.1.1 There would be less marketing directed at Retail PPI customers by short term IP providers because the price they could charge would be effectively capped at the level of the price cap for Retail PPI policies. Customers would not be prepared to pay more than this; and
 - 108.1.2 There would be less incentive for short term IP providers to design appropriate policies to compete with Retail PPI providers because they would, again, be constrained by low (and capped) premiums.
- 108.2 Any chilling of the market for short term IP policies would effectively choke off the development of short term IP policies that would constrain Retail PPI providers.
- 108.3 If the price was set too low then it would have a significant effect in terms of:
- 108.3.1 reducing any marketing by Retail PPI providers, because it would not be worth it;
 - 108.3.2 reducing sales as a consequence of reduced marketing;
 - 108.3.3 ultimately potentially leading to market exit by Retail PPI providers; and
 - 108.3.4 the consequence of this being unmet demand that would not be met by anyone else.
109. In conclusion, if the normal development of a market is prevented (as a consequence of imposing a price cap) then competition would never develop and the price cap would need to be applied on a permanent basis, which could never be proportionate.
110. Finally, if the purpose of a price cap is to bring prices closer to competitive levels while other measures take effect this must be reconsidered in light of the comments above by SDGFS that other measures are in fact no longer necessary.
111. An alternative to a price cap would be to impose an obligation on Retail PPI providers to include in their marketing materials a reminder of the existence of short term IP policies. This would be a less intrusive remedy than a price cap and significantly more proportionate and may, in light of the Commission's findings that customers would prefer a fixed monthly premium, generate some searching or switching behaviour that could give rise to a competitive constraint on Retail PPI providers.

CONCLUSIONS

112. In light of the Commission's findings in the Provisional Decision, as set out above in paragraph 6, it is clear that the AEC that the Commission originally found in its 2009 Report has been significantly lessened.
113. The Commission can take comfort from the fact that it has now found that Retail PPI providers are faced with an effective constraint in the form of stand-alone or short term IP. Moreover, customers consider their PPI premiums to be low and that they wish to purchase a bundled Retail PPI and merchandise cover policy.

114. These low premiums are the cause of customer inertia in terms of searching for alternative products. Therefore, there is no significant consumer detriment arising out of the features of the market the Commission found led to an AEC in its 2009 Report.
115. Moreover, SDGFS has now provided further work by Oxera which demonstrates the existence of a waterbed effect in relation to the price of Retail PPI and the price of goods and credit. This is a relevant consumer benefit that would be lost if the Commission were to impose a price cap remedy such that a price cap would be disproportionate.
116. In relation to the imposition of any remedies SDGFS notes the Commission's findings that it can no longer be sure that the imposition of a package of remedies, including the POSP and the personal quote, would be proportionate in relation to Retail PPI.
117. SDGFS concludes that, for the reasons set out above, the only proposed remedies that may be proportionate are the information based remedies set out in Option 2, 3 and 7 (albeit subject to the submissions made above on the specification of these remedies).

**DLA PIPER UK LLP
FOR AND ON BEHALF OF SDGFS
4 JUNE 2010**

ANNEX ONE

THE WHOLE DOCUMENT IS CONFIDENTIAL AND HAS BEEN REMOVED