
PPI SERVICES REMITTAL

**BARCLAYS BANK PLC RESPONSE TO THE
PROVISIONAL DECISION**

NON-CONFIDENTIAL VERSION

1. EXECUTIVE SUMMARY

Barclays Bank PLC ("**Barclays**") welcomes the opportunity to comment on the Competition Commission's (the "**Commission**") provisional decision ("**PD**"), published on 14 May 2010, in relation to the remittal stage of the market investigation into the supply of payment protection insurance ("**PPI**") in the UK.

This submission sets out Barclays response to the Commission's PD. Barclays has not been able to comment on all the issues raised by the Commission in the limited time available. In this context, the lack of any express statement does not therefore indicate agreement or disagreement by Barclays with the existence or importance of any issues contained within the PD.

In summary:

- The Commission failed to carry out a review of the features that it had identified or its proportionality analysis in relation to standalone PPI or short term income protection products ("**STIP**") that are not linked to any credit product, such as those offered by a number of credit providers, including Barclays.
- The Commission adopts a selective (and contestable) approach to the assessment of the evidence before it, giving particular weight to those pieces of evidence which appear supportive of its desired conclusion, whilst dismissing evidence contrary to its views without due consideration. As a result, its conclusions are severely flawed, both in relation to its proportionality analysis and its modelling exercise.
- In particular, the conclusions reached by the Accent survey commissioned by the Commission are unsound and open to challenge insofar as the Commission seeks to rely on the Accent survey evidence to found its estimates of the possible costs of the loss of convenience to consumers arising from the POSP, its modelling of a "base case" and, ultimately, its analysis of the proportionality of the remedy package set out in the 2009 report, including the POSP. Moreover, the Accent survey provides no support whatsoever for any conclusions addressed to standalone PPI or STIP that is not linked to any credit product.
- Barclays contends that the Commission has erred again by finding that the POSP was justified without any proper evidential basis for this conclusion, incorrectly concluding that the POSP was a more reasonable, effective or proportionate remedy to impose than any of the other proposals put to it, to which it did not give adequate consideration.
- The Commission failed to take account of considerations (in the form of market developments) which are relevant to its analysis of the features of the market leading to an adverse effect on competition ("**AEC**").

2. DEVELOPMENTS IN THE PPI MARKET AND THEIR IMPACT

Although the Commission was not ordered to revisit its conclusions on the AEC by the Competition Appeal Tribunal ("CAT"), the Commission does so at the suggestion of the CAT who stated that "*a reconsideration carried out some time after the original decision might properly be assisted by reference to more recent developments in the relevant markets*".¹

2.1 The development of competition/STIP products

As Barclays described in its response to the Commission's data request of 14 December 2009, the picture for Barclays in relation to PPI and income protection products has altered significantly in many aspects, including the range of products, channels through which these are sold and volume of sales.

A summary of Barclays recent developments is set out below for completeness:

- Withdrawal of single premium PPI by end January 2009.
- [TEXT REDACTED]
- [TEXT REDACTED] LifestylePlan ("LSP") [TEXT REDACTED]
- Development of STIP products for both the Barclays and the Barclaycard brands. Barclays Income Insurance ("BII") [TEXT REDACTED]
- [TEXT REDACTED]
- [TEXT REDACTED]
- [TEXT REDACTED]

[TEXT REDACTED]

Barclays has also simplified its sales process, offering an online quotation tool and easy online application. In relation to its BII product, [TEXT REDACTED] It is therefore clear to the customer that the credit is in no way dependent on whether they take out a protection product or not. [TEXT REDACTED]

Pilot results for BII demonstrate that customers are responding well to the stand-alone nature of the product. In addition, the pilots show that where the customer also holds a loan with Barclays (in only [TEXT REDCATED] of cases), the BII product purchased is often for a different protection amount (typically higher) than the amount of the loan. Furthermore,

¹ See paragraph 6 of the CAT's Ruling (Form of order and costs) dated 26 November 2009 in *Barclays v CC*.

Barclays market research concluded that *"flexibility and choice within the benefit duration and deferment periods are accepted and appreciated"*.²

Therefore, the STIP products introduced by Barclays differ in many respects from the PPI products the Commission assessed in the early stages of its inquiry.

The Commission mentions the development of new products by the main parties to the investigation (stating that *"[t]hese products were often ones that are not linked to a specific credit product but offered wider and/or more flexible cover"*) only in relation to its analysis of possible loss of choice as a result of the POSP.³ The Commission fails however to assess this development when looking at the market developments and their impact on the features of the market identified by the Commission.

In particular, the Accent survey, whose conclusions are relied on extensively by the Commission throughout the PD, was designed specifically to understand how consumers view the convenience associated with taking out PPI at the time of the loan, and any consequent loss of convenience if they have to wait before they can purchase PPI from the same provider. It offers no assistance with estimating or drawing conclusions about the loss of convenience to consumers from being stopped from purchasing from a chosen credit provider standalone PPI, or STIP that is not linked to any credit product, until a POSP has been complied with. The Commission has signally failed to consider the loss of convenience to consumers in those circumstances. It is an egregious oversight, especially in light of the significant and ongoing investment by Barclays and other credit providers to develop standalone PPI and STIP products of which the Commission is aware and the Commission's own expectation that entry of large PPI distributors into the standalone market would represent a "key development" in standalone provision (paragraph 7.78 of the PD).

2.2 Future of PPI

PPI, in the form sold in 2007, no longer exists. Evidence of this includes:

- The withdrawal of single premium PPI has had a significant impact on the sector, by changing the structure and sales processes of most providers.
- Claims volumes, which the Commission (in the more benign times of 2006-2007) stated were low⁴, have increased significantly.
- Sales volumes and Gross Written Premiums have decreased year-on-year since 2004 according to the Commission's data, with a dramatic further fall in 2009.

² Please see [TEXT REDACTED], p8.

³ See paragraph 7.59 of the PD.

⁴ See, for example, paragraphs 4.50-4.59 of the 2009 report.

It would, however, be incorrect to assume that 2009 was a "one-off" year. Although technically out of recession, the economy continues to be in a fragile state. An indication of this is the shrinking employment rate, which in May 2010 presented the lowest quarterly figure since the three months to September 1996.

An assumption of growth of PPI sales to pre-recession levels appears very optimistic, notwithstanding the trend mentioned above. We note that the Commission does not state what level of sales it would expect, merely repeating its assumption that "*as prices reduce we would expect PPI take-up to increase.*" Please also see paragraph 35-37 of **Annex 1**.

Finally, new regulation (see below) and efforts by the industry have improved the sales processes and made the product more clear and transparent for consumers.

2.3 Further changes in the regulatory environment

As the Commission is aware, the selling of PPI is currently heavily regulated. Since the introduction of the first Insurance Conduct of Business ("ICOB"), PPI has been the subject of much scrutiny and regulatory change. The second Insurance Conduct of Business Sourcebooks ("ICOBS") came into force on 6 January 2008 with a six-month transitional period for implementation until 5 July 2008.

All of the requirements set out in ICOBS contribute to customers' ability and ease of shopping around for PPI. For example, ICOBS aims to make price disclosure clearer to customers, therefore enabling customers better to search and switch between PPI policies. In addition, PPI providers are obliged to refer customers to the optionality of the PPI, when sold at the credit point of sale.

The Commission, however, does not attempt to measure the impact of these changes, many of which would not have yet been visible at the time of the 2009 report.

In addition, there have been a number of other regulatory developments beyond those mentioned by the Commission (i.e. withdrawal of single premium PPI and agreement with trade bodies in relation to MPPI refunds). These include:

- FSA work in relation to the PPI backlog, in particular, in relation to complaints.
 - In September 2009, firms representing more than 40% of face-to-face sales of single premium PLPPI agreed to review their sales and redress those consumers identified as mis-sold.
 - For complaints about all PPI products, the FSA is planning on introducing new guidance for PPI complaints handling and redress, where appropriate.
 - The FSA plans to introduce a new rule requiring firms to reopen certain PPI complaints previously rejected to be reassessed against the new guidance.

- As the Commission is aware, the FSA worked together with the industry to develop price comparison tables on PPI, which went live on 23 June 2008. These are currently run by the Consumer Financial Education Body Ltd.

3. FEATURES

The Commission concludes that *"all the features comprising the AEC which were addressed by the remedies package remain and (...) remain as significant"*⁵ as in the 2009 report. For the reasons set out below, this assertion is untrue and unsupported by the evidence.

3.1 The Commission's approach to standalone providers/short term income protection

The Commission concluded in its 2009 report that STIP products sold *"as a result of a referral during the point of sale of a credit product are PPI products sold at the point of sale."* However, the Commission has not taken the necessary steps to verify whether the features identified in relation to PPI apply equally to STIP products. As STIP is not linked to any credit product, it is equally not logical for it to be linked to the point of sale of any credit product.

In addition, it is clear that the Commission has not even considered whether the POSP is an appropriate or proportionate remedy in relation to standalone PPI or STIP products that are not linked to any credit product.

As noted above, the Accent survey, upon which the Commission relies heavily, does not distinguish between PPI, standalone PPI and STIP products that are not linked to any credit product and therefore does not offer any assistance in estimating or drawing conclusions about the loss of convenience to consumers from being prevented from purchasing standalone PPI or STIP that is not linked to any credit product, from a chosen credit provider. (Barclays notes that the Accent survey was designed to **"understand consumer likes and dislikes in purchasing PPI at the same time as the loan it is connected to"** [emphasis added].)

Similarly, in its proportionality analysis, the Commission does not consider potential differences between PPI and standalone PPI or STIP products that are not linked to any credit product.

In Barclays view, STIP that is not linked to any credit product should not be subject to a POSP. The Commission has not thought through the effect of such a prohibition, as evidenced by the definitions of "Credit Arranger" and "PPI" in the Commission's draft order published in July 2009.

As noted during both the informal and formal consultation to the Commission's draft order, Barclays is concerned that the definitions of "PPI" (which includes STIP), "Credit Arranger",

⁵ See paragraph 9.5 of the PD.

"Standalone PPI" and "Stand-alone Provider", as currently drafted in the Commission's draft order, would have the following unintended consequences:

- The inclusion of STIP within the definition of PPI for the purposes of the draft order means that a POSP would apply even in the case of sale of a STIP product which is in no way linked to a credit product.
- It appears difficult for Credit Arrangers to also be Stand-alone Providers (i.e. the Distributor or intermediary arranging credit for a consumer and a Stand-alone Provider) regardless of the circumstances.⁶

Consequently, the remedy is likely to stifle innovation by credit providers that wish to offer standalone PPI or STIP. Given the diverse nature of Barclays offering across many customer segments, this would result in particular customer detriment.

Finally, as mentioned above, BII and LSP will be offered to customers as part of a suite of protection products. It may give rise to customer confusion (and even TCF issues) if certain consumers were not able to complete the purchase BII or LSP, but were able to purchase other types of protection.

3.2 The point of sale advantage

The Commission continues to conclude that the sale of PPI at credit point of sale further restricts the extent to which other PPI providers can compete effectively. The Commission does not, however, address the significant developments in the product offering of the main providers.

As mentioned at the time of the Provisional Findings in June 2008, Barclays believes that the fact that large providers are offering stand-alone PPI and STIP products will: (a) erode the perceived point of sale advantage; and (b) lower the alleged barriers identified by the Commission in relation to companies successfully entering and expanding into the stand-alone market. As evidenced by the Commission's PD,⁷ this is currently occurring. Yet the Commission has chosen to ignore this crucial element in its analysis of the point of sale advantage.

3.3 Competition between PPI providers

The Commission continues to conclude that most distributors and intermediaries do not actively seek to win customers by using the price or quality of their PPI policies as a competitive variable.

⁶ It seems that Barclays would have to ascertain that it has not provided the customer with any type of credit product in the last six months in order to sell a customer standalone PPI without a POSP applying.

⁷ See paragraph 7.59 of the PD.

As mentioned above, Barclays has competed and continues to compete in the market with a range of new STIP products. In addition, the Commission describes the development of STIP products by credit providers. The STIP products in development or recently launched protect income and are not linked to credit products, leading to sales of protection products at points other than the credit point of sale.

The Commission's remedies should be forward looking, and as such, should take this significant development into account. Barclays does not therefore agree with the Commission's provisional conclusions on this point, which do not appear to be based on the primary evidence before the Commission.

3.4 **Switching**

The Commission reconsiders the four main barriers to switching identified in its 2009 report and provisionally concludes that "*some remain as much of a problem as at the time of the report*". As explained below, Barclays believes that this is not supported by the evidence.

Terms which make switching expensive

One of the main barriers to switching as identified by the Commission was the existence of single premium PPI. As the Commission is aware, in late 2008 the FSA wrote to the main providers of single premium PPI requesting them to cease selling single premium PPI. **[TEXT REDACTED]**

The FSA went on to request that all providers cease selling single premium PPI, stating in its press release that "*We therefore request that if your firm has not already done so, it stops selling single premium PPI with unsecured personal loans as soon as possible and in any event by 29 May 2009. In view of our ongoing concerns across the single premium market over the standard of sales, we believe this request is justified to bring an orderly withdrawal of single premium PPI from the market.*"

The outcome of the FSA's actions has been for all providers to cease selling single premium PPI. The move was seen by all, in the industry as well as in the press, as an effective ban of single premium sales. If, as the Commission appears to imply, the FSA's request was "*only a request*", it seems unlikely that the result would have been total withdrawal by all industry players. Given the changes that have occurred to the market as a consequence, and FSA's views, Barclays doubts the ability of a provider to offer single premium PPI products in the short, medium or long term.

Terms which risk leaving consumers uninsured

As stated during the original inquiry, initial exclusion periods and pre-existing conditions are used to eliminate the information asymmetry which exists at the start of the policy between the insurer and the consumer. In addition, exclusion periods for involuntary unemployment

cover allow pricing to be relatively lower due to reduced risk of adverse selection. These are a feature of most insurance policies and are not specific to PPI.

Lack of access to consumers' balance information

Barclays agrees with the Commission's new conclusion that the lack of access to consumers' balance information is not a relevant feature. However, whereas the Commission dismisses this new conclusion for all but retail PPI, Barclays submits that it is also relevant in the assessment of the barriers to entry and expansion, as alleged by the Commission.⁸

Ease of switching as a result of new developments

As can be seen from the above, two of the three barriers to switching (for forms of PPI other than retail PPI) are no longer relevant, while the third is not specific to PPI but rather a common characteristic of many insurance products.

It is therefore difficult for the Commission to maintain, as it attempts to do in paragraph 5.24 that "*there remain barriers to switching. Some remain as much of a problem as at the time of the 2009 report*". These statements are unsupported by the evidence. Further, the Commission's vague statement that "*some*" remain is not later recognised by the statement in paragraph 5.28 and 9.5 that "*all the features*" remain and "*remain as significant*".

3.5 Searching

The Commission provisionally concludes that each of the barriers to search identified in its 2009 report remain "wholly or largely in place". Barclays disagrees with these conclusions as they are unsupported by the evidence.

As mentioned previously to the Commission, Barclays believes that there are benefits to searching for consumers and is, as a result, committed to providing consumers with sufficient and timely product information. Many developments in the area have led to lower barriers to search, where those existed previously.

Barclays customer research⁹ suggests that customers like being able to obtain a quote on the Barclays website. Following specific customer feedback, Barclays is considering additional changes to its BII product, such as allowing customers to store quotations so that they can shop around and then revert if needs be when a purchase intention is reached. This facility is already available to its LSP customers, who are able to save up to 5 quotes at any one time which are stored and valid for 30 days.

As mentioned above, Barclays has introduced significant developments to its sales process, including to ensure that the perception that taking PPI would increase customers' chances of

⁸ Barclays considers it unfortunate that the Commission did not carry out similar research to that carried out in relation to retail PPI for other PPI or STIP products.

⁹ See footnote 2, e.g. pages 9 and 35.

being given credit no longer exists. Barclays is disappointed that, in this respect, the Commission simply refers back to its 2009 findings (based on 2007 evidence).

Customers are increasingly able to actively compare prices through price comparison websites. There are a number of relevant websites, such as moneysupermarket.com, incomeprotect.co.uk or unbeatablequote.co.uk.¹⁰ By using these, customers can compare different monthly benefits, cover periods, excess periods and other features.

Product complexity

As the Commission itself admits, single premium PPI was previously seen by the Commission as the main cause of product complexity. This is no longer sold by providers.

As mentioned previously, Barclays does not believe that product complexity is a barrier to searching. Despite the Commission's assertions that the complexity of PPI has a detrimental effect on consumers' ability to understand that information, Barclays believes that the additional features can add value to the product and may lead to one product being more suitable for the consumer than another without as many features.

As conceded by the Commission, there has been a substantial amount of work put into sales processes and practices, including making information available early on in the process.

Barclays policy information is clearly shown within the Guide to Insurance and regulatory documents provided to customers. In addition, Barclays website provides a guide to BII in relation to cover, eligibility, benefits and more, as well as an FAQ section which covers all its products, including BII.¹¹

In addition, Barclays new STIP products have been built with simple processes and flexibility to allow clear understanding for the customer.

Limited scale of stand-alone provision

The Commission states that the scale of stand-alone provision has actually declined since the 2009 report was published, concluding that the barrier remained. The Commission again chooses to ignore the evidence before it that providers are introducing new products, some of which are stand-alone or STIP products (and cited at paragraph 7.59 PD), which will clearly have an effect on this alleged barrier.

Length of sales process

¹⁰ These offer products by providers such as help u cover, More than (part of RSA Group), Columbus direct and Pay Protect.

¹¹ See <http://www.bank.barclays.co.uk/Insurance/BarclaysGuidetoIncomeInsurance/P1242570835589> and <http://ask.barclays.co.uk/?x=y>.

Barclays notes that the Commission views the length of time taken to conduct a PPI sale as one of the barriers to searching. A reduction of the time taken to conduct a sale is not within Barclays gift, as the duration of the sales process is driven by and a result of various regulatory requirements. The implementation of a POSP would only lengthen this time and involve a duplication of the sales process.

In addition, the possibility of a customer receiving quick and numerous quotes in relation to its protection products is becoming more prevalent. For example, customers purchasing the BII and LSP products will easily be able to obtain a price quotation from any Barclays channel (currently only available online), providing consumers with sufficient information to decide what cover type and level suits their needs best.

4. COMMISSION'S REMEDIES AND ALTERNATIVES TO POSP

As confirmed by the CAT in its judgment in *Barclays v CC*, the Commission is under a duty to consider the following factors in its proportionality analysis of the remedies to address its AEC, i.e. the remedy:

- Must be effective to achieve the legitimate aim in question (appropriate);
- Must be no more onerous than is required to achieve that aim (necessary);
- Must be the least onerous, if there is a choice of equally effective measures; and
- In any event, must not produce adverse effects which are disproportionate to the aim pursued.

Barclays continues to believe that the POSP would result in severe customer detriment. It is likely that the enforced separation of the sale of credit and PPI would result in customers not taking out PPI at all. This is borne out by the numerous natural experiments carried out by the parties, the results of which are dismissed without due consideration by the Commission as overstatements.

Furthermore, the Commission's approach to reconsideration of the POSP, as set out in section 3 of the PD, does not allow the Commission to carry out the analysis required at the third bullet above: the Commission quickly dismisses all possible alternatives as "not substantially effective". This is an error in the Commission's proportionality analysis. Please see paragraphs 6-18 of **Annex 1** for further detail.

As mentioned in response to the Commission's Possible Remedies and subsequently in response to the Commission's Provisional Decision on Remedies, Barclays believes that the information remedies contemplated by the Commission (i.e. personal quote, information in marketing materials, provision of information to FSA/OFT and FSA's subsequent publication in price comparison tables and annual statements) sufficiently address the AEC identified by the Commission. These remedies would address the point of sale advantage effectively and

would reduce the unintended consequences on the sector and consumers (e.g. loss of convenience).

In light of the developments since the 2009 report and the weakening of most, if not all of the features identified by the Commission, the POSP is not a necessary, appropriate or proportionate remedy.

Barclays believes that a "menu regulation" approach, as suggested by Professor Yarrow and Dr Decker in section 1.1 of **Annex 1**, would enable the Commission to arrive at an appropriate and effective set of remedies and, in addition, would: (i) avoid the loss of convenience to consumers of the POSP; and (ii) have a lower risk of unintended consequences than the POSP (by avoiding circumstances such as a customer not being able to buy STIP products when they wish to purchase them (including the point of sale of an unrelated credit product)).

5. **LOSS OF CONVENIENCE**

Introduction

The CAT's judgment stated that "*We have been unable to discern, even by implication, any consideration given by the Commission to the disadvantage which would be constituted by a net reduction in the PPI sales attributable to the loss of convenience, in its conduct of the proportionality analysis.*" Later, the CAT states that "*This is primarily because the Commission's opinion that increased demand flowing from a reduction in PPI prices would "partially or fully off-set" the adverse consequences of reduced convenience is so unfocused as to leave us with no sufficient yardstick as to the extent of any net reduction in take-up rates which the Commission may have had in mind.*"

Barclays has a number of concerns in relation to the analysis of the loss of convenience both in the proportionality analysis, as well as in the modelling exercise. Barclays comments on the loss of convenience, as used in the modelling exercise, are addressed in section 6 of this response.

The Commission has erred, as it did in the 2009 report, by failing to quantify the acknowledged detrimental effect that the POSP would have, despite going through the tick-box exercise of addressing it in further detail in its PD.

In addition, the Commission continues to fail to assess the extent of the price reductions or consequent increase in sales that it expects to occur as a result of the POSP (or its package of remedies) and no analysis of the extent that any such effect might offset the decline from the reduction in convenience. As stated by Professor Yarrow and Dr Decker in **Annex 1**, the Commission dismisses much of the parties' evidence in favour of assumptions which are not supported by any evidence.

Without an analysis of the extent of the benefits and the extent of this detriment, there continues to be no basis upon which the Commission could properly conclude that the benefits of the POSP are justified in light of the scale of the detriment identified. As a result, the Commission's conclusions are severely flawed, both in relation to its proportionality analysis and its modelling exercise.

Would there be a reduction in the number of policies sold with a POSP in place?

The Commission concludes on the basis of the natural experiments, parties' estimates and survey evidence that, if all else were equal, there would be "*some drop-off*" in sales of PPI to existing customers. The Commission also concludes that "*many*" customers prefer to have a gap between buying PPI and credit.

As in the 2009 report, the Commission merely dismisses most of the evidence put forward by the parties in relation to their natural experiments and internal estimates on the basis of its own assumptions, which are not based on any evidence themselves. It is absurd in an analysis of the impact of the loss of convenience for the Commission to claim that natural experiments intended to mimic the imposition of a POSP "*were not very informative on the impact of the remedies on the PPI take-up rates*" due to them not taking account of the other remedies. Please also see section 2.5 of **Annex 1**.

The Commission dismisses the experiments further by saying that in the natural experiments by HSBC and LBG fewer customers received a quote for PLPPI "*than we [the Commission] thought should have done*". The Commission goes on to assert that either sales staff put less effort into the sale or, purchasers were taking out PPI policies which they would not have taken out had they had the time to reflect. Neither conclusion is supported by evidence.

Furthermore, the Commission is selective in its use of the survey evidence, attaching apparently less weight to the majority of customers in numerous surveys which prefer to buy PPI at the credit point of sale than to "*some*" consumers which prefer to buy following a delay in the process.

In addition, the Commission attaches disproportionate weight to the minority of respondents in its own Accent survey who stated that they would prefer to have a gap between buying PPI and credit.¹² Barclays also submits that the Accent survey is fundamentally flawed due to the fact that the two scenarios offered to customers are: (i) preference for buying at the point of sale; and (ii) preference for delay. Customers are currently able to buy protection products after the credit point of sale and this scenario does not imply that the customer would not be able to purchase PPI at the credit point of sale. At best, the interviewees who opted for scenario (ii) are indifferent as to whether a POSP is imposed.

¹² See paragraphs 4-5 of the Yarrow/Decker report at **Annex 1** in relation to confirmation bias.

Please see at **Annex 2** a detailed explanation of Barclays many concerns in relation to the methodology, conclusions and use of the Accent survey, a number of which were raised at design stage without any amendments being made.

What would be the causes of any reduction in the number of policies sold?

The Commission adopts a new line of argumentation in relation to the causes of such (unquantified) reduction in sales.

The Commission superficially reviews evidence in relation to historical complaints information to determine whether customers do not want or need PPI, without reaching any firm conclusion, other than to say that *"to the extent that any decline in take-up of PPI is as a consequence of the elimination or reduction of unwanted sales at the credit point of sale [...] we do not regard those lost sales as indicative of any consumer detriment resulting from the POSP"*.

In any event, the Commission is confusing complaints, mis-selling and the effects of the POSP. Barclays considers it to be inappropriate for the Commission to take the view that a certain percentage of customers would not have taken the cover given appropriate time to reflect, in effect saying that the customer would otherwise have been sold a policy that did not meet their needs. Contrary to the Commission's assertion, it is not a relevant consideration to assume that certain lost sales are not indicative *"of any consumer detriment resulting from the POSP"*.

The Commission goes on to set out the second possible cause for a reduction in the number of policies sold: loss of choice. The Commission equates loss of choice only with market exit. The Commission, however, ignores its earlier evidence about significant reductions in the sales of PPI which have taken place since the 2009 report. It further assumes that *"we would expect that distributors would take action to ensure that as many sales are achieved as possible"*. This assumption is not based on any evidence and contradicts the evidence and estimates submitted by the distributors themselves.

Finally, the Commission addresses the loss of convenience to customers. The Commission here focuses only on its own survey evidence and concludes that, although a majority of those interviewed expressed a preference to take out PPI at the credit point of sale, those who expressed a preference for a delay in the process gave their preference more relative strength and as a result, on aggregate, the interviewees associated a positive monetary value with buying PPI at some time after the point of sale of credit. As mentioned above, the conclusion derived is incorrect, since those who expressed a preference for a delay were not advocating in favour of a POSP, but simply stating that they would prefer to buy PPI following a delay (which in effect they are able to do now). As raised by Professor Yarrow and Dr Decker in **Annex 1**, this position clearly ignores the fact that 60% of interviewees would as a result not have purchased PPI, but the demand for PPI of the 30% who would purchase the policy would not have increased. It therefore appears that the Commission's calculations on this

point suffer from a manifest error. In addition, in its analysis, the Commission ignores all of the other experiments, internal documents and surveys it reviewed in the previous section of the PD.

As mentioned above, the Commission continues to fail to assess the extent of the price reductions or consequent increase in sales that it expects to occur as a result of the POSP (or its package of remedies) and no analysis of the extent that any such effect might offset the decline from the reduction in convenience, merely restating the same conclusions as in the 2009 report (based on assumption rather than evidence).

6. REVISED ASSESSMENT OF PROPORTIONALITY

Is the remedy package effective, no more onerous than needed and the least onerous?

Having already dismissed the majority of the parties' evidence (see above), the Commission concludes that they have not found evidence which causes them to revisit their previous decision on effectiveness of the remedy package (including the POSP), except in relation to retail PPI. The Commission carries out a similar (dismissive) analysis in relation to whether the remedy package is necessary, reaching the same conclusion.

As mentioned above, in Barclays view, the Commission is again proceeding on the basis of irrelevant considerations and ignoring relevant considerations in arriving at these conclusions. Barclays therefore disagrees with the Commission's views on the appropriateness and necessity of the remedy package (as set out in the first two limbs in section 4 above).

As the Commission views the POSP as the only possible remedy, it is not able to carry out a comparative analysis (third limb). As stated in paragraphs 6-8 of **Annex 1**, the Commission's decision to only consider alternatives if: (i) they are deemed fully effective; and (ii) the POSP is found to be disproportionate results in the exclusion of viable alternatives from the proportionality analysis and appear contrary to general principles of proportionality.

Does the remedy package produce adverse effects which are disproportionate to the aim?

Although the Commission addresses the points raised by the CAT for reconsideration, there continue to be a number of flaws in the Commission's modelling analysis and resulting conclusions. In particular, and as mentioned in greater detail in **Annex 1** by Professor Yarrow and Dr Decker and **Annex 2**:

- The loss of convenience measurement is no longer measured as a loss, but rather as an upward shift in demand if a POSP were introduced. This position is unsustainable, as the consumer group who chose to delay the purchase of PPI (the minority) are able to purchase it with delay today and would not pay more simply because they were forced to wait (see paragraph 49-52 of **Annex 1** and section 2.1 of **Annex 2**).

- The calculation of the (firm-wide) elasticity of demand appears untransparent and unclear (see section 3.1 of **Annex 1**).
- There is a lack of clarity surrounding the model and, in particular, in relation to the waterbed effect (see paragraph 28-31 of **Annex 1**) and the pre-remedy price of credit (see section 3.2 of **Annex 1**).
- We refer the Commission to **Annex 1** and **Annex 2** for further detail.

By relying upon the (imperfect) result of a modelling exercise which itself relied on unfounded assumptions rather than evidence, the Commission is again proceeding on the basis of irrelevant considerations and ignoring relevant considerations.