

09/23\*\*\*

Financial Services Authority

The assessment  
and redress of  
payment protection  
insurance complaints

September 2009





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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 October 2009.

Comments may be sent by electronic submission using the form on the FSA's website at ([www.fsa.gov.uk/Pages/Library/Policy/CP/2009/cp09\\_23\\_response.shtml](http://www.fsa.gov.uk/Pages/Library/Policy/CP/2009/cp09_23_response.shtml)).

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**It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.**

**A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.**

Copies of this Consultation Paper are available to download from our website – [www.fsa.gov.uk](http://www.fsa.gov.uk). Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

# 1 Overview

## Purpose and background

- 1.1 This Consultation Paper (CP) sets out our proposals for:
- guidance on the fair assessment and (where appropriate) redress of complaints related to sales of Payment Protection Insurance (PPI); and
  - rules requiring firms to re-assess, against the proposed new guidance, complaints about PPI sales that the firm had *previously rejected*.
- 1.2 These proposals stem from our serious concerns about the fairness with which firms have assessed consumer complaints about past PPI sales, which have significantly increased in recent times. Our concerns are prompted by:
- the large number of PPI complaints referred to the Financial Ombudsman Service (FOS), forming a substantial part of its caseload;
  - the significant difference in consumer experience and outcome between PPI complaints to firms (a majority of which are rejected) and those referred to the FOS (most of which are currently over-turned by the FOS in favour of the consumer);
  - our discussions with the FOS concerning its dealings with some firms' complaint handling departments concerning PPI complaints;
  - our own analysis of samples of complaints decisions made by some firms;
  - findings from our thematic work, mystery shopping, and enforcement actions concerning firms' sales practices and views on applicable sales standards; and
  - our dialogue with firms and other industry representatives about the approach they adopt to assessing PPI complaints.

- 1.3 We consider that firms' unfair assessments of PPI complaints reflect:
- deficiencies in the general assessment of PPI complaints, including not investigating them properly and giving too little weight to the particular events and circumstances of the specific sale to the complainant;
  - specific deficiencies in assessing PPI complaints arising from firms' failure to consider appropriately PPI sales standards (including our principles); and
  - deficiencies in assessing fair redress where a complaint is upheld.
- 1.4 These shortcomings fall far short of what our principles and rules require from firms, and our handbook proposals and supporting actions are designed to ensure firms address them.
- 1.5 We anticipate that the proposals and other actions will lead firms to treat PPI complaints more fairly and consistently and to uphold and redress a greater proportion of them. This will benefit consumers and reduce the current heavy burden of cases on the FOS.
- 1.6 Our proposals on complaints handling are not the only action we are taking to ensure fair outcomes for consumers and that firms' conduct adheres to our principles and rules. We are also taking targeted and intrusive supervisory action in areas of the PPI market where we have specific concerns about sales practices. We have taken 22 enforcement actions against the mis-selling of PPI, which have imposed fines totalling £11.8m and required the redress of consumers who suffered detriment. And recently we have:
- encouraged firms to stop selling single premium PPI with unsecured loans, which they have now agreed to do;
  - obtained agreements from firms representing over 40% of face to face sales in the Single Premium Unsecured Personal Loan PPI market to review these sales and redress those consumers identified as mis-sold;
  - begun targeted reviews of sales of single premium PPI on *secured* loans (second charge mortgages), which will be extended to sales of PPI on credit cards in due course; and
  - welcomed the package of measures being taken forward by the Competition Commission in the PPI market.
- 1.7 Our interventions on PPI complaints and sales alike are consistent with the strategic importance we attach to the principle of Treating Customers Fairly.

## Timing of the consultation

- 1.8 Because the number of PPI complaints continues to mount rapidly, and because we want as many of these complaints as possible to be handled in accordance with our proposals as soon as possible, we are setting the period for consultation at **one month**. We recognise this is short for proposals that are of significant impact, but we have undertaken extensive pre-consultation (see 1.17) and we believe this short consultation period is now warranted in the circumstances, to limit consumer detriment.

## Summary of our proposals and supporting actions

- 1.9 The proposals consulted on here are:
- guidance on the fair assessment of a complaint, intended to ensure that firms give a balanced and evenly weighted consideration to evidence about PPI complaints and consider the complaints fully and in the round;
  - guidance setting out standards for calculating redress where the complaint is upheld; particular detail is provided on the redress of complaints about the sale of single premium policies, where, for appropriate cases, we propose that comparison is made to an alternative regular premium policy that the consumer would have needed, wanted and been prepared to buy at the time; and
  - a review rule requiring firms to re-assess against the guidance PPI complaints they have previously rejected.
- 1.10 We have also published an open letter to eight trade associations setting out our concern that specific deficiencies in firms' assessment of PPI complaints arise from firms' failure to consider appropriately PPI sale standards. To assist firms in this, the letter provides examples of common sales failings (which we also expect firms to avoid in their future sales).
- 1.11 We understand that during the consultation period, in conjunction with stakeholders, the FOS will develop a standardised PPI complaint questionnaire for firms to administer to complainants. This will help ensure that relevant evidence is provided to firms by consumers (and their representatives), and to consumers by firms, thereby improving firms' assessment and decisions, as well as helping to ensure that proper investigation of complaints is carried out before any referral to the FOS. We support this initiative by the FOS.

## Proposed coverage

- 1.12 The proposed guidance will supplement the existing requirements in our Dispute Resolution Sourcebook (DISP) for the fair and consistent handling of complaints in general, as a specific, practical guide for handling PPI complaints (only).

- 1.13 The guidance applies to complaints about any kind of PPI policy, but only applies to complaints about its sale, or that link to its sale (for example, a complaint about a rejected claim where the disclosure of relevant exclusions is at issue). Throughout this consultation we use ‘PPI complaints’ in this sense only.
- 1.14 The guidance will apply to any such PPI complaint (as defined at 1.4.7R(2) of the proposed text) that already falls within the scope of our complaint handling requirements in DISP. For most firms, this will include complaints about their PPI sales before 14 January 2005 (the date insurance selling became a regulated activity).
- 1.15 The review rule only applies to complaints that fall under the scope of the guidance but were, in addition, received by the firm on or after 14 January 2005, and rejected by it (but not settled on a full and final settlement basis, nor referred to the FOS).

## **Structure of this paper**

- 1.16 The rest of this paper is structured as follows:
- Chapter 2 sets out in more detail the rationale for these proposals;
  - Chapter 3 reviews in more detail the content of the proposals, and sets out the questions we want to consult on;
  - Chapter 4 outlines the next steps following the consultation;
  - Annex 1 is the cost benefit analysis of the proposals;
  - Annex 2 is our assessment of the proposals’ compatibility with our statutory objectives and principles of good regulation;
  - Annex 3 brings together the various consultation questions; and
  - Appendix 1 contains the draft handbook text.

## **Pre-consultation**

- 1.17 We have discussed the proposals in particular detail with a range of stakeholders, including the FOS, Financial Services Compensation Scheme, an industry group (comprised of relevant trade bodies and some firms), consumer groups, and also our Consumer Panel, Practitioner Panel and Smaller Businesses Practitioner Panel. We would like to thank all who have contributed to these discussions, which have helpfully informed our proposals.

## **Next steps**

- 1.18 The consultation period is one month, closing on 30 October. We will then review and finalise our proposals in light of the responses received.

- 1.19 Once the proposals are implemented, we will monitor firms' performance so as to assure ourselves that PPI complaints are being fairly handled and reviewed. If we find that firms are not doing this and are putting complainants' interests at risk, firms can expect tough action from us.

### **Who should read this paper?**

- 1.20 This CP will be of prime interest to firms currently or previously active in the sale of PPI. This CP is also of interest to relevant trade and consumer bodies.

#### **CONSUMERS**

This CP will be of interest to consumers who have complained about a sale of a PPI policy, or are considering doing so, and to third parties representing them.

# 2 Rationale for our proposals

- 2.1 In the current difficult economic climate, PPI can play an important role in protecting consumers' repayments on specific credit agreements. It is precisely this potential importance that makes it vital that a consumer is only sold a policy which actually does what they want and meets their actual needs.
- 2.2 The well publicised concerns about PPI sales practices expressed by us, and the wider concerns about the PPI sector expressed by the Competition Commission, have prompted many consumers to consider the PPI that was sold to them and, in many cases, to complain to the firm that sold it to them.
- 2.3 This has led to a marked increase in the number of PPI complaints over the last two years. Firms' own data, provided to us, indicates that the sector received 158,000 PPI complaints in 2008 alone.
- 2.4 It is vital that firms deal with these complaints fairly. Unfortunately, we do not currently have confidence that firms are doing this.
- 2.5 On average, firms have rejected around 60% of the PPI complaints they have received, but some firms have rejected nearly all. One effect of this has been a very large increase in the number of PPI complaints referred to the FOS, and in 2008/09 PPI complaints made up more than one quarter of the FOS's total case load, placing yet further burdens on it.<sup>1</sup> The FOS has felt it appropriate to overturn, in favour of the complainant, firms' decisions on over 80% of the PPI cases reaching it. These proportions of firm rejections and FOS over-turns are both outliers compared to those for complaints about other products.
- 2.6 This significant difference in consumer experience and outcome between PPI complaints to firms and those referred to the FOS, along with the other information available to us (outlined at para 1.2 above), lead us to conclude that firms' unfair assessments of PPI complaints reflect the following deficiencies:

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1 FOS annual report for 2008/09

*Deficiencies in their general assessment of PPI complaints, including:*

- not properly investigating the complaints (especially when they are received from claims management companies or are in the form of template letters);
- giving too little weight to the particular events and circumstances of the specific sale to the complainant;
- giving too much weight to the presumed effectiveness and fairness of its own standard sales process and too little weight to evidence (eg from its own internal monitoring or external criticism) that its sales staff were actually often doing something different; and
- giving too little weight to information held by the firm about the appropriate target audience for products with particular features and to whether the consumer fitted that profile.

*Specific deficiencies in assessing PPI sales complaints* arising from firms' failure to consider appropriately PPI sales standards (including our principles), such as:

- failing to consider whether the recommended policy met the consumer's needs, especially in respect of the often inflexible nature of single premium products (eg where the consumer repays the loan early), or of particular exclusions from, or limitations to cover;
- failing to recognise that in face-to-face and telephone sales, where the sales process was primarily conducted orally, firms should *orally* disclose the key features of the product, such as its optional nature, price, non-pro-rata refund terms and exclusions and limitations;
- failing to take reasonable steps to ensure the customer is eligible to claim under the terms of the contract;
- failing to make customers aware of the consequences of taking out a PPI policy that does not cover the full term of the loan it is linked to; and
- failing to stay within the limits of a non-advised sales process when that is what the firm was purporting to do.

*Deficiencies in assessing fair redress, for example:*

- not considering reasonably what the consumer would in all likelihood have done but for the firm's shortcomings at the point of sale, and in particular tending to conclude the customer would have bought the policy anyway;
- offering standard 'ex gratia' sums regardless of the actual detriment caused to the consumer.

2.7 These deficiencies fall far short of what our principles and rules require from firms. Furthermore, many firms have been unwilling to analyse and reconsider their approach to handling these complaints in light of the decisions that the FOS has given it on similar previous cases (see DISP G1.4.2 (4)). These firms continue to

reject complaints they receive, despite knowing that many of these would be upheld if referred to the FOS. Again, this is not acceptable behavior by firms, since it treats their customers unfairly.

- 2.8 Unfortunately therefore, firms' behaviour has led to an unfair outcome for many consumers, where a majority of PPI complaints to firms are rejected, but the small minority that persist with their complaint to the FOS mostly get upheld and redressed. This has potentially left the many complainants who have not gone on to the FOS, but who may have suffered detriment from poor sales practices, without remedy or redress.
- 2.9 The FOS highlighted to us this unsatisfactory position, which was part of the background to the FOS's decision to refer the issue of PPI formally to us under the 'wider implications' process in July 2008. The FOS noted the difficulties consumers could face in pursuing their individual complaints with firms. The FOS asked us to consider whether regulatory action was appropriate.
- 2.10 Following the FOS's letter raising wider implications and concerns, the major trade associations suggested that an industry-led solution might be possible. We therefore supported the efforts of an industry-led group, with consumer representative input, to try to produce an effective industry code to improve PPI complaints handling standards across the sector.
- 2.11 However, it has not proved possible to draft industry standards that had sufficient consensus, or the degree of robustness and fairness to consumers that we considered essential if the improvements we require were to be secured.
- 2.12 In light of this and firms' continuing shortcomings in handling PPI complaints, we decided to issue the guidance consulted on here. This will make absolutely clear our expectations about how PPI complaints should be handled by firms. And in turn, the proposed rule requiring firms to re-assess previously rejected complaints against the guidance will help ensure that those complaints too are now fairly handled.
- 2.13 Together, the proposals will help ensure that the industry is indeed handling PPI complaints in a full and fair way that gives opportunity to consumers who were not treated fairly at the point of sale to receive redress.

# 3 Our proposals

## Guidance on redressing PPI complaints

- 3.1 The guidance applies to complaints about any kind of PPI policy, but only applies to complaints about its sale, or that link to its sale – for example, a complaint about a rejected claim where the disclosure of relevant exclusions is at issue. So, complaints about poor administration or delays in paying claims, for example, are *not* covered by the proposals, though they remain covered by DISP.

## The basic approach

- 3.2 The basic approach taken in our guidance is for the firm assessing the PPI complaint to:
- consider whether it failed to comply with our rules or was otherwise in breach of the duty of care or any other requirement of the general law when selling the PPI policy; and
  - assess whether, if it were not for such failings, the customer would have taken a different course of action;

taking into account relevant materials published by the FSA, other relevant regulators, the FOS and former Ombudsmen Schemes,

so that:

- a) where the firm considers that the consumer would not have bought the policy the firm sold and would not in all probability have purchased any alternative PPI policy, the firm should cancel the policy and return the sum of all premiums and any interest on those premiums paid by the consumer – where necessary, the firm should also restructure the loan as if the policy had never been taken out;

or

- b) (for some single premium policy cases only) where the firm considers that the consumer would not have bought the policy the firm sold them but would in all probability have purchased an alternative regular premium PPI policy, the firm should:

- calculate what the consumer would have paid so far under the relevant regular premium comparator we stipulate in our guidance;
- refund the difference between this and what the consumer has actually paid in terms of the single premium and interest on it;
- offer the consumer the chance to maintain their existing policy (and its cover) to its scheduled end but now on a regular premium basis and at the price of the comparator policy we have stipulated; and
- restructure the loan (capital and interest) as if the single premium policy had never been taken out (including terminating interest payments on the original single premium and, where necessary, collecting the new regular premiums);

or

- c) where the firm considers the consumer would in any event have bought the policy the firm sold them, the firm may reasonably choose not to pay any redress, even if it had made errors at point of sale – but we expect this will be unusual.

- 3.3 Our guidance also sets out considerations about when it is reasonable for a firm to consider that scenario a), b), or c) applied to the particular sale complained of.
- 3.4 The approaches in a) and c) are familiar from many decisions taken by the FOS recently, some of which have been published by it, as representative examples.
- 3.5 Approach b) is one that the FOS has taken previously in a small number of single premium policy cases where it was possible to identify an alternative regular premium product available to the consumer which they could have chosen were it not for the sales failings by the firm. Now, to facilitate the application of this approach to relevant cases more widely and provide helpful clarity to complainants, firms and the FOS, we as regulator are proposing a single referent regular premium policy as the appropriate alternative comparator for consumers in appropriate cases.
- 3.6 We are confident this is a reasonable approach to assessing and redressing PPI sales complaints more generally. We have aimed to make it as straightforward as possible to apply. And the FOS has told us that this alternative comparator would be an appropriate basis for its own assessment of redress in relevant cases.

### **The appropriate comparator**

- 3.7 We reviewed the market for all unsecured personal loan PPI policies available between 2005 and 2009. We identified only one policy that in that period provided the most comprehensive life, accident, sickness and unemployment cover, on a standalone and regular premium basis (the overwhelming majority of the policies being single premium credit-linked ones).
- 3.8 This standalone policy offered coverage similar to that offered by the main credit-linked policies over the same period. Despite some differences, we consider that overall its quality of cover is broadly similar to those policies, and that it is

an appropriate alternative for relevant consumers. The average price of the policy since July 2005 was around £6 per £100 of benefit, so we propose to stipulate that as the referent regular premium policy price. We note the view expressed in the Competition Commission's Report that PPI pricing has been stable since 2002.

- 3.9 The guidance on maintaining the policy but at the price stipulated by us, is not a usual regulatory step<sup>2</sup> but follows necessarily from the combination of:
- the need to put back where they would have been, were it not for the failures of the firm, those complainants who were likely to have wanted and needed PPI cover, but not the single premium policy cover they were sold; and
  - the fact that most firms that sold single premium policies did not offer any regular premium policy and so cannot price the maintained cover in line with any regular premium policy of their own.
- 3.10 In the current difficult economic climate, we believe that this guidance on firms offering relevant complainants maintenance of cover will be helpful to many of these consumers.

### **Claims and their impact on redress**

- 3.11 Where the firm finds that the consumer would not have bought any PPI policy, but the firm has previously paid out on one or more claims on the policy, the firm may deduct the value of those claims from the redress it pays the consumer.
- 3.12 Where, however, the firm finds that the consumer would have bought an alternative regular premium policy, such paid claims should not be deducted from the redress, as they are merely claims on the policy the consumer would have had.
- 3.13 More generally, where a complaint raises (explicitly or implicitly) potential issues around exclusions or eligibility and their disclosure, then irrespective of whether the main focus of the complaint is on the original sale or a subsequently rejected claim, the firm should consider whether the same potential deficiency affected both the sale and the rejection of any subsequent claim, and fairly redress the consumer accordingly. This should include now paying the claim where appropriate. Where the basic redress due to the complainant is the full return of premiums, but there is also a claim to be paid, the firm should pay the larger of the premiums or the claim(s).

Q1: Do you agree the proposed approach to the assessment and redress of PPI complaints is fair and balanced and will provide fairer outcomes for more consumers?

Q2: Do you agree that the regular premium referent price we propose to stipulate is a reasonable one?

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<sup>2</sup> Note however the somewhat similar logic behind the Guidance concerning continuing life cover for mortgage endowment complaints – see DISP App 1.5.4G.

## **An alternative potential approach to paying for future cover**

- 3.14 In pre-consultation, some firms have expressed concern that, being single premium policy suppliers, their systems are not set up to collect regular premiums (as our guidance envisages for some upheld single premium complaints). They suggested therefore that instead, where the consumer chooses to retain cover, firms could withhold sufficient lump sum from the redress they owe the consumer to pay for their future regular premiums (until the end of the original policy term).
- 3.15 This proposal raises some issues – for example, the status of the consumer’s money thus retained by the firm, and the potential opportunity or interest foregone by them on this sum. It would also mean a further refund would be needed where the consumer chose subsequently to cancel their regular premium policy. Nevertheless, this may be a viable approach and we invite comments on it.

Q3: Do you consider that this alternative approach to paying for future regular premium cover would be fair to relevant consumers and practicable?

## **Guidance on the fair assessment of PPI complaints**

- 3.16 The specific proposed guidance on redress is backed up by and should be viewed in the context of the broader proposed guidance on assessing PPI complaints and considering evidence about them. While new to the Handbook, similar considerations have been set out previously in earlier regulatory comments on complaint handling (notably the two Dear CEO letters concerning mortgage endowment complaints of 2002 and 2004).
- 3.17 In essence the guidance elaborates the fundamental point that the receipt by a firm of a PPI complaint should be seen as raising an initial concern that things did not go according to procedures or script, or that these were themselves faulty, and it is that concern which needs to be taken seriously by the firm. So the firm should investigate the complaint, collect information, assess the evidence and reach a conclusion, with all this done in a fair and balanced way that gives due weight to accounts and evidence from each side, and due allowance to areas of genuine uncertainty and divergence.
- 3.18 We believe the redress guidance and evidential principles will together lead to complaints being dealt with more fairly, with the result that a greater proportion of consumers will have their complaints upheld by firms and receive redress. The overall result will be better outcomes for consumers through improved consistency of outcome and greater redress across PPI complaints as a whole.

Q4: Do you agree that the proposed guidance on the fair assessment of complaints and the evidence about them is relevant, helpful, reasonable and appropriate?

## **Complaints about PPI policies sold before 14 January 2005 (N3)**

- 3.19 Complaints about banks' and insurers' general insurance activity, including complaints about their sales of general insurance, have been covered by DISP since N2 (1 December 2001).
- 3.20 For brokers who became authorised only at N3 (14 January 2005), post-N3 complaints about pre-N3 insurance activity were made subject to DISP and the FOS *if* the broker was covered by the General Insurance Standards Council (GISC) at the time of the sale and the subject matter of the complaint would have been covered by GISC.
- 3.21 So the guidance will apply to a complaint about a pre-N3 sale provided the complaint falls within DISP as per the foregoing.
- 3.22 This is important, as firms seem to have been handling complaints about these earlier sales no better than those about later ones. For example, around half of the complaints about PPI referred to the FOS have concerned pre-N3 sales, and just as many of them are being over-turned by the FOS in favour of the consumer as for complaints about later sales.

### **The PPI complaints review rule**

- 3.23 This proposed rule reflects our concern that many rejected PPI complaints may not have received fair investigation or consideration, and therefore deserve reassessment in accordance with the proposed guidance.
- 3.24 In essence the review rule will apply to those PPI complaints that:
- fall under the scope of the guidance (as outlined above) but have not already been assessed in accordance with it; and
  - were received on or after N3 – this limits the backward extent of the review; PPI complaint numbers did not become significant until later; and
  - were rejected by the firm (but have not been referred to the FOS, nor settled by the firm on a full and final settlement basis).
- 3.25 We do not consider it would be proportionate or necessary to look to unwind cases settled with the consumer on a full and final basis. However, we would consider it of doubtful fairness and integrity on the part of a firm were it to routinely offer standard or arbitrary figures for the settlement of PPI complaints in the period before the proposed guidance comes into force, and we would be likely to investigate such behaviour where it came to our attention.
- 3.26 Our proposed rule requires the firm to pro-actively re-assess all such complaints in accordance with the proposed guidance and then promptly provide a final response to the consumer (as per DISP 1.6.2). This should set out its re-assessment and resulting decision, and make clear that the consumer has six months in which to refer their case to the FOS if they remain dissatisfied.

3.27 We propose that firms should complete their review of all such cases within 12 months of the date the review rule comes into force.

Q5: Do you agree that requiring the re-assessment of rejected PPI complaints against the proposed guidance is a fair and proportionate requirement?

Q6: Do you agree with the scope of the review rule?

## **A PPI complaint questionnaire**

3.28 Claims management companies (CMCs) offer to help consumers pursue their complaints with financial services firms and the FOS, and a number of them are currently focusing on PPI complaints. In return, the consumer has to pay the company a fee, usually a fixed share of any redress awarded for an upheld complaint. Obviously, this fee is money that the complainant can't then use to help correct the financial problem they had complained about.

3.29 Some consumers may find it helpful to use such companies. However, the obligations we impose on firms to handle complaints fairly and without charge are designed to ensure that a consumer can make a complaint and have it fairly considered without needing any third party assistance.

3.30 We note that complaints that come from some claims management companies in the form of templates (especially where these contain only brief and generic text) do not necessarily help firms make a fair and balanced consideration of the complaint. Firms should be able to seek more detail and supporting information, including contacting the customer directly to get his or her recollection of events at the point of sale.

3.31 We understand that to facilitate this, the FOS is developing during the consultation period, in conjunction with industry and consumer representatives, the design of a PPI complaint questionnaire which the FOS would generally require to be completed before a referral. This will ensure both CMCs and firms do the necessary leg work in setting out and looking into the details of the case, avoiding generic complaints and generic rejections respectively. The equivalent mortgage endowment questionnaire worked well to this effect.

3.32 We have also spoken with the Ministry of Justice, who regulate CMCs, to ensure they are aware of some poor behaviours by some CMCs active in PPI complaints.

# 4 Next steps

- 4.1 The consultation period is one month, closing on 30 October. We will review and finalise our proposals in light of the responses received, and plan to set these out in a Policy Statement by the end of December. If we proceed along the proposed lines, we will look to bring the guidance and review rule into force immediately.
- 4.2 We consider this immediate implementation to be necessary because we are concerned about detriment to complainants and believe it is important that firms make necessary changes to bring their complaint handling quickly into line with the guidance and review rule. But we also consider it to be feasible, given that we have had extensive pre-consultation and that our intention to act has been in the public domain since May of this year.

Q7: Do you agree that the immediate implementation of our proposals would be reasonable?

- 4.3 Following implementation, we will retain our focus on ensuring good outcomes for consumers through supervision of firms' compliance. We will monitor and assess this during 2010. Firms will need to be able to provide to us on request detailed management information about their progress in handling PPI complaints, in particular concerning the proportion they are upholding or rejecting, and the redress they are paying out. We will seek assurances, through our own work and potentially from skilled persons, about the robustness of the firm's complaint handling process and the extent to which our guidance has been successfully embedded in it. We would also expect to see ongoing evidence, based on sampling reviews, that such process was generating fair and compliant decisions on PPI sales complaints.
- 4.4 If we find any firm is not acting appropriately, it is likely to be referred for further investigation with a view to possible enforcement action. We will take steps to ensure the firm revisits all complaints that it has failed to deal with fairly.
- 4.5 Firms will also wish to consider their existing obligations under DISP concerning the root cause analysis of PPI complaints.<sup>3</sup> That is, in addition to handling complaints fairly, firms should be assessing the common underlying causes of those complaints

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3 DISP 1.3.3R; see also the June 2008 TCF Update which noted positive general examples where firms' root cause analysis of complaints led them to reconsider and correct their own unfair practices.

and correcting those causes. We would anticipate that for most firms this would involve improvements to their point of sale practices and to auxiliary aspects, such as the training and competence of those involved in the sales. The guidance consulted on here should help firms think constructively in this way about potential shortcomings in their PPI sales practices.

- 4.6 To that extent, root cause analysis of PPI complaints should be part of a wider reflection by firms on the full range of criticisms and concerns we have raised concerning PPI sales practices. We would expect firms to develop a clear conception and programme of the changes they intend to carry out in response.
- 4.7 In this context, we would see it as appropriate for a firm to consider whether a wider redress programme is called for, potentially including the pro-active redress of relevant PPI customers who have not complained, where for example the firm becomes aware from complaints or otherwise that it had serious deficiencies in past sales practices, either in general or in a particular sales location or medium.<sup>4</sup>
- 4.8 Accordingly, if specific and material root causes of poor or doubtful PPI sales have been identified by a firm (from its complaints or otherwise), we would expect the firm to develop a clear view of and report to us on:
- the consideration they have given to the scope and severity of the consumer detriment implied by this;
  - what pro-active redress or remediation exercises they are undertaking in response; or
  - the reasons they have for considering that it is fair and reasonable for them *not* to do such a pro-active redress exercise.
- 4.9 This is another aspect we will take a close interest in over the coming period. We are encouraged to see some firms already undertaking large scale pro-active reviews of this kind on their own initiative, and we would expect to see any other firms that are similarly placed undertaking similar action.

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4 DISP 1.3.5G states that a firm 'should have regard to Principle 6 (Customers' interests) when it identifies problems, root causes or compliance failures and consider whether it ought to act on its own initiative with regard to the position of customers who may have suffered detriment from, or been potentially disadvantaged by such factors, but who have not complained'.

# Cost benefit analysis

- 1 Sections 155 and 157 of FSMA require us to perform a cost benefit analysis (CBA) of our proposed rules and to publish the results. The purpose of a CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a proposed policy. Specifically, we are required to publish ‘an estimate of the costs together with an analysis of the benefits’.
- 2 The two main proposals we consider in this analysis are:
  - a. guidance on the fair assessment of a PPI complaint, intended to ensure that firms give a balanced and evenly weighted consideration to evidence about PPI complaints and consider them fully and in the round, and calculate fair redress where the complaint is upheld;
  - b. a ‘review rule’ requiring firms to re-assess against the guidance PPI complaints they have previously rejected.

## **Market failure analysis**

- 3 The PPI market suffered from a collection of information asymmetries at point of sale. This included but was not limited to consumers being sold PPI as part of a bundle with the credit product, so not realising it was optional, or how much it cost, and not understanding fully the cover and its exclusions.
- 4 This information asymmetry market failure contributed to the conditions in which mis-selling arose and so to the consequent emergence of issues around fair complaints handling and redress.

- 5 Our data indicates that in 2008, firms received approximately 158,000 PPI complaints<sup>5</sup>, of which they upheld around 40%. Of all PPI complaints, only around 16% were referred to the FOS of which around 80% were upheld in favour of the consumer. As only a small proportion of total PPI complaints go to the FOS, firms may not have sufficient incentives to treat complaints fairly.
- 6 Our proposals in this CP, which we expect to lead to greater redress from firms to consumers, are prompted mainly by considerations of equity (i.e. justice and fairness) and principally address the consequence of market failure. We consider that only marginally are these proposals also likely to mitigate the market failure and so bring further economic benefits beyond the benefit of fairness.<sup>6</sup>

## Cost benefit analysis

### *Benefits*

- 7 Proposal A could in principle address the market failure by making mis-selling less profitable and therefore reducing its occurrence.<sup>7</sup> However, in practice we think this effect is not likely to be large, at best bringing only marginal economic benefits. Indicative information suggests only a proportion of consumers who are mis-sold PPI products complain. Unless the proposals raise awareness of mis-selling, and they are not primarily intended for this purpose, they are unlikely to significantly reduce the potential gain to firms from mis-selling and are therefore unlikely, of themselves, to significantly reduce such activity.
- 8 Proposal B does not primarily address future mis-selling directly either. However, this proposal may send the message to firms that we are able and willing to enforce our rules rigorously, especially when coupled with appropriate supervisory and enforcement efforts. In theory, sending this message could lead to improved future compliance, but in practice we have little evidence that such an impact would be material.
- 9 Complainants who would not receive redress without our guidance or review rule will benefit from their introduction. This is simply a transfer from firms to these complainants, and not directly an overall welfare gain.

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5 Data to the FSA provided by firms representing the majority of the PPI market, including all major providers

6 Other FSA actions, like the agreement we obtained from industry in February 2009 to stop selling Single Premium Unsecured Personal Loan PPI policies, are intended to mitigate the market failure and so address the incidence of mis-selling directly.

7 Were mis-selling to reduce, economic benefits could arise through: 1) positive welfare implications for consumers from a greater proportion of more suitable products being sold; 2) greater consumer confidence potentially leading to greater participation in the financial services market; 3) a reduction in costs that would otherwise arise in the process of claiming compensation and redress.

## *Costs*

- 10 The proposed guidance supplements the current requirements in DISP, providing practical detail on the fair assessment of PPI complaints, as well as providing a clear framework for redress in relevant cases. This will provide a further platform for supervisory and enforcement action, should this prove necessary. It is expected therefore that firms will pay out more redress than they currently do as a result of our proposals.
- 11 It is difficult to precisely calculate the increase in redress that may result, but we estimate below broad ranges of possible increases. While incremental redress represents an extra cost for firms, this is a transfer to consumers and does not translate directly into an overall loss in welfare.<sup>8</sup>
- 12 Specifically, the proposals will affect regular premium policies and single premium policies in somewhat different ways. For regular premium policies, the proposed guidance is expected to lead to an increase in the number of complaints being redressed without significantly altering the average redress amount. For single premium policies, the proposed guidance is expected to lead to both an increase in the average redress amount as well as an increase in the number of complaints being redressed.
- 13 In addition, the further administrative costs borne initially by firms (which might be eventually passed onto the consumers through pricing) are a dead weight loss.

## **Proposal A**

- 14 To understand the incremental costs for firms that may arise from Proposal A, we construct a broad range based on a set of assumptions.
- 15 In 2008, as noted, firms received 158,000 PPI complaints. Our first assumption is that the annual level of complaints will remain the same. However, complaint volume could increase – at least in the next couple of years – if there is greater awareness of the issue among consumers and if more people get redressed (as people are more likely to complain if they know someone else has been successful).
- 16 Firms upheld approximately 40% of these complaints. As our second assumption, we construct a low impact scenario where Proposal A leads to a 55% uphold rate and a high impact scenario where Proposal A leads to a 70% uphold rate.
- 17 The table below summarises the potential incremental annual redress costs for the entire population of firms affected.

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<sup>8</sup> Part of redress cost increases for firms might be passed on through price increases to its customers or other customers of firms.

**Table 1 Estimation of incremental redress costs**

	SP	RP	SP and RP (summed or averaged as appropriate)
Number of PPI complaints to firms p.a (a)	79,000 <sup>9</sup>	79,000	158,000 <sup>10</sup>
<b>Current</b>			
Average firm redress per upheld complaint (b)	£570	£160	£365 <sup>11</sup>
% of complaints upheld by firms (c)	40%	40%	40% <sup>12</sup>
Firm redress total (d=a*b*c)	£18m	£5m	£23m
<b>Low impact scenario of new guidance</b>			
Average firm redress per upheld complaint	£1700 <sup>13</sup>	£160	£930
% of complaints upheld by firms	55%	55%	55%
Firm redress total	£74m	£7m	£81m
<i>Incremental redress total: Low impact-current</i>	<i>£56m</i>	<i>£2m</i>	<i>£58m</i>
<b>High impact scenario of new guidance</b>			
Average firm redress per upheld complaint	£1700	£160	£930
% of complaints upheld by firms	70%	70%	70%
Firm redress total	£94m	£9m	£103m
<i>Incremental redress total: High impact-current</i>	<i>£76m</i>	<i>£4m</i>	<i>£80m</i>

- 18 In addition, firms currently also paid out about £22m of redress for cases adjudicated by the FOS in favour of complainants. We expect the redress amount through this avenue to be lower as a result of our proposals as increased upheld rates by firms could lead to fewer cases being overturned by the FOS. It is difficult to estimate the degree by which redress payments through this avenue might reduce and we have not adjusted for this in our cost calculation. Our calculations of incremental redress are therefore likely to be over-estimates.
- 19 It is possible that firms face some incremental costs from expending more resources to now deal better with these complaints than they would have done previously. As this is uncertain and could be off-set by less case fees if (as we anticipate) volumes of cases to the FOS reduce, we have crudely assumed that one cancels out the other.
- 20 In total therefore, without adjusting for the potential reduction in redress cost from fewer cases being overturned by FOS, if our new guidance has a low impact, we estimate, based on the assumptions above, incremental annual redress costs of

<sup>9</sup> We assume that complaints to firms have the same split as those to the FOS.

<sup>10</sup> Firms' report to the FSA

<sup>11</sup> Estimate based on firms' report to the FSA

<sup>12</sup> Firms' report to the FSA

<sup>13</sup> FSA estimate: 50% SP cases will be at £2000, the other 50% SP cases will be at £1400 (£6/£20\*£2000=£1400), where the £20 is the central market price for single premium per £100 cover in the last decade (source: Defaqto), and the £6 is the equivalent regular premium referent the proposal stipulates.

around £58m for the entire population of firms affected. If our new guidance has a high impact, we estimate, this number may be around £80m.

- 21 It is important to remember that the incremental £58 – 80m per year cost the proposal may impose on firms is a transfer to consumers, compensating them for mis-sold policies, and does not translate directly into an overall loss in welfare.
- 22 We would not expect this annual incremental redress to continue indefinitely. The Competition Commission (CC) proposal for the prohibition on the sale of single premium PPI policies is expected to come into force in October 2010. We would expect the bulk of complaints regarding single PPI policies sold up to that time to have been made and dealt with by perhaps four or five years after prohibition comes into effect.

## Proposal B

- 23 To understand the incremental costs for firms that may arise from Proposal B, we construct a range based on the assumptions used above and some further information particular to this issue.
- 24 Since January 2005 there have been around 415,000 PPI complaints, of which we estimate 248,000 were rejected by firms. In this period the FOS received around 63,000 cases, suggesting that approximately 185,000 PPI complaints rejected by firms will fall within the scope of our proposed review rule and so need to be re-opened and reassessed against our guidance.
- 25 Using the same low and high impact scenarios (firm uphold rates of 55% and 70% respectively), 61k<sup>14</sup> to 124k<sup>15</sup> previously rejected complaints ought potentially to be upheld by firms in the review. Employing the £930 redress per upheld case assumed above suggests a one-off transfer of £57m – £115m from firms to complainants.
- 26 In addition there will be administrative costs associated with reviewing the 185,000 PPI complaints firms will have to reassess. We estimate it will cost firms £200 to reassess each case<sup>16</sup>, indicating the policy imposes a one-off administrative cost to industry of £37m. There might also be potential costs of FOS fees if some reassessed cases are referred to the FOS by complainants.<sup>17</sup>

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14  $415,000 * 55\% - (415,000 - 248,000) = 61K$

15  $415,000 * 70\% - (415,000 - 248,000) = 124K$

16 In previous Pensions and AVC mis-selling episodes the ratio of administrative costs for firms to redress costs was about 1/6<sup>th</sup> to 1/4<sup>th</sup>. We consider the ratio of administrative costs to redress costs should be lower in the PPI case because firms will be reviewing rejected complaints rather than reviewing sales from scratch. Our £200 administration cost estimate per case is just over 1/5<sup>th</sup> of our estimated average redress.

17 FOS fee per case is £500. A scenario in which there were 10,000 additional referrals to the FOS, for example would imply further one off costs through case fees to firms of £5m.



# Compatibility statement

- 1 This annex sets out our assessment of the compatibility of our proposals with our general duties under section 2 of FSMA and with our four statutory objectives.

## **Compatibility with our statutory objectives**

### *Market confidence*

- 2 Our proposed guidance and review rule may increase confidence in consumers who complain about PPI sales receiving fair and balanced consideration of their complaint and fair and consistent redress where appropriate.

### *Consumer protection*

- 3 The enforcement of consistent complaint handling will provide a minimum standard for assessing complaints and where appropriate redressing them. This could protect consumers from having their complaints unfairly rejected, or from receiving inadequate redress, or from having to pursue their case through the FOS.

### *Promoting public awareness*

- 4 Our proposals are not specifically aimed at this objective, but may contribute to enhancing public awareness of the redress mechanisms available concerning retail financial services.

### *Reducing financial crime*

- 5 Our proposals are not aimed at this objective, nor directly relevant to it.

## **Principles of good regulation**

- 6 Section 2(3) of FSMA requires that, in carrying out our general functions, we have regard to the specific matters set out below.

*The need to use our resources in the most efficient and economic way*

- 7 The handbook solution supplements the current requirements in DISP, providing practical detail on the standards we expect firms to be applying, as well as providing a clear framework for redress in relevant cases. This will provide a further platform for supervisory and enforcement action, should this prove necessary, and thereby make easier and quicker the pursuit of any firms that seem not to be handling complaints fairly.

*The responsibilities of those who manage the affairs of authorised persons*

- 8 Our Handbook solution is designed to ensure maximum clarity for those tasked with understanding and applying the existing DISP rules in their firms.

*The principle that a burden or restriction which is imposed on a person, or on the carrying out of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction*

- 9 As detailed in Annex 1, the transfer from firms is equal to the redress to consumers with valid mis-selling complaints, and therefore proportionate to the detriment those consumers have suffered.
- 10 Additional administration costs of the review rule are a dead weight loss, but these are a minor part of the incremental costs firms are expected to face. Further, though marginal, there may also be economic benefits from some reduction in mis-selling.

*The need to minimise the adverse effects on competition that may arise from anything done in the discharge of those functions*

- 11 The application of the guidance and review rule applies to all firms in the PPI market and therefore will not have a significant effect on competition. The guidance on firms continuing the single premium policy as a regular premium price with a premium rate stipulated by the regulator could bring an earlier end to the sale of single premium PPI policies.<sup>18</sup> The Competition Commission (CC) proposes that the prohibition on the sale of single premium policies comes into force in October 2010.

*Acting in a way which we consider most appropriate for the purpose of meeting our statutory objectives*

- 12 The proposals meet our objectives more effectively than the other options we have considered. In particular, they will help provide sufficient assurance about the assessment and redress of consumers with valid complaints about PPI sales.

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18 The potential redress (for some single premium policy complaints) based on a stipulated regular premium rate, combined with the impending CC measures, could lead some firms to conclude it is not worthwhile to continue selling single premium policies.

# List of questions consulted on

- Q1: Do you agree the proposed approach to the assessment and redress of PPI complaints is fair and balanced and will provide fairer outcomes for more consumers?
- Q2: Do you agree that the regular premium referent price we propose to stipulate is a reasonable one?
- Q3: Do you consider that this alternative approach to paying for future regular premium cover would be fair to relevant consumers and practicable?
- Q4: Do you agree that the proposed guidance on the fair assessment of complaints and the evidence about them is relevant, helpful, reasonable and appropriate?
- Q5: Do you agree that requiring the re-assessment of rejected PPI complaints against the proposed guidance is a fair and proportionate requirement?
- Q6: Do you agree with the scope of the review rule?
- Q7: Do you agree that the immediate implementation of our proposals would be reasonable?



Draft handbook text

**DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE)  
INSTRUMENT 2009**

**Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions in or under:
- (1) the following provisions of the Financial Services and Markets Act 2000 (“the Act”):
    - (a) section 138 (General rule-making power);
    - (b) section 156 (General supplementary powers);
    - (c) section 157(1) (Guidance); and
    - (d) paragraph 13 (Authority’s procedural rules) of Schedule 17 (The Ombudsman Scheme); and
  - (2) article 9 (Record-keeping and reporting requirements relating to relevant transitional complaints) of the Financial Services and Markets Act 2000 (Transitional Provisions) (Complaints Relating to General Insurance and Mortgages) Order 2004 (SI 2004/454).
- B. The rule-making powers referred to above are specified for the purpose of Section 153(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on 1 January 2010.

**Amendments to the Handbook**

- D. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

**Citation**

- E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) Instrument 2009.

By order of the Board

[            ] 2009

## Annex

### Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### Introduction

...

#### **Appendix 2: FSA's guidance on handling payment protection insurance complaints**

This appendix contains the FSA's guidance to firms on handling complaints relating to the sale of payment protection contracts.

...

#### **1.4 Complaints resolution rules**

...

Payment protection contracts: special provisions

1.4.6      G      DISP App 2 contains guidance to respondents on the approach to assessing complaints relating to the sale of payment protection contracts and to determining appropriate redress where a complaint is upheld.

1.4.7      R      A respondent must re-assess in accordance with the complaints resolution rules any complaint relating to a payment protection contract that meets all of the following criteria (a "re-opened complaint"):

- (1) the complaint was received on or after 14 January 2005;
- (2) the complaint concerned the sale of a payment protection contract, such as (but not limited to) those matters described in the examples in DISP App 2, but not solely administrative matters such as delays in claims handling;
- (3) before 1 January 2010 the respondent:
  - (a) sent the complainant a final response; or
  - (b) sent the complainant a written response in accordance with DISP 1.6.2R or DISP 1.6.5R, or a response as referred to in DISP 1.6.4R; or

(c) did not send either a *final response* or a response of the kind described in (b) by the end of eight weeks after its receipt of the *complaint*;

(4) the *complaint* was not:

(a) rejected by an application of the *complaints time barring rule*; or

(b) resolved in final settlement with the complainant; and

(5) the complainant did not refer the *complaint* to the *Financial Ombudsman Service*.

1.4.8 R Where assessing a re-opened *complaint*, only the *complaints handling rules*, the *complaints resolution rules* and *DISP 1.9.2R* (the relevant complaints record rule) apply.

1.4.9 R A *respondent* must issue a *final response* for every re-opened *complaint* by 31 December 2010 which sets out prominently within the text of that *final response* that if the complainant remains dissatisfied with the *respondent's* response, he may now refer his *complaint* to the *Financial Ombudsman Service*. The *rules* on referring *complaints* to the Ombudsman (*DISP 2.8*) apply in relation to this *final response*.

### **Complaints record ~~rule~~ rules**

#### General rule

1.9.1 R ...

#### Payment protection contracts: re-opened complaints

1.9.2 R A *firm* must keep a record of each re-assessment of a *complaint* relating to the sale of a *payment protection contract* (see *DISP 1.4.7R*) and the measures taken for the re-assessment and resolution of the *complaint*, and retain that record for at least three years from the date it issued a *final response*.

DISP Sch 1 Record keeping requirements

DISP Sch 1.1 G

...

DISP Sch 1.2 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...				
<i>DISP 1.9.2R</i>	Re-assessment of a <i>complaint</i> relating to the sale of a <i>payment protection contract</i> (under <i>DISP 1.4.7R</i> ).	The measures taken for the re-assessment and resolution of the <i>complaint</i> .	Not specified.	3 years from the date of issue of the <i>final response</i> .

Insert the following new Appendix after DISP Appendix 1. The text is not underlined.

## **Appendix 2 Handling Payment Protection Insurance Complaints**

### **2.1 Introduction**

- 2.1.1 G This appendix sets out the approach and standards which *firms* should use when investigating *complaints* relating to the sale of a *payment protection contract* and for determining appropriate redress where a *firm* upholds a *complaint*. It is primarily concerned with how the *firm* should assess a *complaint* and how the *firm* should determine what redress is appropriate to offer to a complainant in circumstances where the *firm's* investigation of a *complaint* concludes that:
- (1) the *firm's* conduct of the sale failed to comply with the *rules* or was otherwise in breach of the duty of care or any other requirement of the general law; and
  - (2) if the *firm's* conduct of the sale had complied with the *rules* and not been in breach of the duty of care or any other requirement of the general law, then either:
    - (a) the complainant would not have bought a *payment protection contract*; or
    - (b) the complainant would have bought a different type of *payment protection contract* to the one he bought;
- taking into account relevant materials published by the *FSA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*.
- 2.1.2 G There may also be cases where a *firm* will conclude after investigation that, notwithstanding any failings on the part of the *firm*, the complainant would nevertheless have proceeded to buy the *payment protection contract*, in which case no redress will be due (subject to the assessment of any claims).
- 2.1.3 G While the *FSA's* expectation is that *firms* will follow the approach and standards set out in this appendix, *firms* may take an alternative approach, provided that the outcome for complainants is at least commensurate with the outcome that would result from following the approach described in this appendix.
- 2.1.4 G It is not expected that all *complaints* will be covered by the types of failings described in this appendix. Where issues raised by the *complaint*

are not expressly covered by this appendix, a *firm* should resolve the *complaint* in a way that is consistent with the provisions in this appendix and the *firm's* obligations under the *FSA's rules*, including the *Principles*, and treat the complainant fairly.

2.1.5 G Where a *complaint* is made, a *firm* should proactively consider all the *payment protection contract* sales for which the *firm* was responsible in relation to that particular complainant. This is likely to be of particular importance if a *firm* refinances an existing loan, cancels an existing single premium *policy* and sells the complainant a new single premium *policy*.

2.1.6 G For the purposes of this appendix, a “claim” is a claim by a complainant seeking to rely upon the *policy* under a *payment protection contract*.

## **2.2 The assessment of a complaint**

2.2.1 G The *firm* should consider, in the light of all the information provided by the complainant and otherwise already available to the *firm*, whether the *firm's* conduct of the sale failed to comply with the *rules* or was in breach of the duty of care owed to the complainant or any other requirement of the general law, taking into account relevant materials published by the *FSA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*.

2.2.2 G The *firm* should seek to establish the true substance of the *complaint*, rather than taking a narrow interpretation of the issues raised. The *firm* should not focus solely on the specific nature of a *complaint*. This is likely to require an approach to *complaint* handling that seeks to clarify the nature of the *complaint* (e.g. through asking the complainant for further information).

2.2.3 G If during the assessment of the *complaint* the *firm* uncovers evidence of sales failures not raised in the *complaint*, the *firm* should investigate those other aspects as if they were part of the *complaint*.

2.2.4 G Where a *complaint* raises (expressly or otherwise) issues that may relate to the original sale or a subsequently rejected claim then, irrespective of the main focus of the *complaint*, the *firm* should pro-actively consider whether the issues relate to both the sale and the claim and assess the *complaint* and determine redress accordingly.

2.2.5 G A *firm* may need to contact a complainant directly to understand fully the issues raised, even where the *complaint* has been received from a third party acting on the complainant's behalf. The *firm* should not use such contact to delay the assessment of the *complaint* and should limit its contact with the customer to that which is strictly necessary.

2.2.6 G The *firm* should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the *firm* through other means, for example, the root cause analysis described in *DISP* App 2.4G.

## 2.3 The approach to considering evidence

- 2.3.1 G Where a *complaint* is made, the *firm* should investigate the *complaint* fairly, giving appropriate weight to what the *complainant* says and other information about the sale established by the *firm*.
- 2.3.2 G The *firm* should not solely rely on the detail within the wording of a *policy's* terms and conditions to reject what a complainant recalls was said during the sale.
- 2.3.3 G The *firm* should recognise that oral evidence may be sufficient evidence and not dismiss evidence from the complainant which is not supported by documentary proof.
- 2.3.4 G The *firm* should not draw any negative inference from a complainant not having kept documentation for any particular period of time.
- 2.3.5 G Where the complainant's account of events conflicts with the *firm's* own records or leaves doubt, the *firm* should assess the reliability of the complainant's account fairly and in good faith. The *firm* should make all reasonable efforts (including by contact with the complainant where necessary) to clarify ambiguous issues or conflicts of evidence before making any finding against the complainant.
- 2.3.6 G The *firm* should not reject a complainant's account of events solely on the basis that the complainant signed relevant documentation regulating the purchase of the *policy*.
- 2.3.7 G The *firm* should not reject a *complaint* because the complainant failed to exercise the right to cancel.
- 2.3.8 G In determining a particular *complaint*, the *firm* should give more weight to the specific evidence of what happened during the sale than to the general evidence of selling practices at the time, such as training, instructions or sales scripts. A *firm's* disclosure of details of a *policy* at the time of the sale should carry more weight than providing material to the *complainant* after the decision to buy the *policy*.
- 2.3.9 G The *firm* should not assume that because it was not authorised to give advice (or it intended to sell without making a recommendation) that it did not in fact give advice in a particular sale. The *firm* should consider the available evidence and make a fresh assessment about whether or not it gave advice or made a recommendation to the complainant.
- 2.3.10 G In considering the information made available to the customer at the time of the sale, the evidence to which a *firm* should have regard includes:
- (1) whether the documentation provided to the complainant was sufficiently clear and 'user friendly' (for example, was the documentation in plain and intelligible language?);

- (2) whether the complainant was given a reasonable opportunity to understand what was being sold to him (for example, was the complainant pressured, or was the documentation passed to the complainant for signature without sufficient explanation?);
- (3) any extra explanation or information given by the *firm* in response to questions raised (or information disclosed) by the complainant; and
- (4) any evidence about the tone and pace of oral disclosure (for example, was it read out too quickly for the complainant to have understood it?).

2.3.11 G The *firm* should consider the complainant's individual circumstances at the time of the sale. For example, the *firm* should take into account any limited financial capability or understanding on the part of the complainant.

2.3.12 G The *firm* should take account of a complainant's limited ability fully to articulate his *complaint* or to explain his actions or choices made at the time of the sale.

## 2.4 Root cause analysis

2.4.1 G If a *firm* receives *complaints* about its sales of *payment protection contracts* it should analyse the root causes of those complaints including, but not limited to, the consideration of:

- (1) the concerns raised by complainants (both at the time of the sale and subsequently);
- (2) the reasons for both rejected claims and *complaints*;
- (3) the *firm's* stated sales practice at the relevant time(s);
- (4) evidence available to the *firm* about the actual sales practice(s) at the relevant time(s) (this might include recollections of staff and complainants, compliance records, and other material produced at the time about specific transactions, for example call recordings and incentives given to *advisers*);
- (5) relevant regulatory findings;
- (6) relevant decisions by the *Ombudsman*; and
- (7) the *firm's* present knowledge of the intentions and actions of the relevant directors, *employees* or other agents at the time.

2.4.2 G Where consideration of the root causes of *complaints* suggest recurring or systemic problems in the *firm's* sales practices, the *firm* should, in assessing an individual *complaint*, consider whether the problems identified led to a failure in the individual case, even if not referred to

specifically by the complainant.

## 2.5 The approach to redress

- 2.5.1 G The approach to redress applies to:
- (1) advised and non-advised sales;
  - (2) *policies* sold face-to-face, by telephone, internet and post;
  - (3) single premium, regular premium and revolving credit *policies*; and
  - (4) *policies* in force, *policies* that were cancelled during the term and *policies* that ran full term.
- 2.5.2 G The approach to redress recognises that if the *firm*'s conduct of the sale had complied with the *rules* and any duty of care or any other requirement of the general law then, in many cases, it is likely that the complainant would not have taken any *payment protection contract*. Additionally, in the specific circumstances described below (see *DISP* App 2.5.7G) it may be assumed that the complainant would have purchased an alternative *payment protection contract*.
- 2.5.3 G In the absence of evidence to the contrary, the *firm* should assume for all *payment protection contracts* that the complainant would not have purchased any *payment protection contract* if the *firm* was in breach of the *rules* or any duty of care or any other requirement of the general law with the result that the complainant was, for example:
- (1) pressured into purchasing the *payment protection contract*;
  - (2) not made aware that the *policy* was optional;
  - (3) not made aware at the time of the sale that he was being sold a *payment protection contract* or that he was being sold a *contract of insurance* at all;
  - (4) not made aware at the relevant time that the *policy* did not meet his needs, including because of a significant exclusion or limitation that was of direct relevance to his circumstances at the time, and such knowledge would have materially impacted his ability to make a reasonable evaluation of the *payment protection contract*; or
  - (5) ineligible to claim under the whole or a material part of the cover and the *firm* failed to take reasonable steps to ensure this was not the case.
- 2.5.4 G Where the *firm* concludes that the complainant would not have purchased any *payment protection contract*, the refund payable by the *firm* to the complainant is the total amount paid by the complainant in respect of the *payment protection contract* (plus interest), less any claims paid by the *firm*, subject to *DISP* App 2.5.10G and *DISP* App 2.5.11G.

- 2.5.5 G If the complainant has received any rebate from the *policy*, for example if the customer cancelled a single premium *payment protection contract* before it ran full term and received a refund, the *firm* may deduct the value of this rebate from the refund otherwise payable to the complainant.
- 2.5.6 G The *firm* should explain clearly to the complainant the basis for the redress offered and how any refund has been calculated.

**Additional considerations for single premium payment protection contracts**

- 2.5.7 G For single premium *payment protection contracts* the *firm* should, where none of the circumstances apply to assume the complainant would not have purchased a *policy* (see *DISP* App 2.5.3G), consider whether the *firm* was in breach of the *rules* and any duty of care or any other requirement because:
- (1) the complainant had a need for flexibility, e.g. to refinance the loan or re-pay it early and this was not properly taken into account; or
  - (2) the cancellation terms were non-pro rata and this was not disclosed appropriately to the complainant; or
  - (3) the complainant was not told that interest was payable on the *payment protection contract* premium; or
  - (4) for any other reason the *policy* did not meet the complainant's needs;
- and, if so, the *firm* should assume that instead of buying the single premium *payment protection contract* he bought, the complainant would have purchased an alternative regular premium *payment protection contract* unless:
- (5) the *firm* can demonstrate that the complainant would still have bought the single premium *payment protection contract* he bought, even if the sale had been conducted properly, in which case no redress will be due; or
  - (6) the evidence indicates that the complainant did not have a need for a *policy*, or if properly informed would not have wanted a *policy*, in which case the *firm* should conclude that the complainant would not have purchased any *payment protection contract* and determine redress accordingly (see *DISP* App 2.5.4G).
- 2.5.8 G In determining what the complainant would have done (for the purposes of *DISP* App 2.5.7G (5)), the *firm* should assume that the complainant would have been aware that *payment protection contracts* were available from other *firms* without the need to agree to a different loan arrangement.
- 2.5.9 G If the *firm* decides that a complainant would have purchased an alternative regular premium *payment protection contract*:

- (1) the *firm* should, for the purposes of calculating the refund, use the value of £6 per £100 of cover as the comparative price of the alternative regular premium *payment protection contract*;
- (2) the refund payable by the *firm* to the complainant is the difference between the total amount actually paid by the complainant in respect of the *payment protection contract* and the amount he would have paid if he had taken the alternative regular premium *payment protection contract*;
- (3) where the complainant expressly wishes it, cover is to continue until the end of the existing *policy* term, with the complainant paying the price indicated in (1) and able to cancel at any time; and
- (4) the *firm* should not deduct the value of any paid claims from the refund.

### **Assessment of claims**

2.5.10 G Where a *complaint* has been made about a *policy*, in respect of which a claim has been rejected, the *firm* should determine whether during the sale:

- (1) the *firm* failed to disclose appropriately an exclusion or limitation later relied on to reject the claim; or
- (2) the *firm* failed to take reasonable steps to establish the complainant's eligibility to claim on the *policy*, if ineligibility of the complainant was later relied on to reject the claim;

and if either of these circumstances apply, the *firm* should in assessing the *complaint* consider the claim as if such reliance had not been placed.

2.5.11 G Where the *firm* re-considers a previously-rejected claim and concludes that redress is payable in respect of the claim, then:

- (1) if the value of the claim is less than the amount of the refund otherwise payable to the complainant in accordance with the principles in this appendix the *firm* may disregard it; and
- (2) if the value of the claim exceeds the amount of the refund otherwise payable to the complainant in accordance with the principles in this appendix the *firm* should pay to the complainant only the value of the claim (and interest as appropriate).

## **2.6 Payment of interest and restructuring of loan payments**

2.6.1 G In this appendix, the term "historic interest" means the interest the complainant paid to the *firm* because a single premium *payment protection contract* was added to the credit product.

2.6.2 G Where the *firm* determines that a refund is payable to the complainant (which may include an amount in respect of historic interest), it should

include simple interest on that refund at a rate of 8% per annum from the date on which the complainant made a relevant payment to the *firm*.

- 2.6.3 G In the case of a single premium *payment protection contract* any historic interest should be added to the refund where payable and the *firm* should also restructure the loan payments or account and take any other action necessary to place the complainant back in the position he would have been in if he had not purchased the *payment protection contract*.

2.7 **Examples**

- 2.7.1 G Table of examples of typical refund calculations

Example 1	Complainant would not have purchased any <i>payment protection contract</i> - the loan and the <i>payment protection contract</i> are in force
Example 2	Complainant would not have purchased any <i>payment protection contract</i> - the loan and the <i>payment protection contract</i> ran the full term
Example 3	The complainant would have purchased an alternative regular premium <i>payment protection contract</i> at the outset – the loan and <i>payment protection contract</i> are in force
Example 4	A claim was rejected, relying on an exclusion that the <i>firm</i> failed to disclose - the loan and the <i>payment protection contract</i> ran the full term.

- 2.7.2 G **Example 1 Complainant would not have purchased any payment protection contract - the loan and the payment protection contract are in force**

As described in *DISP* App 2.5.4G, the refund is the return of all payments made on the *payment protection contract* to date (plus any historic interest) and 8% simple interest on each monthly payment, from the time each payment was made to the time the refund is paid.

<b><u>Loan and policy details:</u></b>	
Monthly loan payment	£200
Monthly amount of <i>payment protection contract</i> payments	£50
Term of <i>policy</i> (in months)	60
Number of monthly <i>payment protection contract</i> payments to date	20

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**Calculation of refund:**

Refund of total *payment protection contract* payments (£50 x 20 months) £1,000

8% p.a. simple interest on each payment since the month it was made, calculated as:

- Interest on first payment made =  $£50 \times 8\% \times 20/12$  (8% annual simple interest on £50 payment over 20 months) plus
- Interest on second payment made =  $£50 \times 8\% \times 19/12$  (etc)
- Total interest =  $£50 \times 8\% \times (20 + 19 + \dots + 2 + 1)/12$

Total interest £70

**Total refund £1,070**

The loan payments must be restructured as if the *payment protection contract* never existed and the future loan repayments are £200 for the remainder of the term of the loan.

2.7.3

**G Example 2 Complainant would not have purchased any payment protection contract - the loan and the payment protection contract ran the full term**

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As described in *DISP* App 2.5.4G, the refund is a full return of all payments made in respect of the *payment protection contract* over its term (plus any historic interest), and 8% simple interest on each monthly payment, from the time each payment was made to the time the refund is paid.

**Loan and policy details:**

Monthly amount of *payment protection contract* payments £50

Term of *policy* (in months) 60

Period to date (in months) 72

**Calculation of refund:**

Refund of total *payment protection contract* payments £3,000

(£50 x 60 months)

8% p.a. simple interest on each payment, calculated as:

- Interest on first payment made =  $£50 \times 8\% \times 72/12$   
(8% annual simple interest on £50 payment over 72 months (time since payment was made)) plus
- Interest on second payment made =  $£50 \times 8\% \times 71/12$  (etc)
- Total interest =  $£50 \times 8\% \times (72 + 71 + \dots + 14 + 13)/12$   
(Final payment on the loan was made 13 months ago)

Total interest £850

**Total refund £3,850**

2.7.4

**G Example 3 The complainant would have purchased an alternative regular premium payment protection contract at the outset – the loan and the payment protection contract are in force**

As described in *DISP* App 2.5.9G, the refund is the difference between the payments in respect of the *payment protection contract* (plus any historic interest) and the payments that would have been made under the alternative regular premium product with 8% simple interest on this amount, from the time each payment was made to the time the refund is paid.

**Loan and policy details**

Monthly loan payment	£200
Price of monthly <i>payment protection contract</i> payments	£50
Term of <i>policy</i> (in months)	60
Monthly <i>payment protection contract</i> payments to date	20

**Difference between the price of the policy purchased and the price of the alternative policy:**

Price per £100 of alternative regular premium <i>payment protection contract</i>	£6
Resulting monthly price for current loan (based on £200 monthly loan repayments)	£12
Monthly difference between actual (£50) and alternative	£38

(£12) monthly payments

**Calculation of refund:**

Refund of total difference in *payment protection contract* payments (£38 difference x 20 months) £760

8% p.a. simple interest on difference between actual and alternative price for each payment, calculated as:

- Interest on first month's payment =  $£38 \times 8\% \times 20/12$  (8% annual simple interest on £38 payment over 20 months) plus
- Interest on second month's payment =  $£38 \times 8\% \times 19/12$  (etc)
- Total interest =  $£38 \times 8\% \times (20 + 19 + \dots + 2 + 1)/12$  £53

Total interest

**Total refund £813**

In this example, the loan payments needs to be restructured, so that the complainant's future loan repayments are £200 each month for the remainder of the term of the loan.

Regular premium cover should be provided for the remaining term of the loan at the comparative cost of £12 (based on the reference price of £6 per £100 of cover, applied to the monthly loan repayments of £200).

2.7.5

**G Example 4 A claim was rejected, relying on an exclusion that the firm failed to disclose – the loan and the payment protection contract ran the full term**

As described in *DISP* App 2.5.12G redress is the greater of:

- (1) The refund which would be paid as a refund of all payments made by the complainant for the *policy* (plus any historic interest), with 8% simple interest on each payment; and
- (2) The value of the claim, plus 8% simple interest from the date each payment on the claim would have been made to the date the refund is paid.

**Loan and policy details:**

Monthly loan payment £200

Price of monthly <i>payment protection contract</i> payments	£50
Term of <i>policy</i> (in months)	60
Period to date (in months)	72

**1. Calculation of the refund otherwise payable (all payments returned with 8% simple interest):**

Refund of total <i>payment protection contract</i> payments (£50 x 60 months)	£3,000
8% p.a. simple interest on each payment since the month it was made (calculation as per Example 2)	£850

**Total refund for return of payments with interest      £3,850**

**Particulars of the claim:**

Time since the first payment that would have been covered by the claim (in months)	30
Monthly amount of claim	£250

**Scenario 1: Duration of the claim is 6 months**

2. Calculation of the value of the claim:

Unemployment/Accident/Sickness period (in months)	6
Total value of the claim (£250 x 6 months)	£1,500

8% simple interest on each payment, calculated as:

- Interest on first month's claim =  $£250 \times 8\% \times 30/12$   
(8% annual simple interest on £250 claim over 30 months  
(time elapsed since the first payment that would have been  
covered by the claim) plus
- Interest on second payment made =  $£250 \times 8\% \times 29/12$   
(etc)
- Total interest =  $£250 \times 8\% \times (30 + 29 + \dots + 26 + 25)/12$   
(Last claim on the *policy* would have been made 25  
months ago)

Total interest	£275
Total refund representing payment of claim	£1,775
Refund representing payment of the claim is less than the refund of <i>payment protection contract</i> payments with interest.	
As described in <i>DISP</i> App 2.5.12G, the refund is the value of the <i>payment protection contract</i> payments with interest.	
<b>Total refund is</b>	<b>£3,850</b>

### Scenario 2: Duration of the claim is 18 months

<u>2. Calculation of the value of the claim:</u>	
Unemployment/Accident/Sickness period (in months)	18
Total claims on the <i>policy</i> (£250 x 18 months)	£4,500
8% simple interest on each payment, calculated as:	
<ul style="list-style-type: none"> <li>Interest on first month's claim = <math>£250 \times 8\% \times 30/12</math> (8% annual simple interest on £250 claim over 30 months (time elapsed since date of claim))</li> <li>Interest on second payment made = <math>£250 \times 8\% \times 29/12</math></li> <li>Total interest = <math>£250 \times 8\% \times (30 + 29 + \dots + 14 + 13)/12</math> (Last claim on the <i>policy</i> would have been made 13 months ago)</li> </ul>	£645
Total interest	
Total refund representing payment of claim	£5,145
Refund representing payment of the claim is greater than the refund of <i>payment protection contract</i> payments with interest.	
As described in <i>DISP</i> App 2.5.11G, the refund is determined as payment of an amount equivalent to that which would have been payable by the insurer had the claim been accepted plus interest at 8%.	
<b>Total refund is</b>	<b>£5,145</b>



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