



Stephen Haddrill, ABI
Chris Cummings, AIFA
Paul Smee, UK Payments Administration
Angela Knight, BBA
Eric Galbraith, BIBA
Adrian Coles, BSA
Michael J Coogan, CML
Stephen Sklaroff, FLA

COMMON POINT OF SALE FAILINGS FOR PPI SALES

Today the FSA has published a consultation paper on new rules and guidance for the proper handling of PPI complaints. In pre-consultation with stakeholders on these proposals and from our on-going supervisory work with firms and other intelligence we have become concerned that one reason many firms are not handling PPI complaints correctly is because they are not applying the appropriate standards for the sale of this product. This is despite our having repeatedly reminded firms of these standards in numerous speeches, thematic reports and other publications over recent years. In order to remind your members of the appropriate standards, we have set out, in the appendix to this letter, common failings at the point of sale which result in poor outcomes for consumers. These failings have come to our attention, through thematic work, mystery shopping, and enforcement actions. They are not intended to be exhaustive.

As I am sure you will agree, there is no excuse for these failings and we will continue to take robust action – including disciplinary and other formal action as appropriate – when we identify them.

The FSMA regulatory framework covering the sale of general insurance commenced on 14 January 2005, so our Principles for Business and conduct of business rules have applied to PPI sales made on or after that date. In the FSA's view, the general principles of fair conduct by firms when selling PPI before 14 January 2005 have much in common with our standards after this date (see, for example, relevant extracts from GISC and ABI codes set out in the appendix). Firms should have regard to the list of failings when considering their point of sale obligations for earlier sales, including in the context of assessing complaints about such sales.

Yours sincerely

Christina Sinclair
Head of Department
Retail Policy and Conduct Risk Division

COMMON TYPES OF FAILINGS IN PPI SALES

Failings in the conduct of the sale

The firm:

- pressured the customer into taking a payment protection contract; or
- assumed the customer would want the payment protection contract from the outset (e.g. by automatically including it in a loan quotation); or
- led the consumer to believe that the payment protection contract *had* to be taken in order to obtain the loan (or other goods or services) or *would improve* his prospects of doing so; or
- made the sale without the customer's explicit agreement to purchase the payment protection contract.

The firm did not disclose to the customer, in good time before the sale was concluded and in a way that was clear, fair and not misleading, that:

- the payment protection contract was optional; or
- the purchase of the payment protection contract involved the purchase of an insurance policy; or
- the customer could cancel the policy without penalty within the cooling-off period or the duration of the cooling off period.

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to make these disclosures orally. *NB In addition, the current insurance conduct of business rules specifically state that, if a firm provides information orally during a sales dialogue with a customer on a main characteristic of a policy, it must do so for all the policy's main characteristics.*

The firm did not explain whether it was selling on an advised or non advised basis.

Where seeking to sell on a non-advised basis, the firm:

- failed to make it clear it was only providing information on the policy; or
- gave advice to the customer regarding the policy (e.g. expressed an opinion on the merits of the policy).

The firm did not provide the written documents required under the FSA's rules (such as, for example, a policy summary, statement of price, or statement of demands and needs). A list of the relevant documents is set out in the FSA Handbook, as are the timescales for providing the documents and, where relevant, the need to stress to the customer the importance of reading the material. Providing written documents does not replace the need to disclose information orally.

Failings around eligibility and exclusions and limitations

The firm did not take reasonable steps to ensure the customer only bought a policy for which he was eligible.

The firm provided misleading or inaccurate information (for example, orally) about the PPI policy.

The firm failed to explain to the customer in a way that was clear, fair and not misleading, in good time before the sale was concluded, the significant exclusions and limitations that would tend to affect the decisions of customers generally to buy the payment protection insurance. In an advised sale, the firm should also have disclosed any exclusions and limitations which were particularly relevant to the individual customer (see also the section "failings around suitability" for advised sales).

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to make these disclosures orally. *See NB above.*

The firm sold a customer a policy comprising one or more parts under which he was not eligible to claim, without having first:

- taken reasonable steps to ensure the customer only bought a policy under which he *was* eligible to claim benefits; or
- disclosed to the customer, in good time before the sale was concluded and in a way that was clear, fair and not misleading, that parts of the cover did not apply.

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to do this orally. *See NB above.*

Failings around suitability

The firm advised on or recommended a policy without:

- having taken reasonable steps (and reasonable care) to properly establish the customer's demands and needs, for example, by failing to obtain information from the customer on such matters as what existing means the customer already had of protecting the loan (including existing insurance, benefits from employer, savings and investments), whether the customer was aware of any pre-existing medical conditions which might be excluded under the policy, whether the policy would be affordable in light of the customer's income and outgoings, and whether the customer's circumstances were likely to change; or
- ensuring the policy was suitable for these demands and needs taking into account all relevant factors, including level of cover, cost, relevant exclusions, excesses, limitations and conditions; or
- disclosing to the customer if any of their demands and needs would not be met; and in face to face and telephone sales, the firm failed to make this disclosure orally. *See NB above*; or
- disclosing to the customer whether any part of the cover would not meet a demand or need and in face to face and telephone sales, the firm failed to make this disclosure orally. *See NB above*. This reflects our experience that each element of a PPI policy contributes materially to its cost.

Failings around price disclosure

The firm did not disclose to the customer in a way that was clear, fair and not misleading in good time before the sale was concluded:

- the total (not just monthly) cost of the policy separately from any other prices (or the basis for calculating it so that the customer could verify it);
- price information in a way calculated to enable the customer to relate it to a regular budget;
- (for a policy of over one year with reviewable premiums) the period for which the quoted premium was valid, and the timing of reviews.

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to make this disclosure orally. *See NB above*.

Additional failings specific to single premium policy sales

The firm sold the customer a policy where the cost of the loan and the premium was likely to exceed the benefits payable under the policy.

The firm recommended a policy without first having established and then taken into account whether there was a prospect that the customer would repay or refinance the loan before the end of the term of the policy.

The firm failed to disclose to the customer in a way that was clear, fair and not misleading in good time before the sale was concluded:

- that interest would be payable on a single premium in addition to the amount provided under the credit agreement or the amount of that interest; or
- whether the term of the cover was less than the term of the credit agreement and the consequences of such mismatch; or
- that the customer would not receive a pro-rata refund if the customer were to repay or refinance the loan or otherwise cancel the single premium policy after the cooling off period (if this was the case).

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to make these disclosures orally. *See NB above.*

Additional failings specific to regular premium policies

The firm failed to disclose to the customer, in good time before the sale was concluded, and in a way that was clear, fair and not misleading and calculated to enable the customer to understand the typical cumulative cost of taking out the policy and to relate it to a regular budget, relevant price or price-related information.

And in face to face and telephone sales, where the sale was primarily conducted orally, the firm failed to make these disclosures orally. *See NB above.*

RELEVANT EXTRACTS FROM INDUSTRY CODES

The General Insurance Standards Council (GISC) promised in its Code that its members would:

- *act fairly and reasonably when we deal with you [the customer];*
- *make sure that all our general insurance services satisfy the requirements of this Private Customer Code;*
- *make sure all the information we give you is clear, fair and not misleading;*
- *avoid conflicts of interest or, if we cannot avoid this, explain the position fully to you;*
- *give you enough information and help so you can make an informed decision before you make a final commitment to buy your insurance policy.*

The GISC Code provisions further included that:

“3. We will give you enough information and help so you can make an informed decision before you make a final commitment to buy your insurance policy.”

“3.2. We will make sure, as far as possible, that the products and services we offer you will match your requirements ...

- *If it is practical, we will identify your needs by getting relevant information from you.*
- *We will offer you products and services to meet your needs, and match any requirements you have.*
- *If we cannot match your requirements, we will explain the differences in the product or service that we can offer you.*
- *If it is not practical to match all your requirements, we will give you enough information so you can make an informed decision about your insurance.”*

“3.3 We will explain all the main features of the products and services that we offer, including ...

- *any significant or unusual restrictions or exclusions;*
- *any significant conditions or obligations which you must meet.”*

“3.4 We will give you full details of the costs of your insurance.

3.5 If we give you any advice or recommendations, we will:

- *only discuss or advise on matters that we have knowledge of;*
- *make sure that any advice we give you or recommendations we make are aimed at meeting your interests; and*
- *not make any misleading claims for the products or services we offer or make any unfair criticisms about products and services that are offered by anyone else.”*

The Association of British Insurers (ABI) codes (which pre-dated GISC) also set out relevant requirements. For example the ABI General Insurance Business Code of Practice for all Intermediaries (1989) (the ABI Code) said that it *“shall be an overriding obligation of an intermediary at all times to conduct business with utmost good faith and integrity.”*

The ABI Code stated as one of its general sales principles that the intermediary shall “*ensure as far as possible that the policy proposed is suitable to the needs of the prospective policyholder.*” It also included requirements about “*Explanation of the Contract*”. It said the intermediary shall “*explain all the essential provisions of the cover afforded by the policy or policies he is recommending so as to ensure as far as is possible that the prospective policyholder understands what he is buying; [and] draw attention to any restrictions and exclusions applying to the policy.*”