

Handbook Notice No 60

November 2018

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1 Overview

Legislative changes

- 1.1 On 25 October 2018, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>18/18</u>	Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 3) Instrument 2018	FCA 2018/49	08.11.18

- 1.2 On 15 November 2018, the Board of the Financial Conduct Authority made the relevant changes to the Handbook as set out in the instrument listed below.

CP	Title of instrument	Instrument No	Changes effective
<u>18/11</u>	Professional Indemnity Insurance (Insolvency Exclusions) for Personal Investment Firms Instrument 2018	FCA 2018/50	01.06.19

Summary of changes

- 1.3 The legislative changes referred to above are listed and briefly described in Chapter 2 of this Notice.

Feedback on responses to consultations

- 1.4 Consultation feedback is published in Chapter 3 of this Notice or in a separate Policy Statement.

FCA Board dates

- 1.5 The table below lists forthcoming FCA board meetings. These dates are subject to change without prior notice.

December	13	2018
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January	24	2019
February	28	2019
March	28	2019
April	25	2019
May	30	2019
June	27	2019
July	25	2019
September	26	2019
October	24	2019
November	21	2019
December	12	2019

2 Summary of changes

- 2.1 This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 25 October and 15 November 2018. Where relevant, it also refers to the development stages of that material, enabling readers to look back at developmental documents if they wish. For information on changes made by the Prudential Regulation Authority (PRA) please see <https://www.bankofengland.co.uk/news/prudential-regulation>.

Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 3) Instrument 2018

- 2.2 Following consultation in Consultation Paper (CP) 18/18,¹ the FCA Board has made changes to the FCA Handbook sections listed below:

DISP App 3

- 2.3 This instrument also includes, for reference, final guidance which does not form part of our Handbook, and which was published in Consultation Paper (CP) 18/33.²

1 [CP18/18 'Guidance on regular premium PPI complaints and recurring non-disclosure of commission' \(July 2018\)](#)

2 [CP18/33 'Regular premium PPI complaints and recurring non-disclosure of commission – Feedback on CP18/18, final guidance, and consultation on proposed mailing requirements' \(November 2018\)](#)



- 2.4 In summary, this Handbook and non-Handbook guidance resolves uncertainty about whether firms should consider the non-disclosure of commission at the point of sale and subsequent 'recurring non-disclosure' (RND) when assessing regular premium PPI complaints. The guidance says that RND is a kind of omission that can make a credit relationship unfair and that firms should assess this under our general complaint handling rule. The guidance addresses potential consumer harm by ensuring that firms do not reject relevant regular premium PPI complaints without considering RND.
- 2.5 This instrument comes into force on **8 November 2018**. Feedback has been published in CP18/33.

Professional Indemnity Insurance (Insolvency Exclusions) for Personal Investment Firms Instrument 2018

- 2.6 Following consultation in Consultation Paper (CP) 18/11,³ the FCA Board has made changes to the FCA Handbook sections listed below:
- IPRU(INV) 13 and TP 1**
- 2.7 In summary, this instrument makes changes to the Handbook to require Personal Investment Firms (PIFs) to have professional indemnity insurance policies that do not limit cover where the policyholder or a third party is insolvent, or where a person other than the PIF (eg the Financial Services Compensation Scheme) makes a claim on the policy. The new rules are intended to ensure that more consumer claims are paid by insurers, which will help to reduce the cost of the FSCS to other firms.
- 2.8 This instrument comes into force on **01 June 2019**. Feedback is published in Chapter 3 of this Notice.

³ [CP18/11 'Reviewing the funding of the Financial Services Compensation Scheme \(FSCS\): feedback from CP17/36, final rules and new proposals for consultation' \(May 2018\)](#)

3 Consultation feedback

- 3.1 This chapter provides feedback on consultations that will not have a separate Policy Statement published by the FCA.

CP18/11 Reviewing the funding of the Financial Services Compensation Scheme: feedback from CP17/46, final rules and new proposals for consultation

Professional Indemnity Insurance (Insolvency Exclusions) for Personal Investment Firms Instrument 2018

Background

- 3.2 In 2016, we launched a fundamental review of how the Financial Services Compensation Scheme (FSCS) is funded. As part of the review, we considered whether it might be possible to reduce the FSCS compensation bill by ensuring that more claims are paid by insurers through professional indemnity insurance (PII).
- 3.3 The FSCS has a duty to pursue recoveries that are 'reasonably possible and cost effective to pursue'. When the FSCS pays compensation to a consumer, the consumer's rights against the firm in default, any third party or a successor are usually assigned to the FSCS. This allows the FSCS to try to recoup some or all of the costs of compensation for the benefit of both levy payers and/or those consumers who have been paid compensation by the FSCS but still have uncompensated losses. One route to recoveries for the FSCS includes the PII providers of firms in default.
- 3.4 In the past some PII providers have sought to limit their liability by preventing the FSCS from making a claim on the policy. This was either through:
- a specific clause excluding the FSCS as a claimant, or
 - relying on broad, general insolvency clauses which exclude claims relating to the insolvency of the firm or of third parties regardless of any legal liability the firm may owe to a consumer.
- 3.5 If the cost of compensation falls to FSCS rather than the firm or its insurer, it is ultimately borne by those firms that remain in the industry. Spreading the risk across all firms does not follow the 'polluter pays' principle. If PII providers limit their liability by preventing the FSCS



from making a claim on the policy, this also creates a barrier to the FSCS achieving its duty of pursuing recoveries. This results in levy payers paying higher levies and consumers potentially receiving less compensation than they are owed.

- 3.6 In CP17/36,⁴ we asked respondents for views on a possible requirement preventing personal investment firms (PIFs) from purchasing PII policies which contain exclusions, for the insolvency of the firm or any third party, which could prevent the FSCS or the customer from making a claim. We received 75 responses and respondents generally supported the proposal. Some recognised that such exclusions were not permitted for other professions, eg solicitors and accountants.
- 3.7 In CP18/11, we consulted on introducing a rule to ensure that PIFs have PII policies that do not limit cover which would otherwise be provided by the policy, where the policyholder or a third party is insolvent, or where a person other than the PIF (eg the FSCS) is entitled to make a claim on the policy.

Feedback

- 3.8 We received 15 responses to CP18/11. Two respondents commented on the final rules implementing the funding review but did not comment on proposed new rules.
- 3.9 Around half of respondents supported the proposals. Those in support agreed that it was important that firms should have PII policies that are fit for purpose and that do not prevent the FSCS from recovering compensation costs.
- 3.10 The majority of respondents who disagreed with the proposals expressed concerns about increased costs for firms and reduced availability of PII and the consequences that this could have on both financial services firms and consumers. Some respondents told us that advisers providing advice on transferring from defined benefit pension schemes are already finding it difficult to obtain cover at a reasonable cost or at all. A lack of access to PII cover could restrict the availability of advice and so harm consumers.
- 3.11 A few respondents queried how the FCA would ensure that unscrupulous firms did not ignore the requirements. Some respondents took the view that we should put the requirement on insurers rather than or in addition to PIFs (ie prevent insurers from including such exclusions in their policies).
- 3.12 During the consultation period, we met with insurers and brokers to explore the likely impact of our proposals on access to and cost of PII

4 [CP17/36 'Reviewing the funding of the Financial Services Compensation Scheme \(FSCS\): feedback from CP16/42, final rules, and new proposals for consultation' \(October 2017\)](#)

cover, to see if we could further refine our cost benefit analysis. The majority told us that most policies did not currently contain relevant exclusions, so premiums are unlikely to increase significantly. However, one large insurer said that not permitting exclusions in relation to the insolvency of the insured could increase premiums by up to 25%. A few insurers told us that policies only exclude funds if the insolvency of the fund happened before the policy started, so the third party requirement is unlikely to significantly increase premiums.

Our response

- 3.13 We note the concerns raised in the responses about increased costs for firms and a reduced availability of PII. However, a number of stakeholders and respondents to the CP told us that they have not seen recent examples of policies containing such exclusions. The analysis set out in the cost benefit analysis in CP18/11 indicates that even if the intervention resulted in a 25% increase in premiums this would on average be affordable. In any case, we consider that this is likely to be an overestimate of the impact in practice.
- 3.14 As part of the PII review, we considered mandated policy terms with no exclusions. This alternative option was rejected given that it was likely to result in PII becoming either unavailable or unaffordable, which could force firms out of the market and reduce the availability of advice.
- 3.15 We will work with the FSCS to monitor compliance and the effectiveness of the intervention. We may review whether a requirement for insurers is appropriate at a later date if the FSCS provides us with evidence that it has encountered difficulties in pursuing recoveries as a result of prohibited exclusions. Individuals in PIF senior management are responsible for ensuring that PII contracts meet the relevant regulatory requirements and so action can be taken against individuals for any breaches even if the firm itself has failed.
- 3.16 After consideration of the responses, we have decided to proceed with the proposals that we consulted on. The new requirements will apply to PIFs in relation to all PII policies effected or renewed from 1 June 2019, the date on which the rules will take effect.
- Cost benefit analysis and compatibility statement**
- 3.17 The CBA and compatibility statement in the CP remain valid. In the compatibility statement that accompanied CP18/11, we incorrectly stated that the Legislative and Regulatory Reform Act 2006 (LRRRA) did not apply. The LRRRA does apply because the instrument contains guidance provisions. However, we have had regard to the high-level 'Principles' and the 'Regulators' Code' under the LRRRA and we consider that the guidance provisions are proportionate for the reasons stated above (and in the CP).

Equality and diversity issues



- 3.18 We have considered the equality and diversity issues that may arise from our proposals. We continue to believe that the proposals do not adversely impact any of the groups with protected characteristics ie age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.
- 3.19 The changes made by this instrument are listed in Chapter 2 of this Notice.

4 Additional information

Making corrections

- 4.1 The FCA reserves the right to make correctional or clarificatory amendments to the instruments made at the Board meeting without further consultation should this prove necessary or desirable.

Publication of Handbook material

- 4.2 This Notice is published on the FCA website and is available in hardcopy.
- 4.3 The formal legal instruments (which contain details of the changes) can be found on the FCA's website listed by date, reference number or module at www.handbook.fca.org.uk/instrument. The definitive version of the Handbook at any time is the version contained in the legal instruments.
- 4.4 The changes to the Handbook are incorporated in the consolidated Handbook text on the website as soon as practicable after the legal instruments are published.
- 4.5 The consolidated text of the Handbook can be found on the FCA's website at www.handbook.fca.org.uk/. A print version of the Handbook is available from The Stationery Office's shop at: www.tsoshop.co.uk/Financial-Conduct-Authority-FCA/.
- 4.6 Copies of the FCA's consultation papers referred to in this Notice are available on the FCA's website.



Obligation to publish feedback

- 4.7 This Notice, and the feedback to which Paragraph 1.4 refers, fulfil for the relevant text made by the Board the obligations in sections 138I(4) and (5) and similar sections of the Financial Services and Markets Act 2000 (the Act). These obligations are: to publish an account of representations received in response to consultation and the FCA's response to them; and to publish (where applicable) details of any significant differences between the provisions consulted on and the provisions made by the Board, with a cost benefit analysis and a statement under section 138K(4) of the Act if a proposed altered rule applies to authorised persons which include mutual societies.

Comments

- 4.8 We always welcome feedback on the way we present information in the Handbook Notice. If you have any suggestions, they should be sent to handbookproduction@fca.org.uk (or see contact details on the back cover).

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This Handbook Notice describes the changes to the Handbook and other material made by the Financial Conduct Authority (FCA) Board under its legislative and other statutory powers on 25 October and 15 November 2018.

It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board.

Contact names for the individual modules are listed in the relevant Consultation Papers and Policy Statements referred to in this Notice.

General comments and queries on the Handbook can be addressed to:

Colin Shields

Tel: 020 7066 0671

Email: colin.shields@fca.org.uk

However, queries on specific requirements in the Handbook should be addressed first to your normal supervisory contact in the FCA. For most firms this will be the FCA's Contact Centre:

Tel: 0300 500 0597

Fax: 0207 066 0991

Email: firm.queries@fca.org.uk

Post: Contact Centre

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12 Endeavour Square

London E20 1JN

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