FINANCIAL CONDUCT AUTHORITY

Previously rejected PPI complaints and further mailing requirements – Feedback on CP18/33 and final rules and guidance

Policy Statement
PS19/2**

January 2019

This relates to

Consultation Paper 18/33
which is available on our website at
www.fca.org.uk/publications

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1 Summary

Introduction

1.1 In Consultation Paper CP18/33, we proposed new rules requiring firms to write to certain previously rejected payment protection insurance (PPI) complainants to tell them they can make a new complaint. We also set out proposed guidance on the proposed mailing requirements, and on our existing mailing requirement.

1.2 In this policy statement, we summarise and respond to the feedback we received. We have carefully considered that feedback, but it has not substantively changed our view of what we proposed, and we publish largely unchanged final rules and guidance here. Our view is that these:

- help to ensure fair and consistent outcomes for relevant PPI complainants
- support our PPI consumer communications campaign
- support our overall aim of bringing the PPI issue to an orderly conclusion in a way that secures appropriate protection for consumers and enhances the integrity of the UK financial system

Background

1.3 In CP18/18, we explained that there was some uncertainty about whether firms, when assessing complaints about regular premium PPI, should consider the non-disclosure of commission at both the point of sale and subsequently. To resolve this uncertainty, we proposed guidance which detailed how firms should handle complaints about regular premium PPI in light of recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share ('RND').

1.4 Following that consultation, in CP18/33 (Appendix 1) we published final guidance. This ensures that firms don't cause harm by rejecting PPI complaints without considering RND. Among other things, the guidance explains that it may often be reasonable for firms handling PPI complaints involving RND to draw from our existing rules and guidance on handling PPI complaints in light of *Plevin*.[1]

1.5 We had noted in CP18/18 that if a firm had not considered RND when it rejected a previous regular premium PPI complaint, the consumer can make a new complaint. The firm would have to treat this complaint as new and assess it in relation to RND, if it is in scope of section 140A of the Consumer Credit Act 1974 ('s140A').

1.6 In CP18/33, we considered the position and potential communication needs of these previous rejected complainants, in light of the responses to CP18/18 and our final guidance. We concluded that:

1 The Supreme Court judgment handed down in November 2014: Plevin v Paragon Personal Finance Limited [2014] UKSC 61. The judgment related to non-disclosure of high commission at the point of sale of a PPI policy. See www.fca.org.uk/publication/policy/ps17-03.pdf

- These consumers may have disengaged from the PPI issue, and be desensitised to our campaign's messaging and prompts to action. This is because they previously complained about mis-selling but were rejected. They were then either not included in our Plevin mailing requirement in DISP App3.11[2], or were included and responded to it but were again rejected.
- If these consumers were to re-engage with the PPI issue and our campaign and make a new complaint before the deadline, then some, and perhaps many, would be upheld and redressed in light of RND (or in some cases Plevin).
- There was a limit to how much RND-specific messaging we could include in our campaign, given RND's relative complexity.
- There was a clear risk that previously rejected complainants might miss out on the opportunity to seek redress, and potentially suffer harm as a result.
- This was just as true of those who could make a new complaint in light of Plevin but were not caught by our previous mailing requirement, as for those who could make a new complaint in light of RND.

1.7 Therefore, we consulted on new rules (see CP18/33 Appendix 2) that would require:

- Lenders to write to specific regular premium PPI Plevin complainants whose complaints they previously rejected on the grounds that they did not involve an unfair credit relationship or were out of jurisdiction.[3] These letters should tell these consumers that they can make a new complaint in light of RND, and remind them of our 29 August 2019 deadline for complaining.
- Sellers (including brokers) to write to specific regular and single premium PPI mis-selling complainants whom they previously rejected as out of jurisdiction. These complainants were not caught by our previous Plevin mailing rule and so were not written to. These letters should tell these consumers that they can make a new complaint to the lender about non-disclosure of commission, either in light of RND or Plevin (depending on the circumstances), and remind them of the deadline.

1.8 We estimated that 70,000 to 150,000 consumers would need to be sent letters. We set out in the proposed rules the main information the letters should convey.

1.9 We also said that, given the clarity our final guidance on RND had now provided, firms should promptly mail a further 150,000 previously rejected complainants under our existing *Plevin* mailing rule (DISP App 3.11.2R).

1.10 To help feedback, we set out more detail on which cases we had in mind for the proposed new mailings, and further *Plevin* mailing, in a series of boxes, and asked if readers agreed with our descriptions.

Who this affects

1.11 The final mailing requirements and guidance will affect firms that sold regular premium or single premium PPI, or provided credit agreements covered by these types of PPI.

2 DISP App 3.11 requires firms that sold PPI to write (by 29 November 2017) to those previous mis-selling complainants who were rejected on the merits as not mis-sold, but who are eligible to complain again in light of *Plevin*, to tell them this and remind them of our deadline.

3 That is, outside of the jurisdiction of the Financial Ombudsman Service and so outside of our DISP complaint handling rules (see DISP 3.1.2R).

Is this of interest to consumers?

1.12 The final mailing requirements and guidance will be of interest to:

- Consumers who were sold PPI, or may have been. It particularly affects consumers who were sold regular premium PPI, including where it covered restricted credit.[4] This includes home shopping and catalogue accounts, store cards, or loans taken in-store to buy specific goods. This is the case no matter how long ago it was sold, for example, before 6 April 2007.
- Consumer organisations and claims management companies (CMCs), or other paid advocates, who make complaints about PPI on behalf of consumers or otherwise help them.

Our PPI website gives more details about the 29 August 2019 deadline for complaining about PPI and about how to complain.

What we are changing

1.13 The rules which set out our final mailing requirements and the accompanying guidance are set out in Appendix 1 and will apply from 30 January 2019. Firms must complete the mailings required by these rules and guidance as soon as reasonably practicable, and at the latest by 29 April 2019.

The outcome we are seeking

1.14 We want the mailings to help recipients consider whether they want to make a new complaint in light of RND or *Plevin* before the 29 August 2019 deadline.

Measuring success

1.15 We will assess how firms have complied with these new mailing requirements as part of our ongoing supervision of the way they treat PPI complaints.

Summary of main feedback

1.16 We received 7 responses from a range of stakeholders, including trade bodies, firms and consumer bodies (see Annex 2). The main feedback was as follows:

- Most responses agreed that our rationale for the proposed mailings was reasonable, given the view of RND set out in our final guidance. But some of these responses reiterated that they did not agree with that view of RND.
- One response from a consumer body disagreed. It argued that we should instead require firms to proactively reassess the relevant cases, as this would give redress to all affected consumers without them needing to complain again, and also be more efficient.
- No responses disagreed with our descriptions in the boxes of the criteria for cases to be included in the mailings.

4 Restricted credit is defined in our Handbook as: a loan for which, as a result of an existing arrangement between a supplier and a *firm*, the customer's application to the *firm* is submitted through the supplier and the terms of the loan require that it be paid to the supplier for goods or services supplied to the customer, not including loans secured by a charge over land or loans or payments by *plastic card* (other than a *store card*).

Our response to main feedback

1.17 We have carefully considered this feedback (see also 2.12-2.13 and our response).

1.18 Most of the past complaints caught by the proposed mailing requirements were mis-selling complaints which had not raised the issue of undisclosed commission. They were rejected by firms either before the Supreme Court decision in *Plevin* or before we published our final *Plevin* complaint rules and guidance in March 2017. Our insurance conduct of business rules did not (and do not) generally require commission disclosure (either at point of sale or after).[5] So, in any individual case, the non-disclosure of high commission did not breach our rules and is unlikely in itself to have been a breach of our Principles. Therefore, we do not consider the firm's failure to have assessed non-disclosure of commission, when previously assessing such an earlier PPI mis-selling complaint, to have been unfair complaint handling. We thus consider that it would be retrospective and inappropriate for us to require the firm to proactively reopen a previously rejected PPI mis-selling complaint and reassess it now for undisclosed commission. (We expressed this view previously in PS17/3 pages 36-39.) However, it is not retrospective for us to require the firm to tell that consumer that they can make a new complaint now about undisclosed commission (not mis-selling) and we think it is appropriate and proportionate for us to do so.

1.19 There is a much smaller number of cases where a consumer did previously complain about the non-disclosure of commission on their PPI policy, or the firm in any case considered the non-disclosure at point of sale in light of *Plevin*, but the firm did not uphold the complaint. These decisions to reject were made before we published our proposed guidance on RND in July 2018. Again, therefore, we consider that it would be retrospective and inappropriate for us to require the firm to proactively reopen that previously rejected PPI commission complaint and reassess it for RND under our new guidance. However, it is not retrospective for us to require the firm to tell that consumer that they can make a new complaint, now about RND (not *Plevin*), and we think it is appropriate and proportionate for us to do so.

1.20 We consider it reasonable for us to expect the recipients of the letters to make a new complaint in response, if they wish to. We do not consider that this is too onerous for them, and it is consistent with our overall complaints-led approach to addressing potential harm from PPI.

1.21 The letters will be a good supplement to our campaign and be likely to resonate with the recipients about their particular circumstances, helping them to re-engage with the PPI issue and our campaign's messaging. This is consistent with our wider campaign objectives of getting consumers to make an informed and timely decision about their own position and whether to complain.

1.22 Overall, therefore, we still consider that requiring the mailings is appropriate, and we publish largely unchanged final rules and guidance in Appendix 1. The only small change we have made, in response to other feedback, makes it clearer that lenders can exclude cases where there was no RND (or non-disclosure at point of sale) at a time falling within the Ombudsman Service jurisdiction, and hence no loss that needs redressing (2.14 below).

5 Since April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for pre-contract commission disclosure by credit brokers for contracts entered into on or after 1 April 2014.

Equality and diversity considerations and our response

1.23 We have a public sector equality duty, and have carefully considered equality and diversity implications throughout our PPI work. In CP18/18, we said that:

- We did not consider that our proposed RND guidance would adversely or disproportionately affect any of the groups with protected characteristics. These are: age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation and gender reassignment.
- We recognised that some of the customer groups affected by our proposed RND guidance have below average incomes, and may have lower financial confidence and capability. This may make them less likely to complain.

1.24 In CP18/33, we considered the feedback we had received about the position of RND-affected consumers who may have lower financial confidence and capability. This feedback contributed to our decision to propose requirements on firms to mail relevant previously rejected complainants. We asked:

> **Q5:** ***What are your views of the equality and diversity implications of our proposed mailing requirements? Are there additional steps we could take in respect of relevant affected consumers?***

1.25 One response, from industry, said that the measures we had already taken to ensure PPI complaints can be raised easily through different channels, and to partner with third sector organisations, would ensure that letter recipients would not be disadvantaged or excluded, whatever their level of confidence and capability.

1.26 However, another response, from a consumer body, said that because our proposed mailing approach required recipients to re-complain, it was likely to have a disproportionate impact on the vulnerable consumers we had identified and on groups with protected characteristics. The response felt these customers would be better protected from harm if we required firms to reassess their cases proactively.

1.27 We have carefully considered this feedback. It needs to be seen in the context of our careful consideration of equality and diversity implications throughout our PPI work. We have put extensive and appropriate measures in place to mitigate the potential adverse impact we identified on groups with certain protected characteristics[6] or with lower financial confidence and capability, as set out in our Equality Impact Assessment (EIA) in PS17/3 (March 2017) and our more recent update on progress.

1.28 We consider that the letters that these consumers, like others, will receive will provide them with effective specific prompts, and help to re-engage them. The letters will spell out clearly to these consumers, as to others, the various ways in which they can make a complaint in response to any prompt effected by the letters. In particular, as previous complainants, recipients will not in general need to search for, or provide, any additional documentation about themselves or their PPI policy. So, making the new complaint will be very simple for them. This should be particularly helpful for recipients with lower financial confidence and capability or who might otherwise have a lower propensity to complain or who otherwise belong to one of the groups identified in our previous EIA.

6 Namely: older people (particularly those aged over 65 and even more so for those over 75); women; Black, Asian and Minority Ethnic (BAME) groups (particularly those for whom English is not their first language); disabled consumers, with mental health problems, learning disabilities, cognitive and/ or sensory impairments. We also identified a need to ensure that the campaign engages people who care for older or disabled people.

1.29 However, as we did previously, we will agree with stakeholders a standard letter for firms to use. This will be in a clear and jargon free template text, written in plain English. This will help to make the letter as easy to understand as possible for all consumers. We will ensure that the text and template is developed with and reviewed by communications professionals.

1.30 We will pay particular attention to ensuring that firms provide clear signposting for further help in the letters. The letters will contain not only information about the firm's complaint handling arrangements, but also a link to our own PPI website and a number for our PPI contact centre, which can provide further information, and reassurance to consumers who need it that the letters they have received from firms are genuine and not scams. Our PPI contact centre can also direct consumers who need additional assistance to the relevant firm, or to the Citizens Advice Bureau which has partnered with us.

1.31 We will also pursue opportunities to reach and engage relevant consumer audiences in our future public relations activity. Such messaging would potentially help to support their interest and confidence in the letters they receive.

1.32 The mailing rules do allow for firms to choose to reassess previously rejected complaints, and redress the consumer directly, instead of mailing them to invite a new complaint. Some firms have indicated they may do this, and this approach should particularly help any consumers with low financial confidence and capability, including where they belong to one of the groups identified in our previous EIA.

Next steps

1.33 Firms should prepare and send the mailings to all the previous complainants specified in our final requirements as soon as reasonably practicable, and by 29 April 2019 at the latest.

1.34 We will shortly begin discussions with stakeholders with a view to agreeing a standard core letter text for firms to use in their mailings.

1.35 As part of our supervisory work, we will discuss with firms their approach to these new mailings, and to the supplementary mailings we expect some to make under our existing mailing rule.

2 Feedback on proposed requirements and cost benefit analysis

2.1 This chapter sets out in more detail what we had proposed, the feedback to our proposals, and our response.

What we had proposed

2.2 First, we estimated that there are around 10,000 previous Plevin complainants who were rejected by the lender but who can make a new complaint in light of RND. Some were rejected on the merits because the level of commission at point of sale that was not disclosed did not create an unfair credit relationship. Others were rejected as out of jurisdiction, usually because they involved restricted credit where the point of sale was before 6 April 2007. We said these previous Plevin complainants could now make a new complaint in light of RND. This is either because there was RND of commission levels that were higher than at the point of sale, or because there was RND at a date (eg after 6 April 2007) that would bring the new complaint into jurisdiction.[7] We set out more detail on which cases we had in mind in Box 2 in Annex 4 of CP18/33.

2.3 Second, we estimated that between 50,000 and 120,000 regular premium PPI complaints were previously rejected by PPI sellers as out of jurisdiction for the purposes of mis-selling because of the date of sale.[8] As a result, these complaints were not caught by our current Plevin mailing requirement and were not written to. In any case, they could not make a Plevin complaint that would be in jurisdiction. However, we said these consumers can make a new complaint because there was RND at a date that would bring the new complaint into jurisdiction. We set out more detail on which cases we had in mind in Box 3 in Annex 4 of CP18/33.

2.4 Third, we estimated that there were an additional 10,000 to 20,000 previous PPI mis-selling complaints that had been rejected as out of jurisdiction, and not caught by our current Plevin mailing requirement, but where the consumer can make a new complaint about Plevin that would be in jurisdiction. We set out more detail on which cases we had in mind in Box 4 in Annex 4 of CP18/33. We said some may involve single premium PPI. Most are likely to have occurred where the seller was a broker.

2.5 We considered the position and potential communication needs of these 70,000 to 150,000 previous complainants, including in light of the responses to CP18/18 and our final RND guidance. For the reasons explained in paragraph 1.6 of Chapter 1, we proposed the new mailing requirements summarised in paragraph 1.7.

2.6 However, we proposed to exclude from the mailing those cases where sending a letter would be of no benefit to the recipient, including where:

- The firm is the lender and knows the consumer would not be able to make a complaint in response, in light of RND or *Plevin*, that would be in jurisdiction.

7 This would typically mean RND on or after 6 April 2007 for restricted credit, but could mean RND on or after 1 December 2001 for some non-restricted credit.

8 This would typically mean the PPI sale was before 14 January 2005, but could mean before 1 December 2001 for some firms.

- The consumer had already, by 29 April 2019, been offered or paid redress for mis-sold PPI, or for an unfair relationship arising from a failure to disclose high commission.
- The lender has already, in its assessment of a mis-selling or *Plevin* complaint, considered RND but did not offer redress on the basis that an unfair credit relationship had arisen.
- The lender, or the Ombudsman Service, has indicated to the complainant in writing that it will consider or reconsider the PPI complaint.

2.7 We set out in the proposed rules the main information we would require the letters to give, including:

- explaining that the recipient can make a further complaint, about non-disclosure of commission (at point of sale or later)
- referring to the deadline for making PPI complaints and to the identity of the lender (where the seller knows or can reasonably identify this)
- providing information about the firm's complaint handling arrangements (where the firm is the lender)
- referring to the information about making a further complaint that is available on the FCA's PPI website or through the FCA's PPI contact centre

2.8 The estimated additional 70,000 to 150,000 letters would be equivalent to between 7% and 13% of the 1.3m letters sent in the previous *Plevin* mailing. We estimated that the administrative costs to firms of sending the new mailings would be around £25 per letter and between £1.75m and £3.75m in aggregate (compared to the £14, and £18m, which the *Plevin* mailing cost).

2.9 We also estimated that there are at least another 150,000 previously rejected complainants who should now be mailed promptly by firms under our existing *Plevin* mailing rule in DISP App 3.11.2R, given the clarity our final guidance on RND provides. That rule requires the PPI seller to write to previous mis-selling complainants it rejected on the merits as not mis-sold. However, some firms that previously rejected some restricted credit complaints on their merits as not mis-sold did not subsequently mail them all about *Plevin*. These firms thought that there was no point writing about *Plevin* to these particular previous complainants, as they were sold the PPI before 6 April 2007, putting any *Plevin* complaint out of jurisdiction. But, in light of our final guidance on RND, there would be a point in writing to those cases where there was RND on or after 6 April 2007. This is because a complaint made in response, considered in light of RND under our guidance, would be in jurisdiction (see Box 1 in Annex 4 of CP18/33).

2.10 In our cost benefit analysis (CBA) of the proposed mailing requirements and guidance[9]:

- We estimated that the likely aggregate redress resulting would be more than the estimated administrative costs by at least two- or three-fold and probably more, making the proposed mailing requirements proportionate.
- We said that relative to the current situation, this would mean an increase in aggregate future PPI complaints and redress to consumers, and an increase in administrative costs to firms. These dynamics of costs and benefits were set out in the table on p40 of CP18/33 (see also our response under 2.13 below).

9 The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of proposed rules. Specifically, section 138I requires us to publish an analysis of the costs together with an analysis of the benefits that proposed rules will bring. It also requires us to include estimates of those costs.

- We concluded that overall, these dynamics gave us a reasonable basis for expecting that our proposals would deliver a net benefit for consumers, compared to the current situation. But we couldn't guarantee this conclusion given the uncertainties involved.

2.11 We asked:

Q1: ***Do you agree with our assessment of the rationale for the proposed mailing requirements?***

Q2: ***Do you agree with our description of the kinds of previously rejected complaints that would potentially fall within the proposed mailings?***

Q3: ***Do you agree with our assessment of the scale, proportionality and feasibility of the proposed mailings?***

Q6: ***Do you agree with our assessment of the costs and benefits of the proposed mailing requirements?***

Feedback on what we had proposed

Rationale and cost benefit analysis

2.12 As noted in Chapter 1, most responses agreed that our rationale for the proposed mailings (Q1) was reasonable, given the view of RND that we had set out in our final guidance. But some of these responses reiterated that they did not agree with that view of RND. However, these responses did not comment on our CBA (Q6).

2.13 One response from a consumer body disagreed with our rationale for the mailing and our CBA. Its argument was that:

- the previous *Plevin* mailing prompted only 40% of recipients to complain
- many recipients of the proposed new mailings would also probably not make a new complaint, especially given that in some cases this would be their 3rd complaint
- so, our approach would harm those who don't respond, but we had not assessed that harm, in our CBA or elsewhere
- we should instead require firms to proactively reassess the relevant cases, as this would ensure all affected consumers were redressed where needed
- we had not assessed this alternative's potentially greater effectiveness and efficiency in our CBA, which had also placed no value on the time of the consumer, who on our approach would have to make a new complaint to be reconsidered

Our response

We regard the 40% response to the previous *Plevin* mailing as positive, given our experience of previous 'non-PPI' contact exercises and the various factors that tend to influence the response. These include whether the sale was recent, the average potential redress figure, and whether the relationship between firm and consumer had already ended.

We regard the informed decision by a recipient not to complain in response to a clear informative *Plevin* letter as a valid outcome from that mailing. It is a reasonable consequence of consumers having to bear a reasonable degree of responsibility for their actions. So we do not regard a non-response as implying harm.

This aligns with our communication campaign aims and success measures more generally. We see a consumer who makes an informed decision not to complain, based on their understanding of the issues following exposure to our campaign, as an equally valid outcome of our campaign as someone who does decide to complain.

So we regard the previous *Plevin* mailing as having met our aims for it. We confidently anticipate that the similar approach in the further mailings we have proposed will be similarly successful. Only a very small minority of recipients would be complaining for a third time.[10]

In terms of CBA, we accept that our approach will lead to less aggregate redress than the alternative of firms proactively reassessing relevant previous cases. We also accept that this alternative would involve even less time and effort for consumers. However, these cost-benefit considerations do not alter our view, set out in Chapter 1, that it would not be appropriate for us to require firms to conduct such proactive reviews and direct redress payments to these previously rejected complainants.

Overall, therefore, for the reasons set out here and in Chapter 1, we still consider that our mailing requirements are fair, appropriate and proportionate, and that our CBA (see Table below) remains an accurate assessment of the net benefit to consumers that will likely result.

10 Being those few among the estimated 10,000 cases described in 2.2 above who had made both a previously rejected mis-selling complaint, and a separate previously rejected Plevin complaint.

Summary table of costs and benefits of our final mailing requirements and guidance

	Firms	Consumers
Costs	Increased redress payments	
	Increased administrative costs of complaint handling	
Benefits		Increased redress receipts
		Saved time/effort in making PPI complaints

Categories of complaints

2.14 Concerning the kinds of previously rejected complaints that would potentially fall within the proposed mailings (Q2):

- No responses disagreed with our descriptions, in the 4 boxes, of the criteria for relevant complaints to be included in the mailings.
- Some responses said that we should set out more clearly and explicitly (at draft DISP App 3.11.6R) our apparent intention to exclude restricted credit cases where the lending firm knows that there was no RND after 6 April 2007.
- Some responses said that we should exclude older complaints rejected before a certain date - for example before 1 December 2010, when our original rules and guidance concerning PPI complaint handling (DISP App 3) came into force.

Our response

We have amended the exclusion rule to make it clear that a lender does not need to mail a consumer if they know that there was no point of sale or later non-disclosure of commission that fell within the jurisdiction of the Ombudsman Service. So, for example, in a restricted credit context there is generally no need to mail where the lender knows there was no RND on or after 6 April 2007. We consider this to be fair, proportionate and appropriate, because those cases would involve no loss after 6 April 2007 that needed to be redressed.

We have now added the four boxes and their text, substantively unchanged, as non-Handbook guidance at Appendix 1. Boxes 2, 3 and 4 are guidance on the new mailing rules, and Box 1 is guidance on the existing mailing rule.

The existing Plevin mailing rule did not exclude any older cases on the basis of when they were rejected. Some firms did ask us to do that, because of their concerns about potential records gaps for older complaints. But our view was that such potential practical challenges were not reasons to exclude such previous complainants from the mailing, as they could still have made a new complaint. We take the same view now for the new mailing requirements. We also note that most PPI complaints to firms were made after 1 December 2010, so most cases to be included in the new mailings will be for cases rejected after that date.

Proportionality and feasibility

2.15 We did not receive feedback disagreeing with our assessment of the scale, proportionality and feasibility of the proposed mailings (Q3). But some responses said that completing them within the proposed 3 months would be a challenge for some firms. Also, responses to the mailings might well coincide with a rise in the volume of PPI complaints generally as the deadline approaches, which might stress some firms' complaint handling capacity.

Our response

These responses did not explain or give examples of why some firms might find 3 months too short a period to prepare and send their mailings. However, we accept that the requirements may create some operational or financial pressures for some firms, and particularly some smaller ones. If firms do find themselves in difficulty, they can discuss with their usual supervisory contacts potential methods within the regulatory framework to manage these pressures.

The treatment of brokers

2.16 In CP18/33 we noted that non-lending broker firms might not necessarily be able to identify from their own records whether the potential letter recipient would be able to make a new complaint to the lender that would be in jurisdiction. We had therefore designed the proposed requirement so that brokers mail *all* the mis-selling complainants they had previously rejected as out of jurisdiction, even though some complaints about undisclosed commission made in response will be rejected by the lender as out of jurisdiction.

2.17 We asked:

> **Q4:** ***Do you agree with our proposed approach to mailings by firms that were not the CCA lender?***

2.18 We did not receive any feedback on this from brokers or others. However, brokers should feel able to approach us with any questions they may have about complying with the final mailing requirements. Our supervisory work concerning the mailings will include engagement with relevant larger brokers.

Annex 1
Compatibility statement

In CP18/33 we gave our view of the compatibility of our proposed mailing requirements with our statutory and other obligations.

We were satisfied that the proposed mailing requirements were compatible with our general duties in accordance with section 1B of FSMA, having regard to the regulatory principles in section 3B.[11] The mailings would help to prompt relevant and potentially disengaged previously rejected complainants to consider their position and potentially complain before the 29 August 2019 deadline. And that helps us to deliver our operational objectives of providing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

The scope for the proposed mailing requirements to promote effective competition was limited. But we had considered the FCA's competition duty under s.1B(4). Our proposed mailing requirements would not have a significant effect on competition between firms or a disproportionate impact on the ability of new firms to enter the market.

We also had due regard to the recommendations made by the Treasury under section 1JA FSMA about aspects of the economic policy of Her Majesty's Government.[12] In particular, we considered that our proposed mailing requirements took into consideration the recommendations relating to better outcomes for consumers. They would help deliver better outcomes for consumers by helping to prompt recipients to consider their position and potentially complain before the 29 August 2019 deadline.

We had not identified any likely significantly different impact on mutuals from our proposed mailing requirements. In particular, we did not consider that our proposed mailing requirements would lead to significant additional work for mutual firms, or others, that had already been assessing RND when handling PPI complaints.

We had regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulator's Compliance Code. Our view was that our proposed mailing requirements were proportionate and would result in an appropriate level of consumer protection, when balanced with the impacts on firms and on competition.

11 Section 1B of FSMA requires the FCA, when discharging its general functions and as far as is reasonably possible, to act in a way that is compatible with its strategic objective and advances one or more of its operational objectives. The FCA also needs, as far as is compatible with acting in a way that advances its consumer protection objective or integrity objective, to carry out its general functions in a way that promotes effective competition in the interests of consumers.

12 The Treasury published its first set of recommendations for the FCA on 8 March 2017.

We asked:

Q7: ***Do you have any comments on our compatibility statement in light of the proposed mailings?***

We received no direct feedback on our statement. But the response which said we should instead require firms to reassess cases clearly implied that it felt our mailing approach provided less consumer protection, and less good outcomes, than this alternative.

Our response

We have considered this feedback and suggested alternative approach in chapters 1 and 2 above. For the reasons stated there, it does not change our view of our approach, or of our compatibility statement above. In our view, the new mailing requirements and guidance help us to deliver:

- better consumer outcomes by prompting recipients to consider their position and potentially complain before the 29 August 2019 deadline, and
- our operational objectives of providing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system

Annex 2
List of non-confidential respondents

Building Societies Association

Finance and Leasing Association

Financial Services Consumer Panel

Annex 3
Abbreviations used in this paper

CBA	cost benefit analysis
CCA	Consumer Credit Act 1974
CMC	claims management company
DISP	Dispute resolution: Complaints sourcebook
EIA	equality impact assessment
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
Plevin	Supreme Court judgment in Plevin v Paragon Personal Finance Ltd [2014] UKSC 61
PPI	payment protection insurance
RND	recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share
s140A	section 140A of the CCA, which came into force in 2007

Appendix 1
Made rules and non-Handbook guidance (legal instrument)

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 4) INSTRUMENT 2019

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 137A (FCA's general rule-making power);
(2) section 137T (General supplementary powers);
(3) section 139A (Power of the FCA to give guidance); and
(4) paragraph 13 of Schedule 17 (FCA's rules).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force on 30 January 2019.

Amendments to the Handbook

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

Non-Handbook guidance

E. The non-Handbook guidance at Annex B to this instrument is issued.

Citation

F. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 4) Instrument 2019.

By order of the Board
24 January 2019

Annex A

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking thorough indicates deleted text.

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

Application

3.1.1 G …

(4) It requires *firms* to send written communications to complainants in certain circumstances ~~where their previous *complaint* in relation to the sale of a *payment protection contract* did not result in the *firm* offering (or being required to pay) redress on the basis that the complainant would not have bought the *payment protection contract* that they bought~~ (see *DISP* App 3.11).

…

…

App 3.11 Obligation to write letters to certain rejected complainants

Definitions

3.11.-1 R In this section:

(1) "purported complaint" means an expression of dissatisfaction which would have been a *complaint*, had it related to an activity which comes under the jurisdiction of the *Financial Ombudsman Service*;

(2) "recurring non-disclosure of commission" means any omission of the kind described at *DISP* App 3.1.1G(3)(b); and

(3) "non-disclosure of commission" means "failure to disclose commission" as defined at *DISP* App 3.1.5G(7) or recurring non-disclosure of commission.

Letters required to be sent by 29 November 2017

3.11.1 R ~~This section applies~~ *DISP* App 3.11.2R and *DISP* App 3.11.3R apply where:

…

…

Letters required to be sent by 29 April 2019

3.11.4 R *DISP* App 3.11.5R and *DISP* App 3.11.6R apply where, in relation to the sale of a *payment protection contract* which covers, covered or purported to cover a *credit agreement* (this includes partial coverage) a complainant has made:

(1) (in relation to a regular premium *payment protection contract*) a *complaint* to the *CCA lender* that was rejected before 30 January 2019 in that:

(a) it was considered under step 2 of *DISP* Appendix 3 but redress on the basis that an unfair relationship under section 140A of the *CCA* had arisen was not offered; or

(b) it was not considered under step 2 of *DISP* Appendix 3 because the *complaint* was treated as a purported complaint that did not come under the jurisdiction of the *Financial Ombudsman Service*; or

(2) a purported complaint to the selling *firm* that would otherwise have fallen to be considered under step 1 of *DISP* Appendix 3 but was rejected before 30 January 2019 by that *firm* on the basis that it did not come under the jurisdiction of the *Financial Ombudsman Service*.

3.11.5 R The *firm* that rejected the *complaint* or purported complaint (or, where applicable, its successor) must as soon as reasonably practicable, and no later than 29 April 2019, send a written communication to the complainant which:

(1) in a case falling within *DISP* App 3.11.4R(1), informs the complainant they can make a *complaint* against the *CCA lender* in relation to recurring non-disclosure of commission;

(2) in a case falling within *DISP* App 3.11.4R(2), informs the complainant they can make a *complaint* against the *CCA lender* in relation to non-disclosure of commission;

(3) where the *firm* is not the *CCA lender*, makes clear the identity of the *CCA lender* where this is known or can be identified by the *firm* by following reasonable steps;

(4) where the *firm* is the *CCA lender*, informs the complainant of its arrangements for handling *complaints* about non-disclosure of commission;

(5) informs the complainant of the 29 August 2019 time limit; and

(6) refers to the availability of relevant further information on the *FCA's* website (whose address should be provided) or by contacting the *FCA's* PPI contact centre (the telephone number of which should be provided).

3.11.6 R The obligation to send a written communication does not apply where:

(1) the *firm* is otherwise required to send such a written communication is the *CCA lender*, and knows that no non-disclosure of commission has occurred during a time which falls within the jurisdiction of the *Financial Ombudsman Service*;

(2) the complainant has already been offered or paid redress in respect of the *payment protection contract* (either on the basis that the complainant would not have bought the *payment protection contract* they bought or on the basis that an unfair relationship under section 140A of the *CCA* had arisen) by 29 April 2019;

(3) the *CCA lender* or the *Financial Ombudsman Service* has indicated to the complainant in writing that it will consider or reconsider the *complaint* or purported complaint and that consideration is not completed by 29 April 2019; or

(4) the *CCA lender* has, when considering or reconsidering a *complaint* or purported complaint, already considered recurring non-disclosure of commission and not offered redress on the basis that an unfair relationship under section 140A of the *CCA* had arisen.

Annex B

Non-Handbook guidance

1. The four boxes below describe the criteria that we consider put a previous complainant into one of four populations, including as relevant to:

- a supplementary mailing for sellers under our existing Plevin mailing rule in DISP 3.11.2R (Box 1)
- our new mailing requirement in DISP App 3.11.5R (as it applies to lenders) in relation to the recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share (RND) (Box 2)
- our new mailing requirement in DISP App 3.11.5R (as it applies to PPI sellers (including brokers)) in relation to RND (Box 3) and Plevin (Box 4)

2. In the scenarios in each box, the seller may or may not be the same firm as the lender.

3. DISP App 3.11.5R treats the cases in Boxes 3 and 4 as equivalent, in that both should be told by a letter that they can make a new complaint about non-disclosure of commission (which could be in light of RND or Plevin, depending on the circumstances).

Box 1 Cases requiring supplementary mailing under existing Plevin mailing rule

The existing Plevin mailing obligation (DISP App 3.11.2R) requires the seller to write to consumers who made previous mis-selling complaints which it rejected on the merits as not mis-sold (if the credit agreement remained in force at 6 April 2008 and so is in scope of s140A Consumer Credit Act 1974 (CCA)).

We consider that the supplementary mailing required under the Plevin mailing rule will be relevant to the following classes of previous regular premium PPI complaint, where firms did not include these in their previous mailing.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was in a relevant Ombudsman predecessor scheme then, but the lender wasn't.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was in a relevant Ombudsman predecessor scheme then (with the lender's status then irrelevant as all restricted credit acts and omissions in that period are out of jurisdiction).

The credit agreement was entered and the PPI sold between 14 January 2005 and 6 April 2007 (with the seller's status then irrelevant as all PPI sales in that period are in jurisdiction, and the lender's status then irrelevant as all restricted credit acts and omissions in that period are out of jurisdiction).

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was in a relevant Ombudsman predecessor scheme then, but the lender wasn't.

In practice, we will not now insist on firms mailing those among these cases where the firm is also the lender and knows that there was no RND on or after 6 April 2007. This is because those cases would involve no loss on or after 6 April 2007 that needed to be redressed.

Box 2 - Cases where a previous Plevin complaint has been rejected but a new complaint could be made in light of RND

We consider that DISP App 3.11.5R as it applies to lenders will be relevant to the following classes of previous regular premium PPI complaint.

a. Complaints about restricted or non-restricted credit PPI that have been rejected on the merits – eg the non-disclosed commission at point of sale was under the tipping point and it wasn't reasonably foreseeable then that it would go above the tipping point.

   We would expect the firm to write to such cases about RND where commission had gone up after point of sale. We would expect this not only where it had gone above the 50% presumptive tipping point, as there may be some cases where a lower tipping point might apply in the particular recipient's circumstances.

b. Complaints about restricted or non-restricted credit PPI that have been rejected as out of jurisdiction. This would be relevant to:

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the lender was not in a relevant Ombudsman predecessor scheme then.

The credit agreement was entered and the PPI sold between 1 December 2001 and 6 April 2007. The lender's status then is irrelevant because all restricted credit acts and omissions in that period are out of jurisdiction.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and
- there is RND on or after 6 April 2007, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the lender was not in a relevant Ombudsman predecessor scheme then.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and
- there is RND on or after 1 December 2001, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Box 3

Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about Plevin, but they can make an RND complaint that is in jurisdiction

We consider that DISP App 3.11.5R as it applies to sellers will be relevant to the following classes of previous regular premium PPI complaint.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and neither the seller nor lender was in a relevant Ombudsman predecessor scheme then.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was not in a relevant Ombudsman predecessor scheme then. The lender's status then is irrelevant because all restricted credit acts and omissions in that period are out of jurisdiction.

These consumers can make a new complaint in light of RND if:

• the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and

• there is RND on or after 6 April 2007, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and neither the seller nor lender was in a relevant Ombudsman predecessor scheme then.

These consumers can make a new complaint in light of RND if:

• the credit agreement remained in force at 6 April 2008 and so is in scope of s140 CCA, and

• there is RND on or after 1 December 2001, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Box 4

Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about Plevin, but they can make a Plevin complaint in jurisdiction

We consider that DISP App 3.11.5R as it applies to sellers will be relevant to the following classes of previous complaint about regular premium PPI or single premium PPI.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was not in a relevant Ombudsman predecessor scheme then, but the lender was.

These consumers can make a new complaint in light of Plevin that would be in DISP jurisdiction if:

• the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was not in a relevant Ombudsman predecessor scheme then, but the lender was.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was not in a relevant Ombudsman predecessor scheme then. The lender's status then is irrelevant as non-restricted credit in that period is all in jurisdiction.

These consumers can make a new complaint in light of Plevin that would be in DISP jurisdiction if:

• the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA

(Expressions in the text in Annex B which are defined in the Glossary to the FCA Handbook of rules and guidance have the meanings given in those definitions, unless the context otherwise requires. "PPI" means "payment protection contract" and "Ombudsman predecessor scheme" means "former scheme", as defined in the Glossary.)

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