Financial Conduct Authority

Rules and guidance on payment protection insurance complaints

November 2015

Consultation Paper CP15/39***

Contents

We are asking for comments on this Consultation Paper by 26 February 2016.

You can send them to us using the form on our website at:

www.fca.org.uk/your-fca/documents/consultation-papers/cp15-39-response-form.

Or in writing to:

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Abbreviations used in this document

BBA	British Bankers' Association
CBA	cost benefit analysis
CCA	Consumer Credit Act 1974
CMC	claims management company
CMR	Claims Management Regulator
DISP	Dispute resolution: Complaints sourcebook
FCA	Financial Conduct Authority
FEES	Fees manual
FSA	Financial Services Authority (the regulatory body preceding the FCA and PRA)
FSMA	Financial Services and Markets Act 2000
HMRC	Her Majesty's Revenue and Customs
ICOB	Insurance: Conduct of Business sourcebook
ICOBS	Insurance: New Conduct of Business sourcebook
IPT	Insurance Premium Tax
MGOMD	Manning Gottlieb OMD (a media agency)
MoJ	Ministry of Justice
Ombudsman service	The Financial Ombudsman Service
Plevin	Supreme Court judgment in *Plevin* v Paragon Personal Finance Ltd [2014] UKSC 61
Principles	FCA's Principles for Businesses
PPI	Payment Protection Insurance
PRA	Prudential Regulation Authority
s.140A	Section 140A of the Consumer Credit Act 1974, which came into force in 2007
s.140B	Section 140B of the Consumer Credit Act 1974, which came into force in 2007
s.140C	Section 140C of the Consumer Credit Act 1974, which came into force in 2007
s.404	Section 404 of the Financial Services and Markets Act 2000, which, as revised, came into force in 2010

1. Overview

Introduction

1.1 This consultation paper sets out, and asks for views on, our proposals for:

- a new rule that would set a deadline by which consumers would need to make their payment protection insurance (PPI) complaints or else lose their right to have them assessed by firms or by the Ombudsman service
- an FCA-led communications campaign designed to inform consumers of the deadline
- a new fee rule on funding this consumer communications campaign
- new rules and guidance on the handling of PPI complaints in light of the Supreme Court's decision in *Plevin v Paragon Personal Finance Ltd*[1] ('*Plevin*')
- the proposed deadline also to apply to PPI complaints falling within the scope of the proposed rules and guidance on *Plevin*

Who does this consultation affect?

1.2 This consultation affects:

- consumers who were – or may have been – sold PPI
- claims management companies (CMCs), other paid advocates, and consumer organisations, who take forward complaints about PPI on behalf of consumers or otherwise help them
- firms that sold PPI and/or provided credit agreements which PPI covered and
- anyone interested in the FCA's performance and accountability

Is this consultation of interest to consumers?

1.3 Yes, because our proposals would:

1 The Supreme Court gave its decision in November 2014.

- aim to prompt consumers who want to complain about PPI, or to check whether they had PPI, but have not yet done so, into action, potentially bringing them redress sooner
- set a deadline by which consumers would need to make their PPI complaints or else lose their right to have them assessed by firms or by the Ombudsman service
- help ensure that complaints about PPI sales involving undisclosed commission (the issue in *Plevin*) are treated fairly and consistently by lenders

Background

1.4 PPI was sold in large volumes before 2009. It developed into the biggest issue of financial mis-selling in recent years and has significantly damaged public trust in financial institutions. Ensuring that firms put things right by handling PPI complaints fairly is vital to rebuilding public confidence, and the Financial Services Authority and, since April 2013, the Financial Conduct Authority, have remained close to this process. The current rules and guidance about PPI complaint handling have been in place since December 2010 and supported by an intensive project of data gathering, supervisory monitoring and assessment.

1.5 Much progress has been made. Since PPI complaints began rising in 2007, firms have:

- handled over 16.5m PPI complaints
- upheld 75% of these complaints
- paid more than 12m mis-sold consumers over £21b in redress[2] and
- as part of this effort, sent 4.8m letters (so far, of a planned 5.5m) to customers they had identified as being at high risk of having suffered a past mis-sale but who had not yet complained

1.6 However, some consumer bodies have asked for more to be done to help consumers who were sold PPI to understand the potential issues and to complain if dissatisfied. And some firms have raised concerns that the redress exercise is accompanied by less positive trends.

1.7 In January 2015, we announced we would gather evidence and assess whether the current approach was continuing to meet our objectives or whether further interventions by us were needed.[3] In May 2015, we announced we would also consider the implications for PPI complaint handling of the Supreme Court judgment in *Plevin*.[4]

1.8 On 2 October, we announced our intention to consult on interventions in PPI generally, and *Plevin* specifically, and summarised our key proposals.[5] We are now consulting on the details of our proposed interventions, and set out in full the evidence we have considered, our reasons for proposing them, and our assessment of their costs and benefits.

2 http://www.fca.org.uk/consumers/financial-services-products/insurance/payment-protection-insurance/ppi-compensation-refunds
3 FCA Statement, 30 January 2015: The Financial Conduct Authority to gather evidence on how the PPI complaints process is working.
4 FCA statement, 27 May 2015: Statement on *Plevin v Paragon Personal Finance Ltd*
5 FCA statement, 2 October 2015: https://www.fca.org.uk/news/statement-on-payment-protection-insurance-ppi

Context and assessment of risks

Proposed deadline and communications campaign

1.9 The evidence we have collected[6] indicates that:

- a high and growing proportion of PPI complaints are made through CMCs, with fee costs to the consumers who use them
- a high and growing proportion of PPI complaints relate to older PPI sales, where the documentary evidence held by firms and consumers is likely to have significant gaps, and recollections and oral evidence are becoming increasingly stale and
- a significant proportion of PPI complaints turn out not to have involved a PPI sale

1.10 More broadly:

- around three quarters (74%) of the consumers we surveyed have heard of PPI as a product, most of whom (77%) say they are aware of problems or issues with it
- but a number of those consumers who told us they intended to complain, or to check whether they had PPI, also said they had not yet got around to doing so; the perceived open-ended nature of the complaints-led approach to PPI redress[7] appears to contribute to a significant degree of consumer inertia and does not push or incentivise consumers to check if they had PPI, consider if they have any concerns, or progress complaints promptly where dissatisfied

1.11 We now consider there is a case for intervening further in relation to PPI and that introducing a deadline for complaining, preceded by a high profile consumer communications campaign with appropriate messaging:

- would prompt many consumers who want to complain, or to check whether they had PPI, but have not yet done so, into action, resulting in them potentially getting redress sooner, and giving some of them the opportunity to pay off costly debt
- may encourage more consumers to complain directly to firms, rather than using and paying CMCs or other paid advocates
- may increase the efficiency of PPI complaints handling, to the benefit of consumers and firms and
- would bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector

1.12 Overall, we think that the proposed deadline and consumer communications campaign would help bring finality and certainty in a way that advances our operational objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system.

6 See Chapter 2 for details of the evidence we collected.

7 'Perceived' because there are time limits under our existing rules for complaining which have already begun to run or passed for some consumers who had or have PPI.

PPI complaint handling and *Plevin*

1.13 The Supreme Court ruled in *Plevin* that the failure by the lender to disclose to Mrs Plevin the large commissions payable out of her PPI premium made its relationship with her unfair under s.140A of the Consumer Credit Act 1974 (CCA).

1.14 The *Plevin* decision is in the public domain and has created uncertainty for firms about how the judgment should be taken into account in the context of PPI complaints. This brings the risk of inconsistent and unfair outcomes for complainants.

1.15 We recognise that disclosure of commission to consumers was not required by our insurance conduct of business rules (ICOB/ICOBS), such that firms' failure to do so was not in breach of any FSA or FCA regulatory requirements at the time, nor by the industry codes which preceded those rules[8].

1.16 However, we consider that our proposed rules and guidance about how firms should handle relevant PPI complaints in light of *Plevin* would:

- reduce uncertainty and enable firms to continue to take a fair and consistent approach to handling PPI complaints
- make it easier for us to act if we become concerned that firms are not handling PPI complaints appropriately
- provide a clear approach which the Ombudsman service could take into account (along with other relevant considerations) when deciding what is fair and reasonable in all the circumstances of individual PPI cases

Summary of our main proposals

Deadline

1.17 We propose:

- a new rule[9] that would set a deadline for new PPI complaints two years after the start date of the rule
- that PPI consumers would need to complain to a firm on or before the deadline or else lose their right to have their complaint assessed by the firm or by the Ombudsman service[10]
- that the deadline would *not* extend time for those consumers for whom the time limits under our existing rules for complaining to the Ombudsman service have already begun to run or passed
- that, as with our existing time limits, the Ombudsman service should retain the flexibility to deal with complaints submitted after the deadline where, in its view, the complainant's

8 Firms were required by ICOB/ICOBS and by the preceding industry codes to disclose commission to commercial customers if they asked. Since 1 April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for commission disclosure by credit brokers.

9 In section 2.8 of the Dispute resolution: complaints module of our Handbook (DISP)

10 Provided the consumer has complained to the firm before the proposed deadline, they will remain (under our existing rules) in time to take the complaint to the Ombudsman service, if dissatisfied with the firm's response, provided they refer it to the Ombudsman service within 6 months of receiving the firm's response to the complaint.

failure to complain in time 'was as a result of exceptional circumstances' (or where the firm consents to the Ombudsman service doing this)[11]

- that the deadline should apply to new complaints about the sale of PPI policies that took place on or before the start date of the rule, but should not apply where the PPI sale took place after that date and
- that the deadline should *not* apply to PPI complaints about matters unrelated to the sale (such as delays in claims handling or administrative errors)

Consumer communications campaign

1.18 We are proposing a high profile FCA-led consumer communications campaign in advance of the proposed deadline. In light of our consumer research, we propose that the campaign would aim, with a new authoritative voice and appropriate messaging, to:

- raise awareness of the deadline, to prompt those who intend to complain, or to check whether they had PPI, to act ahead of the deadline
- provide information to consumers on how to check if they had PPI if they are not sure and have any concerns
- clarify the PPI mis-selling issue, and complaints about it, and help consumers consider whether they should be concerned
- explain clearly how to make a PPI complaint and dispel existing myths and confusion about the PPI complaints process and
- sign-post consumers to appropriate help

1.19 We also propose to ask firms to support the consumer communications campaign with messaging of their own that would reassure PPI consumers about how they would be treated if they complain.

1.20 The campaign will be designed to reach all adults in the United Kingdom to ensure that all PPI consumers have reasonable opportunity to see or hear our messages.

1.21 Given the scale of the PPI audience and the communication challenge, our proposed campaign will include:

- broadcast and high reach channels (TV and outdoor advertising) to raise awareness of the deadline, combined with direct marketing and digital advertising, signposting consumers to a dedicated online hub and helpline for information and advice and
- a programme of public relations and partnership activity, including communications to reach consumers who may be harder to reach via traditional marketing channels

Fee rule

1.22 We estimate the cost of the proposed consumer communications campaign as £42.2m over two years. To fund this, we are proposing a new fee rule, applying to 18 firms (who receive around 90% of PPI complaints), requiring them to pay this sum over two years.

11 DISP 2.8.2R(3) and (5).

Handling PPI complaints in light of *Plevin* – key elements

Scope

1.23 The proposed rules and guidance apply only to PPI complaints where a claim could be made against a lender under s.140A of the CCA and an order made to remedy any unfair relationship under s.140B of the CCA.

1.24 We propose that the rules and guidance should apply to any PPI complaint meeting these conditions, regardless of:

- the type of PPI policy (whether the PPI covers a secured or unsecured loan, credit card or other revolving credit, or mortgage)
- the structure of its premium (single or regular premium)
- whether the premium was financed by the credit agreement it covered
- the nature of the PPI sale (advised or non-advised)
- the nature and relationships of the respective businesses behind the selling of the PPI, the provision of the credit and the underwriting of the PPI (for example, whether or not it was sold by a firm that was also the lender)

The two-step approach: relationship with existing rules and guidance in DISP App 3

1.25 Our proposed rules and guidance introduce a new second step into the existing rules and guidance in DISP App 3. This means that, where the credit agreement covered by the PPI is in the scope of s.140A-B, then:

- a lender does not have to assess a PPI complaint against the proposed new rules and guidance ('Step 2') *if* it sold the PPI and has already concluded, under the existing rules and guidance ('Step 1'), that the complaint should be upheld (because the PPI was mis-sold) and paid full redress[12].
- a lender should assess a PPI complaint under the proposed Step 2 *if*:
  - it sold the PPI and decides under Step 1 that it would reject the complaint because the PPI was not mis-sold (or uphold it but pay only 'alternative redress'[13]) or
  - it did not sell the PPI (and so cannot decide whether it was mis-sold under Step 1).
- a firm that sold the PPI featuring in the complaint but did not provide the credit agreement the PPI covered (i.e. was not the lender) does not have to assess the complaint at Step 2.

Commission

1.26 We propose, for the purposes of PPI complaint handling only[14], to define 'commission' as: *the proportion of the total amount paid in respect of a payment protection contract that was not due to be passed to and retained by the insurer.*

12 That is, the full return to the customer of their premium plus the historic interest paid on that premium (where relevant).

13 'Alternative redress' refers to the 'Alternative approach to redress: single premium policies' set out at 3.7.7E-3.7.15E in our current DISP App 3 rules and guidance.

14 We are not altering the existing FCA glossary definition of 'commission' used in sourcebooks other than DISP.

The approach to considering evidence at Step 2 and the presumption of unfairness

1.27 Under the proposed rules and guidance, firms will need to consider at Step 2 whether they disclosed to the complainant, in advance of the PPI contract being entered into:

- the commission, or
- an explanation of what the commission was likely to be in the future, or
- the likely range in which it would fall or how it would be calculated

1.28 If a firm did not make such a disclosure (and is not aware that anyone else did so at that time), it should take steps to satisfy itself that this did not give rise to an unfair relationship under s.140A, taking all relevant matters into account.

1.29 We propose, however, that firms should presume at Step 2 that a failure to disclose did give rise to an unfair relationship if the commission was, or had the potential to be, 50% or more. Equally, we propose that firms should presume that the failure to disclose did not give rise to an unfair relationship if the commission was less than 50%, or did not have the potential to be 50% or more. However, our proposed rules and guidance do provide for some flexibility around the 50% figure and these presumptions.

The main elements of redress at Step 2

1.30 The proposed rules and guidance provide for a firm to remedy the unfairness if it concludes that an unfair relationship under s.140A has been created due to undisclosed high commission. The proposed key elements of redress are:

1. the difference between the commission the customer paid (eg 70% of the premium) and 50% (i.e. 20% of premium in this example) *plus*
2. the historic interest the customer paid on that portion (where relevant) (i.e. the interest paid, in this example, on the 20%) *plus*
3. annual simple interest at 8% on the sum of 1 and 2

1.31 However, firms should also consider whether the situation requires a different form or level of redress in order to remedy the unfairness found.

Proactive measures by firms

1.32 We do not propose to require (or otherwise expect) firms to:

- proactively review or take other proactive actions (for example, making targeted contact with relevant customers) in respect of past PPI policies and sales which fall within the scope of s.140A-B and involved undisclosed commission or
- proactively review previously rejected PPI complaints against our proposed new rules and guidance

Cost benefit analysis

1.33 We present at Annex 2 our cost benefit analysis (CBA) of the proposed deadline rule and consumer communications campaign, the proposed fee rule, and the proposed rules and guidance on the handling of PPI complaints in light of *Plevin*.

Commencement of our proposals

1.34 We propose that:

- the deadline rule, the communications campaign fee rule, and the rules and guidance concerning PPI complaints and *Plevin*, should come into force on the same date, in 2016
- the communications campaign should begin soon after that date
- the deadline should fall two years after that date, in 2018

Equality impact assessment

1.35 We have considered the equality impact issues that may arise from the proposals in this consultation paper. Our assessment is set out at Annex 3. We particularly welcome any input to this consultation on such matters, which we will continue to consider.

Next steps

What do you need to do next?

1.36 This consultation is open for three months until 26 February 2016. Please provide any comments on, or evidence about, our proposals by that date.

1.37 Consumers who are unhappy about PPI should continue to complain to the firms concerned and to the Ombudsman service if they are not satisfied with the response from firms. Making such complaints is free to consumers and most people should not need to use a CMC or other paid advocate to help them. Consumers who intend to complain about PPI should do so as soon as possible.

1.38 During the consultation period and before making any final rules and guidance:

- we will expect firms to continue to progress to a conclusion, fairly and promptly under our existing rules, those PPI complaints that would not be affected by our proposed rules and guidance on *Plevin*
- we acknowledge that it will be open to firms to explain to complainants that they cannot provide a final response for those complaints that could be affected by the proposed rules and guidance on *Plevin*[15]

15 Under our existing rules (DISP 1.6.2R(2))

What will we do?

1.39 We will carefully consider comments and evidence received in response to this consultation, and also any already received about our 2 October statement.

1.40 Subject to our assessment of these responses, and if we go ahead with some or all of our proposed interventions, we would plan to issue a policy statement with finalised rules and guidance shortly before their start date.

1.41 During the consultation period, we will undertake preparatory work concerning the proposed consumer communications campaign, so we are ready to begin it promptly if, following consultation, we do make a deadline rule.

1.42 We will continue our ongoing supervision of PPI complaint handling to ensure that firms are fairly and appropriately progressing relevant PPI complaints.

2.
Areas for consultation (I): Our rationale for a proposed deadline and consumer communications campaign

Background and strategic context[16]

2.1 PPI sales grew rapidly through the 1990s, peaking in 2004, before eventually contracting in 2009. Following a number of thematic reviews and reports between 2005 and 2008, the FSA concluded in 2009-10 that evidence indicated that there were 'genuine widespread weaknesses in sales practices across the PPI market'.[17] The FSA did not, however, suggest that all PPI had been mis-sold, and had always stressed that PPI, properly sold, could meet some consumers' genuine credit protection needs.[18]

2.2 Some stakeholders argued at that time that the correct regulatory response should be a full industry wide review of past PPI sales under s.404 of FSMA.[19] However, the FSA considered that 'the most significant sales problems can be redressed more swiftly and proportionately through other means', in particular through a complaints-led approach[20] that would be 'a more targeted and proportionate response to poor sales practices than mandating to the whole market a full review of PPI sales.'[21]

2.3 The FSA emphasised, however, that for a complaints-led approach to be effective and give consumers fair outcomes, it was 'clearly of the essence that firms acted fairly, effectively and consistently when handling complaints', but that it had 'serious concerns that many firms have not been doing this for PPI complaints'.[22]

2.4 So in late 2010, the FSA issued rules and guidance on fair PPI complaint handling.[23] The FSA committed to support this complaints-led strategy with an intensive project of data gathering, supervisory monitoring and assessment, focused on 24 firms.[24]

16 See also Chapter 3 of Thematic Report TR14/14 (August 2014) https://www.fca.org.uk/static/documents/thematic-reviews/tr14-14.pdf

17 p 20 of Policy Statement 10/12 (August 2010), http://www.fsa.gov.uk/pubs/policy/ps10_12.pdf See also Appendix 4 therein for a list of the common failings in PPI selling practices that the FSA had identified.

18 For example, in Consultation Paper 9/23 (September 2009) the FSA said (p8) that: '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.' http://www.fsa.gov.uk/pubs/cp/cp09_23.pdf

19 Under s.404 of FSMA, we have the power to make a consumer redress scheme, requiring firms to review their sales and, where relevant, to pay redress to consumers, where it appears to us that: there has been a widespread or regular failure by firms to comply with requirements applicable to carrying on an activity; that, as a result, consumers have suffered (or may suffer) a loss which a court would remedy; and such a scheme is desirable for the purpose of securing redress, having regard to other ways in which consumers may obtain redress.

20 An approach that mainly relies on consumers who feel they were mis-sold identifying themselves to firms through complaints. It had previously been used by the FSA to redress mortgage endowment mis-selling.

21 See p29 of Consultation Paper 10/6 (March 2010) http://www.fsa.gov.uk/pubs/cp/cp10_06.pdf The FSA also noted there that a complaints-led approach could be relied on as 'financial services issues giving rise to complaints now receive more publicity than in the past, through for example the activity of consumer bodies and websites.'

22 See p21 of PS10/12

23 See PS10/12. The rules came into force on 1 December 2010.

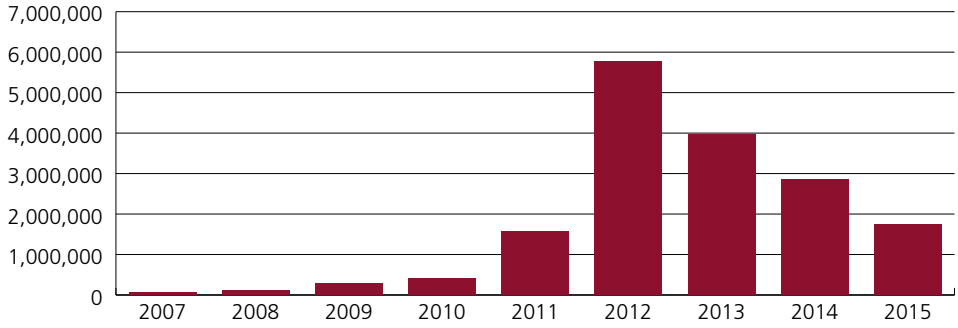
24 These 24 firms had, between them, received 96% of total PPI complaints made before 2011, and included six larger firms that had received 80% and 18 medium firms that had received 16%.

2.5 The banking industry unsuccessfully challenged these measures in the High Court.[25] From April 2011 the FSA's supervisory work was able to move forward. This strategy and supervision has been taken forward since April 2013 by the FCA.

Consumer complaints about PPI mis-selling

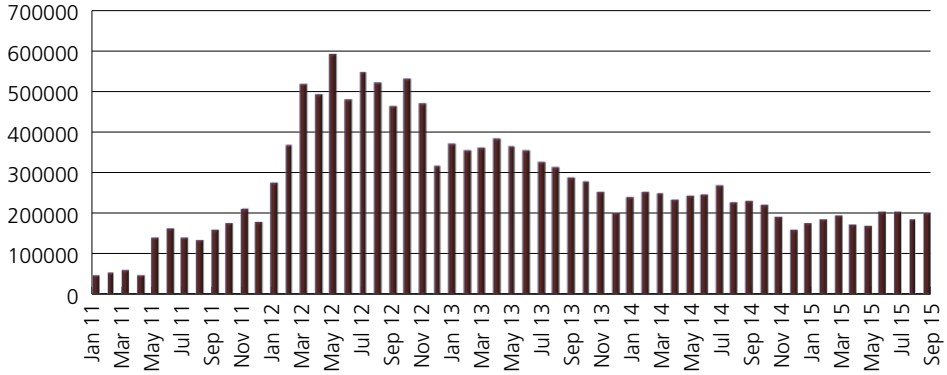
2.6 In all, over 16.5m PPI complaints have been made to firms since 2007 (see Figure 1 below). Many of these concern more than one policy. Nonetheless, it is clear that a majority of the PPI policies sold have not been complained about. (We discuss the reasons for this, including the fact that many consumers are content with their PPI purchase and do not consider that they were mis-sold, at p19 below.)

Figure 1: PPI complaints to firms by year 2007 - 2015 (September 2015)



2.7 At the time we made our initial announcement in January 2015, PPI complaints had been falling gradually but steadily since May 2012. However, subsequent months' data we received, most recently for September 2015, has shown a flattening out:

Figure 2: PPI complaints to firms by month January 2011 - September 2015

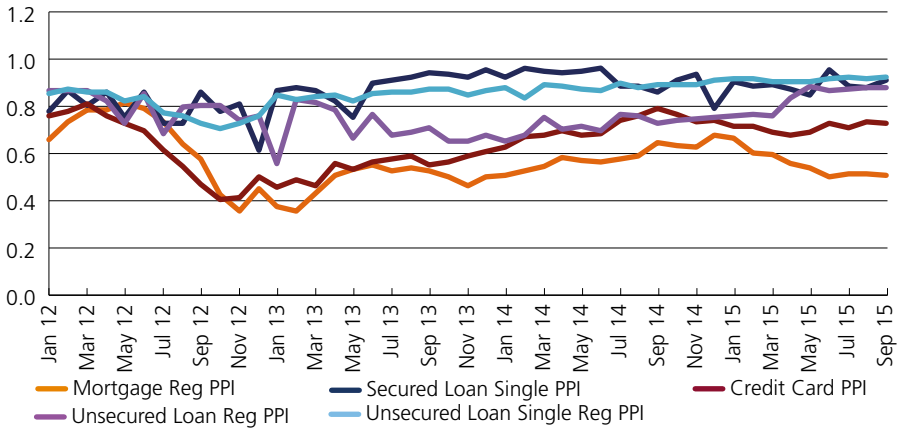


25 In October 2010, the British Bankers' Association (BBA) and Nemo Personal Finance Ltd applied for a judicial review of the FSA's measures, which they claimed rested on certain errors of law. The case was heard in January 2011. Mr Justice Ouseley handed down judgment on 20 April 2011 and rejected the BBA's and Nemo's claims. His decision was not appealed by them.

Firms' handling of PPI complaints

2.8 As we reported in our last thematic report (in August 2014), firms' uphold rates have fluctuated significantly.[26] These trends informed our intensive supervisory work, where we have used a wide range of tools to secure fair and consistent PPI complaint handling.[27] As a result of that work, uphold rates for the main types of PPI complaint increased significantly in later 2013 and have remained high and stable ever since:

Figure 3: Larger firms' PPI complaint uphold rates by PPI type by month January 2012 – September 2015



2.9 Overall, firms have now upheld 75% of all PPI complaints ever made, and that is also the average current uphold rate for new PPI complaints. We continue to monitor these trends and firms' performance.

2.10 Since our August 2014 report:

- we have published two enforcement findings, which fined one large firm[28] and one medium sized firm[29] £117m and £21m respectively, for their unfair handling of PPI complaints in past periods[30] and
- the firms in our project have continued to reassess, under their current improved processes, 2m PPI complaints which they had previously rejected (or potentially paid too little redress to) when their approach to PPI complaint handling was not necessarily as robust and well controlled

26 See pages 11-12 in Thematic Report 14/14. The outcome of firms' decisions about PPI complaints – in particular the proportion which the firm upholds in favour of the consumer – has been and remains an important factor in our risk assessment of their PPI complaint handling. We do not have 'targets' for firms' uphold rates. However, where a firm has generated significantly lower uphold rates than its peers, or there has been a significant fall over time in its uphold rate, then this has informed our risk assessment of, and supervisory dealings with, that firm.

27 This includes file reviews, assurance work with firms, and reports and checking work from external skilled persons. We have also worked closely with the Ombudsman service, sharing our respective experience and understanding to provide coherent consistent feedback to firms and consumers – see Annex 5.

28 https://www.fca.org.uk/your-fca/documents/final-notices/2015/lloyds-banking-group

29 https://www.fca.org.uk/your-fca/documents/final-notices/2015/clydesdale-bank-plc

30 The periods being 5 March 2012 to 28 May 2013, and 10 May 2011 to 30 July 2013, respectively.

Contacting high-risk consumers who haven't complained

2.11 During 2013–2015, the large firms have also been conducting detailed assessments of the 'root causes' of PPI complaints.[31] They have identified various recurrent weaknesses in sales processes that featured in their past selling of certain types of PPI through certain channels at certain times. Where they have concluded that these failings were serious and that it would be fair and appropriate to do so, these firms have then proactively contacted those groups of consumers who may have been impacted by these failings but had not complained.[32]

2.12 We have been assessing firms' root cause analysis, the soundness of their conclusions about whether or not to take proactive measures, and the fairness and scope of their actions. Our involvement has led to some additional groups of consumers being contacted by some firms.[33]

2.13 Overall, firms have:

- committed to sending around 5.5m targeted redress offers or contact letters to identified high-risk non-complainants
- sent around 4.8m of these letters so far
- received around 1.6m complaints in response (a rate of 33%), amounting to nearly 20% of all PPI complaints made between January 2013 and August 2015
- upheld around 97% of these complaints (compared to 75% for other PPI complaints), indicating that the measures are effectively targeting the right customers and
- paid £3.1b redress to these complainants, amounting to nearly 25% of the total redress paid between January 2013 and August 2015

2.14 These proactive measures by firms in themselves constitute one of the most extensive redress exercises in UK financial services history, and have played a particularly significant role in addressing remaining areas of potential consumer detriment.

Conclusion concerning strategy

2.15 In total, firms have so far paid PPI complainants over £21b of redress, most of it since 2011 (see Figure 4 below).

2.16 The complaints-led approach to redressing PPI mis-selling has continued on a larger scale and for longer than was anticipated when it was launched in 2010. However, overall, we believe

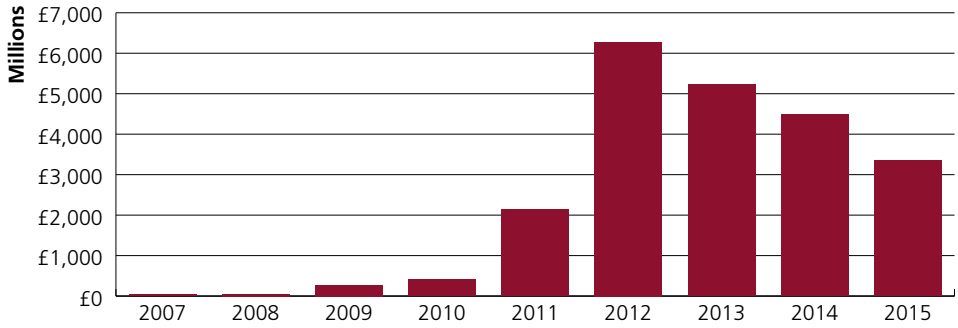
31 In 2010, the FSA, as part of its complaint-led strategy, had set out its expectation that firms should also: identify from PPI complaints when the same problems in past sales had kept occurring and caused subsequent mis-selling complaints ('root cause analysis'); and consider what action they might need to take to ensure the fair treatment of those consumers who may have been affected by such recurrent sales failings but not complained. These expectations derive from Principle 6, as explained in DISP 1.3.6G and DISP App 3.4.3G; see also paras 2.13-2.20 of PS 10/12 (August 2010).

32 In some cases, for example where some customers in a group were simply not eligible for the PPI cover they were sold, they have been immediately offered redress. More often, for example where the firm was aware its staff had not always reliably disclosed to the consumer important information about certain policy exclusions or limitations, firms have written proactively to the consumers in the group, warning them of these potential sales failings and inviting them to complain if they think they were affected by them or are otherwise dissatisfied. These letters also warned the consumers that they had three years from receipt in which to complain.

33 We plan to conclude our assessment of whether these targeted proactive measures are sufficient, or whether some additional groups still need to be contacted, by the time that we issue any policy statement on the proposals in this consultation.

it has provided a fair and effective solution to redressing PPI mis-selling. This gives us a secure foundation from which to consider other potentially less satisfactory aspects of it.

Figure 4: PPI redress paid by year 2007 - 2015 (September 2015)



The evidence we have gathered

2.17 To support our assessment of the PPI landscape, and of whether we should intervene further, we gathered evidence from a number of sources:

- information and data requests to eight firms (who together receive the majority of PPI complaints) concerning volumes and types of PPI complaints, the costs of handling them, and number of PPI policies potentially falling in the scope of s.140A-B of the CCA
- large scale 'quantitative consumer research', across two bespoke online surveys, with a total sample of 20,000 consumers;[34] these identified 4,000 consumers who hold or have held PPI, and asked about their experience of, and attitudes towards, the PPI issue, including whether and when they intended to complain[35]
- group discussions or interviews conducted with 210 consumers ('qualitative consumer research') who were recent or potential future PPI complainants[36]
- academic literature and other published discussions about other deadlines and communications campaigns that prompted consumer action (for example, the UK's switchover from analogue to digital television)
- discussions with industry and consumer stakeholders and
- analysis from specialist media agency Manning Gottlieb OMD

34 The fieldwork periods were 6th March – 12th May 2015 and 13th August-7th September 2015. See the analytical report by Com Res published alongside this consultation.

35 The second survey also tested: the impact of information about *Plevin* on their stated intentions to complain; and their potential appetite for post-PPI debt protection products.

36 The main fieldwork was carried out in April and May 2015. See the analytical report by ESRO "Understanding Redress from a Consumer Perspective" published alongside this consultation.

Consumers' current knowledge and intentions about PPI and complaining

2.18 Our consumer research gave the following picture:

Knowledge of PPI[37]

The quantitative research indicated that:

- Three quarters of all those surveyed have heard of PPI (74%), of whom two in five (42%) say they have a good understanding of what PPI is, while nearly half (46%) say they have some understanding.
- Most of those surveyed who have heard of PPI are aware of problems or issues with it (77%). Of these, nearly all became aware of these issues between two and five years ago (91%), most often via media news stories (61%).

The qualitative research gave a similar picture. The respondents were relatively familiar with PPI.[38] Most spontaneously spoke about mis-selling, which they had often read or heard about in the media.

There was, however, mostly only limited appreciation of how mis-selling may have taken place in practice (the majority associating it solely with the quality of their interactions with sales staff, while only a minority understood there might be issues associated with e.g the product's suitability for their circumstances).

Personal experience of PPI

The quantitative research indicated that:

- More than a fifth of those surveyed say they have had PPI (22%).
- Most people who now know that they had PPI have not always been aware of it. Only a third (36%) of PPI holders have always known. A quarter said they were not aware that they had had PPI until recently (25%).
- 11% of those surveyed have not ruled out that they may have or may have had PPI but are unsure.
- Nearly half of those who either said they had PPI or may have had PPI are concerned about how it was sold to them (46%), or its cost (44%). But a quarter say that they have no concerns (25%).
- Of those who may have had PPI, more say they are unlikely to check (49%) than say that they probably will check (37%).
- The prospect of redress is a motivator for half (50%) of those who say they will check, while over a quarter said they would check because they were concerned about whether they had been mis-sold (29%).
- Of those who say they probably will check, 38% said they would do so within 6 months, while 36% anticipated that they would only get round to doing so in three years' time or more.

37 Annex 6 details the base sizes of respondent sub-sets referred to here, in order to assist the reader and avoid misinterpretation of the percentages.

38 The qualitative respondents were recruited using a screener question and participants who did not know what PPI was were not included.

Experience of complaints

- Approximately half of those who said they had PPI (47%) have made a complaint about at least one of their PPI policies. Half of these complaints (50%) had been made in 2013 and 2014.
- Of those who had complained, most said they had been prompted by media news stories or adverts explaining how to complain (46%), while 20% pointed to a letter from their PPI firm, 18% to a cold call from a CMC, and 22% to advice from, or the example of a successful claim by, friends or family.
- The majority of the complaints were made directly to the PPI firm (64%), while a minority (31%) were made via CMCs.
- The process of making a complaint is generally considered 'easy' by many of those who have gone through it (59%).

The qualitative research suggested that:

- common prompts to making a PPI complaint included contact (usually repeated calls) from a CMC, or new information supplied by a trusted source such as a close friend or family member
- recent complainants who had complained directly to a PPI firm, rather than using a CMC, often found the process simpler and more straightforward than they were expecting.

Intention not to complain

The quantitative research indicated that:

- Nearly three quarters (72%) of PPI holders do not intend to complain (or complain again if they hold more than one policy) about their PPI policy.
- Among those who had not already made a complaint, and do not intend to complain, one in three (35%) said the main reason was that they have no concerns about the policy that was sold to them; one in seven (15%) said that the level of compensation they might receive would not be worth the time and effort it would take for them to complain; and one in nine (11%) said it was due to uncertainty about whether they should be concerned about their PPI.

Intention to complain

- Only one in eight (12%) of those who had PPI intend to complain (or complain again).
- PPI holders who do intend to complain expect to do so within one year (54%), in one to three years (5%) or only in more than three years (34%).

In our qualitative research, many of those who said they intended to complain also said they were unlikely to do so in the near future without a reminder or prompt.

Barriers to complaining

- Those who had PPI and intend to complain say that they had so far mainly been prevented from doing so by lack of time and energy (40%), by the need to have first checked if they had PPI (30%) or by lack of knowledge about how to make their complaint (21%).

The qualitative research added detail, with respondents' comments broadly grouped into the following illustrative 'mind-sets':

- a clear intention to make a PPI complaint, not yet acted on, often because of time constraints or it simply not being a personal priority ('On the brink').
- a complex financial situation which had made their personal history of PPI policies difficult to remember and records hard to locate, such that it was hard for them to know whether to be concerned ('Foggy finances').
- a rational assessment that a PPI complaint was not worth their time, based on the balance of perceived effort needed to make a complaint and the limited expected redress (often because they considered that they had only had small or short lived PPI policies) ('Rational evaluation').
- a moral reasoning that they did not think they had been mis-sold their PPI policies, or that they perceived there was a stigma attaching to complaining about PPI ('Moral grounds').
- a limited awareness, knowledge and understanding of finance generally, including PPI and mis-selling, often with limited understanding of the complaint process and a mistrust of firms ('Disengaged').
- a discomfort making complaints in a range of situations (not just PPI) or fear that a complaint about PPI could lead to negative repercussions (such as damaging their relationships with credit providers) ('Complaint averse').

Broadly, the 'On the brinks' seemed most likely to complain and the 'Disengaged' least likely to, with the others in between. However, many of the consumers seemed, from their comments, to occupy more than one of these mind-sets, often shifting from one to another in the course of discussion (though generally there was increasing intention to complain by the end of the two hour session). So it is very hard to say what any individual consumer's 'overall intention' really is, or how this may or may not translate into action.

2.19 The main conclusions we draw from these research findings are that:

- There is widespread public awareness of the PPI issue and, in broad terms, of problems with past PPI selling practices, albeit less understanding of the details of mis-selling or how these might apply to their own cases.
- There is a significant population of consumers who have been intending to complain but have not done so, due to not making it a priority or not being sure about how to complain. One third of these consumers anticipate that they will make their complaint only in three years' time or longer.
- There is a further significant population of consumers who intend to check whether they had PPI, or get their records together, but who, similarly, are not necessarily prioritising this. Over one third of these consumers anticipate that they will check only in three years' time or longer.

2.20 This leads us to draw the further key conclusion that the perceived open-ended nature of the current complaints-led approach to PPI redress contributes to a significant degree of consumer inertia, as it does not push or incentivise consumers to check if they had PPI, consider if they have any concerns, or progress their complaints promptly where dissatisfied.

Delay and 8%

2.21 We expect firms to add 8% annual simple interest to any redress sum they pay to a consumer in respect of a PPI complaint. This is intended to compensate the consumer for the period during which the money they paid because of the mis-sale (i.e. the PPI premium and interest on that premium) was 'out of their pocket'. Where there is a long period between the sale and the upheld complaint, this can significantly increase the total the firm has to pay to the customer.

2.22 Because of this, and current low interest rates on savings, some firms have suggested that some consumers may deliberately put off complaining about PPI in order to gain further years of 8% interest on their potential redress.

2.23 We have not seen evidence of this in our consumer research or elsewhere and, on general behavioural grounds, do not think that this is likely to be a widespread phenomenon (if it happens at all). What is true, however, is that:

- as time passes, the contribution of the 8% to the redress bill rises and
- delays in complaining are not only more expensive for firms but rarely benefit PPI consumers, many of whom will have debts charging interest at well *above* 8%[39]

Claims management company involvement

2.24 We do not regulate CMCs, which are the responsibility of the Claims Management Regulator (CMR) under the Ministry of Justice.[40]

2.25 CMC marketing activity about PPI has been extensive. For example, consumer research[41] conducted by Ipsos MORI for Citizens Advice found that two thirds (67%) of British adults, equivalent to 32 million people, said they had received a telephone call, text, email or letter about PPI. Of these consumers, more than half (55%) estimated that they had been contacted over ten times in the previous 12 months. Telephone calls (91%), automated messages to landlines (39%) and texts to mobiles (35%) were the most common ways people had been contacted about PPI by CMCs.

2.26 Our own consumer research found that among those who said that they had been triggered into complaining by a telephone call from a CMC, most (84%) then made their complaint through a CMC.

2.27 Our evidence from firms indicates that the share of PPI complaints that were made through CMCs has increased from 41% in 2012 to 47% in 2014 (see Figure 5 below)[42]. Given their share, and their typical fees of around 25%-30% of any redress awarded, it is clear that CMCs have already gained very substantial revenue (more than £2b) from PPI complaints.

39 Our consumer research found that among complainants who received redress, 37% used it to pay down debt, and 43% saved or invested it.

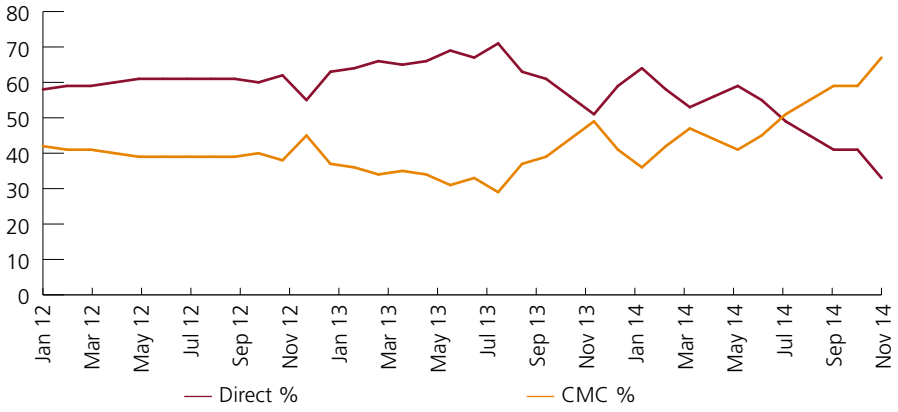
40 https://www.gov.uk/government/groups/claims-management-regulator

41 A national survey of 5,682 people aged 18 and over in Great Britain, conducted in June and July 2013 https://www.citizensadvice.org.uk/about-us/how-citizens-advice-works/media/press-releases/citizens-advice-32-million-unexpectedly-contacted-about-mis-sold-ppi/

42 We are aware, however, that the Chancellor announced in the summer budget that the Ministry of Justice would be giving consideration to whether it should cap CMC fees. Such caps, were they to be introduced, might affect future CMC activity and the share of future PPI redress that may accrue to them. However, we do not know more details currently and so cannot assess further the potential impact.

2.28 These numbers are in line with our quantitative research, where, among those consumers who said they intended to complain, half (49%) said they would complain directly to the PPI firm themselves, but nearly half (46%) said they would use a paid advocate (26% saying a CMC, 12% a financial advisor and 8% a lawyer).

Figure 5: Share of PPI complaints made by consumers directly or through CMCs



2.29 Our qualitative research revealed two contrasting views of CMCs. Most of the consumers who had used them to make a complaint recognised the benefit of their support, particularly in making complaints about multiple PPI products.

2.30 On the other hand, many other consumers said they had been *deterred* from complaining by CMCs, who had strongly influenced their understanding of PPI and the process of complaining, by:

- inadvertently encouraging a belief through their persistent encouragement to complain that PPI redress-seeking was a 'something for nothing' or 'too good to be true' kind of 'scam' or otherwise bore stigma;
- emphasising and often exaggerating the difficulties and timescales of consumers making a complaint themselves (a number of respondents did not know they were able to complain directly to a PPI firm and had assumed CMC involvement was essential); and
- emphasising large redress awards of thousands of pounds, which, in fact, led many consumers to discount as not worthwhile their own potential claims for smaller amounts and to therefore not complain.

2.31 Because of these adverse influences, many of these consumers felt that they and those like them would benefit from authoritative messaging from a 'trusted' or 'government' source that would clarify the PPI issue and how to complain about it.

2.32 Some firms have told us that they receive a large proportion of standardised complaints from CMCs which contain generic statements about past sales and offer little or no accompanying consumer-specific evidence in support. However, we have not been able to assess what, if any, consequences this has for firms' assessment of these complaints and associated costs. We also note that many generically formulated complaints are made by individuals who do not use CMCs but use the templates that are freely available on various websites.

2.33 Some firms have told us that they consider that many CMCs make referrals to the Ombudsman service indiscriminately, regardless of the strength of their case, which costs firms a case fee each time.

2.34 Our evidence from firms suggests (see the table below) that:

- CMCs are more likely than individual consumers to refer cases to the Ombudsman service
- this difference in referral rates has increased over time
- but there is little or no difference in outcomes at the Ombudsman service

PPI complaints referred to the Ombudsman service and decided there[43]

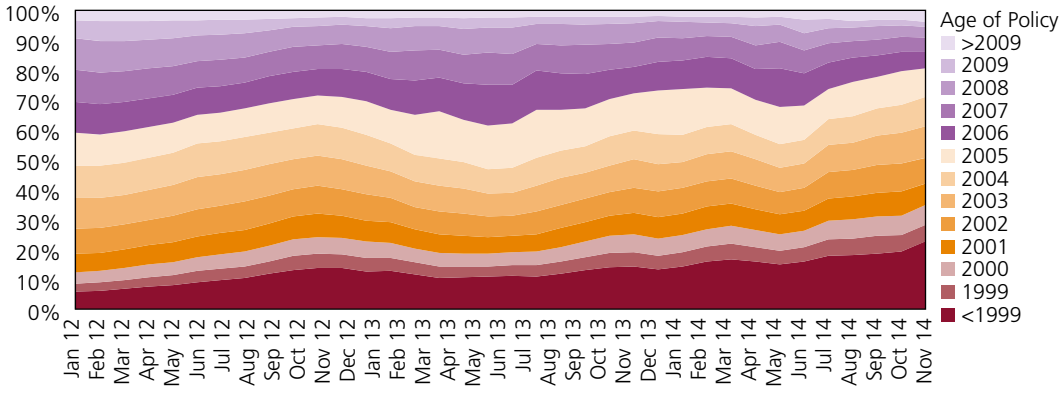
	Average over the six months to June 2012	Average over the six months to June 2014
By consumers directly	4% referred, 65% upheld	3% referred, 66% upheld
Through CMCs	7% referred, 64% upheld	13% referred, 61% upheld

2.35 However, the Ombudsman service does refer CMCs to the CMR where it identifies serious failings, including in the quality of their submissions.[44]

Complaints about older sales

2.36 Our evidence shows that a growing proportion of PPI complaints involve older sales (those made before 2005 or 2000 or even 1990):

Figure 6: Age profile of PPI sales featuring in monthly complaints



2.37 It appears this trend mainly reflects CMCs' efforts to prompt or help consumers to recall or discover older PPI policies that they have not yet complained about:

43 Strictly, 'complaints' here refers to 'number of PPI policies that featured in complaints'.

44 The Ombudsman service also has regular dialogue with the CMR, sharing insights into CMC behaviour, and has contributed to the CMR's bulletins to CMCs.

Figure 7: Age profile of sales in monthly complaints directly from consumers

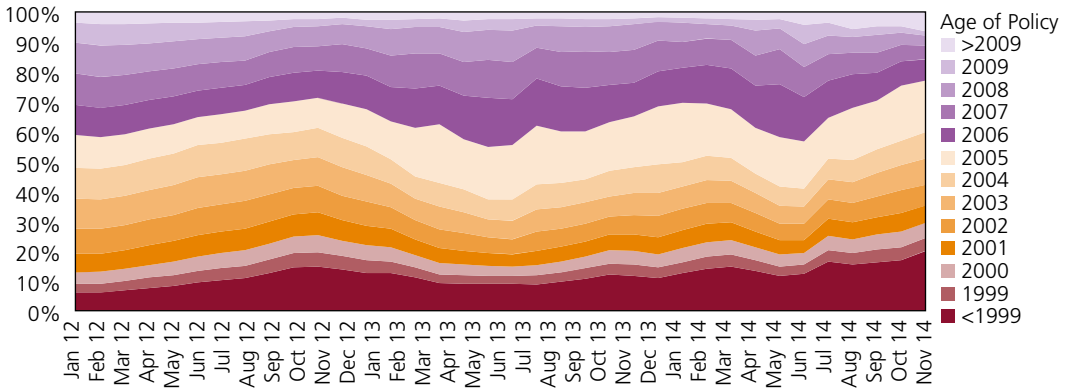
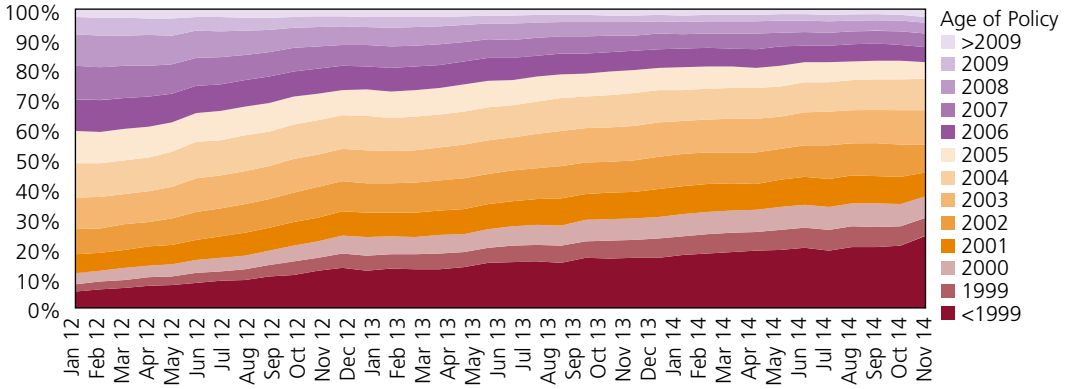


Figure 8: Age profile of sales in monthly complaints via CMCs



2.38 The evidence held by firms and consumers about these older sales is likely to have significant gaps in documentary records and become increasingly 'stale' in terms of recollections and oral evidence about the sale. That will potentially contribute to increasing difficulties for consumers in making their case that they were mis-sold, and for firms in trying to show the contrary, and, in turn, to potentially more costly complaint handling.

'No PPI' cases

2.39 We have gathered evidence about complaints where the consumer was not sold PPI at all ('No-PPI' complaints). The proportion of such No-PPI complaints is significant and projected by firms to increase from 25% in 2015 to 31% in 2018.

2.40 This creates inefficiencies and costs. The cost to firms of checking a complaint and finding there was no sale is wasted money, and the Ombudsman service now has a large department dealing only with cases where the existence of a PPI policy is in dispute. (This situation appears to arise quite frequently for various reasons, including consumer uncertainty (often stimulated, but left unresolved, by CMC activity), poor bank records, and changes of name or address.)

2.41 However, we also note that:

- though the cost to firms is not insignificant in absolute terms, it is modest relative to the cost of handling those complaints where there was a sale
- some firms' initial checking is not robust, with further checking conducted at the Ombudsman service's insistence revealing that in some instances there was, in fact, a PPI sale
- our research suggests that, if consumers were unsure about whether they had had PPI, they were generally more likely *not* to complain than complain speculatively

Is PPI holding back a new healthier protection market?

2.42 We have considered, given the clear fall in PPI sales since early 2009, whether the current perceived open-ended nature of the PPI issue may be negatively affecting consumers' appetite for any improved PPI products or new post-PPI debt protection products that might genuinely meet their needs and provide value for money.

2.43 We tested this view in our second survey of 10,000 consumers.

We asked the 4,730 who were currently eligible for debt or income protection insurance[46] about their situation if they became unable to work for longer than a month due to accident, sickness or unemployment:

- almost half (45%) said they could still meet all repayments with other means (e.g. savings)
- one in five (19%) acknowledged they would probably not be able to pay some or all repayments and
- one in ten (10%) said they had insurance to cover all repayments.

Of those without insurance:

- half (52%) had not considered taking out insurance to protect their repayments or short term income
- a quarter (26%) had considered purchasing this insurance but decided against it and
- 7% had considered, and remain interested in, buying this type of insurance.

We asked these three groups without insurance why they had either not considered it or considered but not purchased it:

- a third (35%) said they did not need it
- a quarter (23%) found it too expensive
- a fifth (21%) said they don't trust the firms that provide it
- 15% have not reached a decision yet about whether to purchase it

2.44 These responses arguably provide some evidence of some lack of trust regarding new debt or income protection and of continued concerns about pricing.

45 Eligible because they were in full or part time work and repaying applicable credit agreements.

2.45 Given the complex past and present dynamics in this market, including the ongoing prohibition on selling protection at the same time as credit, we consider that bringing the PPI redress issue to a close may encourage both the supply and demand sides to move on from the problematic history of PPI, and may even be necessary for a healthier protection market to develop, but may not be sufficient on its own to achieve this.

Uncertainty effects

2.46 We consider that it is reasonable to think that the current long-term uncertainty about firms' future PPI liabilities potentially:

- has some adverse effect, albeit small, on the perceived risk and costs of relevant banks' funding
- contributes to holding back the kind of significant corporate restructuring in the retail financial sector one might expect to see following a financial crisis.

Impact on the Ombudsman service

2.47 The Ombudsman service has now received over 2m PPI cases from consumers who were dissatisfied with the responses they received from firms to their complaints. PPI complaints currently constitute a majority of all its cases (63%) and have done so for several years.[46] This volume of PPI complaints has required a very significant expansion in the Ombudsman service's resourcing and funding.

The potential impact of *Plevin* on PPI complaints

2.48 We explained (in a consumer-friendly way) the gist of the *Plevin* judgment, and its potential implications for consumers, to the 10,000 consumers in our second online survey[47], and also discussed it with 36 consumers (by phone or face to face) in a small follow-up to our main qualitative research.[48]

46 Financial Ombudsman Service annual review 2014/2015: http://www.financial-ombudsman.org.uk/publications/ar15/about.html

47 We told them: Recently a Court ruled that the sale of a PPI policy to a customer was unfair as they were not told that nearly 75% of the price would be kept as commission rather than paying for the insurance. As a result the customer was given some of their money back. The PPI you bought may have included a high level of commission that was not revealed to you. So it is possible that if you complain now, you may also get back some or all of what you paid for your PPI because of undisclosed high commission.

48 Of whom: 12 had participated in the previous larger qualitative research and been identified as people who did not intend to complain and as broadly having the 'Moral grounds' or 'Rational evaluation' mindset; and 24 were new to our research, and split equally between those who had PPI but not complained, those who had PPI and had complained about mis-selling but been rejected, and those who were not sure whether they had PPI or not. Although 36 consumers are obviously not representative of the UK population, their views give a helpful flavour of potential consumer perspectives, to inform the quantitative findings.

Among the 36 consumers:

None had heard of the *Plevin* case, despite some of them being alert to 'PPI news' after attending the earlier research groups.

Many needed quite a lot of explanation and found the details initially quite difficult to grasp, including which party or parties had received the commission. (Some tended to confuse commission with CMC fees.)

Most recalled buying their PPI product direct from a lender (not through a broker) and said they would expect the lender involved in the sale to take a commission or make a profit from the sale. Few respondents had a clear understanding of the potential third parties involved in the sale of their policy.

When the 71.8% figure in *Plevin* was revealed to them, many said that knowing this made them more likely to complain than before. When pushed, most said they would have guessed commissions were between 10% and 50%.

Some then reached the specific conclusion that the product may not have been 'good quality' if so much money didn't go directly towards funding the PPI insurance and related claims pay-outs.

Some, however, felt it was unlikely that they themselves had paid this amount of commission on their own PPI product.

Among the 10,000 consumers we surveyed and told about Plevin:

- two in five (41%) of those already intending to complain (about mis-selling) said that they now intended to complain sooner, citing increased awareness (32%) and expectation of compensation (14%) as the key reasons;
- a relatively low proportion (13%) of those not already intending to complain changed their mind and said they did now intend to complain;
- the majority of those not already intending to complain (59%) say that they still did not intend to complain;
- but among those who previously said they did not know whether they intended to complain or not, 31% changed their mind and said that they now intended to complain (while 57% say they still did not know).

2.49 In sum, the information we provided about *Plevin* doubled the number of consumers in the survey who said that they intended to complain about PPI, though we cannot necessarily assume these consumers will all act on their newly stated intention.

Is there a case for further FCA intervention?

2.50 Having carefully considered the evidence above, we have concluded that we should intervene further in PPI by proposing a deadline for complaining and an FCA-led consumer communications campaign preceding it. We discuss the details of this proposal in the following chapter, but our rationale for proposing it is that:

- **It would prompt many consumers who want to complain, or to check whether they had PPI, but have not yet done so, into action.** This would result in those consumers potentially getting redress sooner, giving some of them the opportunity to pay off more costly debt. An FCA-led communications campaign may also reach consumers who are not engaged with, or trusting of, CMC advertising, and this may result in some consumers who would not otherwise complain now doing so.

  Half of the 20,000 consumers we surveyed said that a deadline would be very likely or fairly likely to prompt PPI consumers to complain or complain sooner, and many of the consumers in our qualitative research said that it was 'reasonable' to introduce a deadline, and that

this would be helpful and focus their minds on checking whether they had had PPI and/or on complaining.

- **It may lead to more redress being paid directly to consumers.** An FCA-led communications campaign may empower consumers and encourage more of them to complain directly to the firms concerned, rather than using CMCs or other paid advocates, and therefore benefit in full from the redress paid out.

- **It may increase the efficiency of PPI complaints handling by firms.** This would benefit consumers (because their complaints may be dealt with more quickly) and firms (because it will reduce their administrative costs). Introducing a deadline and running a consumer communications campaign would potentially achieve this by, for example, limiting the scope for further widening of the time gap between sale and complaint and the associated difficulties in gathering and checking evidence, and limiting the scope for future growth of 'No PPI' cases.

- **It would bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector.** Confidence and certainty are key to ensuring markets work well. But although PPI has not been widely sold for many years, the long tail of complaints has looked set to continue, with the consequent negative effect on confidence. Uncertainty for firms about long-term PPI liabilities also potentially 'overhangs' their operational and financial planning. So bringing the PPI issue to an orderly conclusion will reduce uncertainty for firms and help promote market confidence, including public trust in the integrity of the retail financial sector, particularly given the firms mainly concerned are multi-product firms at the heart of most retail financial markets. The finality and certainty of closure may also indirectly support other potential benefits by:

  - assisting consumers to reacquire appetite for any improved, fairly priced and fairly sold PPI or post-PPI debt protection products (if firms were to provide these and potentially meet consumers' needs); and

  - stimulating innovation and the supply of improved PPI or post-PPI debt protection, and corporate restructuring in the retail banking sector (the main likely distributor of protection products).

- **It helps bring an orderly response to *Plevin*.** The *Plevin* judgment strengthens the rationale for a deadline and consumer communications campaign. This is because it introduces a significant new uncertainty for firms about the size and duration of their potential future PPI liabilities, with the unhelpful side effects of uncertainty noted above. In turn, the potential prompting effects of the *Plevin* judgment (and our proposed rules and guidance about it) are likely to encourage some consumers to complain who would not otherwise have done so, and some potential complainants to complain sooner than otherwise.

- Overall, we consider that bringing the PPI issue to an orderly conclusion through the proposed deadline and consumer communications campaign would **help bring finality and certainty in a way that advances our operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.**

  See Annex 2 for our analysis of the costs and benefits of the various effects of the proposed intervention.

Shorter term impact

2.51 We recognise that the proposed deadline and consumer communications campaign have the potential to:

- increase short-term uncertainty about firms' potential PPI liabilities in the intervening period before the deadline, especially given the inherent difficulty of predicting how PPI customers and CMCs would react and
- increase the number of 'No PPI' complaints in the short-term

2.52 However, because the *long-term* effect of the proposed interventions will be to effectively remove both of these adverse issues, we believe the overall impact with respect to these issues will be beneficial.

Consumer body concerns

2.53 We are aware that some consumer bodies have concerns about a potential deadline for complaining about PPI. We look forward to discussing our proposals with these and other stakeholders during the consultation process. In the meantime, however, we would like to comment on some points that have been expressed in an open letter to us from Which? and Money Saving Expert.[49]

2.54 One such criticism is that *it would be detrimental to consumers and provide the banks with an undeserved resolution to an issue that is of their own making*.

2.55 As we explain in the CBA, we consider that the dynamics discussed in this chapter provide a reasonable basis for expecting that the proposed intervention would lead to a higher level of complaints and redress than if we did *not* intervene. We accept, however, that whatever happens in aggregate, there will be some individual consumers who complain too late, or who would have complained but, having realised the deadline has passed, do not, thereby losing possible redress. Nonetheless, given that by the time of the proposed deadline the PPI issue will have been prominent in the public mind for over 7 years, we consider that consumers generally will have had adequate opportunity to complain about PPI and seek redress.

2.56 A second criticism is that it *would disproportionately benefit those firms that have been worst at resolving PPI problems, in particular those who still have very high overturn rates at the Ombudsman service, and that the FCA should not be consulting on a deadline but redoubling efforts to ensure all firms are handling PPI complaints fairly.*

2.57 We discuss firms' experience at the Ombudsman service at Annex 5. As we explain there, interpreting the figures is not straightforward. But in any case, we do not agree with the logic of this criticism. The proposed deadline and communications campaign aim to prompt consumers to act and bring PPI complaints to firms sooner. Firms will not be able to benefit by handling these PPI complaints slowly or unfairly. We will monitor firms' handling of these complaints throughout, including through appropriate ongoing information sharing with the Ombudsman service, and we will expect firms to deal with PPI complaints fairly right to the end. We will take action where they fail to do so.

49 http://www.moneysavingexpert.com/news/reclaim/2015/08/mse-and-which-urge-regulator-not-to-put-a-time-bar-on-ppi-complaints

2.58 A third criticism is that *it would be likely to create new opportunity for CMCs, both before the deadline and afterwards, when they might switch their attention to bringing PPI claims in the courts.*

2.59 CMCs may well increase the intensity of their own advertising and cold calling in the period before the deadline and emphasise the deadline to consumers to prompt them to act. Such activity is likely to increase consumer awareness of the deadline, just as our own communications campaign will be seeking to do. But the fact that a consumer may be made aware or prompted to act by a CMC advert (rather than a telephone call) does not necessarily mean they will then use a CMC's services to make their complaint.[50]

2.60 Our own proposed consumer communications campaign will be emphasising that most consumers do not need to use CMCs to make a PPI complaint, as they can do it effectively and for free by complaining directly to the firm and, if necessary, by taking their case to the Ombudsman service.

2.61 We cannot set time limits for making a claim about PPI in the courts and a consumer's ability to do so will continue to be determined by the time limits under the general law. Some consumers will already be out of time to take a claim to court, or will fall out of time in the future. But many others will remain in time. This, we think, provides an incentive for firms to handle PPI complaints fairly the first time, to avoid the prospect of numerous claims in court after the deadline.

2.62 However, we would discuss with the CMR, in the run up to the deadline, whether there are steps it can take to help ensure that CMCs provide consumers with balanced information about the potential costs and risks of taking PPI claims to court.

2.63 A fourth criticism is that it is *not appropriate to introduce a deadline at the same time as the Supreme Court judgment in Plevin, and potential FCA rules and guidance on it, open up a new PPI issue and new potential basis for making complaints.*

2.64 The *Plevin* judgment was given in November 2014. We are consulting in this paper on rules and guidance about fair PPI complaint handling in light of it. We consider that the proposed deadline, preceded by the proposed communications campaign, will give consumers long enough to make their PPI complaints, including about undisclosed high commission. We also note that our proposed rules and guidance expect firms to consider undisclosed commission in relevant cases, regardless of whether this was explicitly raised by the complainant.

2.65 Accordingly, the main thing is for consumers who wish to complain about PPI to do so before the deadline, which our proposed communications campaign will help prompt them to do, irrespective of whether they themselves have much or any awareness of the issues in *Plevin*. Meanwhile, our proposed rules and guidance on handling PPI complaints in light of *Plevin* will reduce uncertainty and enable firms to continue to take a fair and consistent approach to handling PPI complaints in the period before the proposed deadline.

Q1: Do you agree with our assessment of the PPI landscape and trends, and that we should now seek to draw the PPI issue to an orderly close through the proposed deadline and proposed consumer communications campaign?

50 Our research indicates that consumers are more likely to follow the channel that triggers the complaint, but about one in six do use another route.

3.
Areas for consultation (II): The details of our proposed deadline and consumer communications campaign

The proposed deadline rule

The effect and nature of the deadline

3.1 We are proposing that PPI consumers would need to complain to a firm on or before the date of the deadline or else lose their right to have their complaint assessed by the firm or by the Ombudsman service.

3.2 PPI consumers will also need to obtain a written acknowledgement (or some other record) of the complaint having been received by the firm on or before the deadline.[51] To be in time for the purposes of the proposed rule, a complainant would not need to have received such an acknowledgement before the deadline. Clearly, however, consumers will have greater peace of mind if they complain as soon as possible and, in any case, sufficiently far before the deadline to have safely received the acknowledgement before it.

3.3 We propose that the deadline should apply to a consumer regardless of whether, or what, they know, about the PPI issue generally, or their own sale or policy in particular, or about the existence of the deadline.

3.4 Thus the proposed deadline is a quite different mechanism from the 3 year time limit in our existing rules – which runs from the date, if any, at which the consumer becomes aware, or reasonably ought to have become aware, that they had potential grounds to complain – or the analogous provisions in the Limitation Act 1980 concerning legal claims.

3.5 So it will generally not be possible for consumers to argue to a firm (or to the Ombudsman service) that they were not aware of the deadline or had not seen or heard communications about it. We anticipate, however, that our proposed consumer communications campaign will be extensive so that few consumers would be able to assert this.

3.6 We do propose, however, that as with the existing time limits in our complaint handling rules, the Ombudsman service should keep the flexibility to set aside the deadline and deal with complaints submitted after where, in its view, the complainant's failure to complain in time 'was as a result of exceptional circumstances'. It will also remain open to a firm to choose to consider a PPI complaint made after the deadline and to permit the Ombudsman service also to consider it.

51 Under our existing complaint rules (DISP 1.6.1R (1)), on receipt of a complaint, a firm must send the complainant a prompt written acknowledgement providing early reassurance that it has received the complaint and is dealing with it.

3.7 We propose that the deadline should not extend time for any consumers for whom the time limits have already begun to run or passed under our existing rules. For example, many consumers have received letters from firms in the last few years which warned that they may have been mis-sold PPI and stated they had three years from receipt to complain. Also, consumers who complain to a firm in time, including before the proposed deadline, but are unsatisfied with the final response they receive from the firm, will still need to refer their complaint to the Ombudsman service within 6 months of receiving that response (even if the deadline is more than 6 months away).

The date of the deadline

3.8 We have considered a wide range of potential deadline dates.

3.9 The consumers in our qualitative research generally felt that a two-year deadline would be fairer than a one-year deadline, but that a three-to-five year deadline would be preferable. They felt this longer period would provide enough opportunity to consumers to explore their own PPI situations in more detail before making any complaint to a firm, while also offering a window for support to be offered to those consumers with multiple PPI policies and multiple potential complaints.

3.10 In our view, the potential advantage, in principle, of a one-year deadline, is that it might bring benefits sooner, particularly if the closeness in time of the deadline was to exert a stronger 'nudge' on individual behaviour than a more distant one.

3.11 However, we attach more weight to its apparent disadvantages:

- it would not leave sufficient time for direct 'prompting' messages about the deadline to be accompanied by, and interspersed with, broader messaging that helps consumers to accept that the direct prompts are reliable and authoritative
- it would risk being unfair by giving potential complainants to firms too little forewarning and time to act
- it would not give consumers sufficient time to consider and respond to the *Plevin* judgment and our proposed rules and guidance about it
- it would be far more likely to cause a short term 'spike' of additional complaints that is so large it strains firms' operational capacity to assess and respond to them fairly and promptly (a concern some firms have already expressed to us)

3.12 Conversely, the potential advantages, in principle, of a three year deadline, are that:

- it would provide a very long period of forewarning and opportunity to consumers
- it would further reduce the risk of a complaint spike and operational strain on firms

3.13 However, we attach more weight to its apparent disadvantages:

- it would be too far off in time to provide a strong, effective nudge to consumer action
- it is a longer period than is necessary to provide effective communications to consumers
- it would delay the potential benefits we identified in our rationale for intervening, without providing compensating advantages

3.14 Accordingly, we propose that the deadline should fall two years after the start date of the rule. We consider this period:

- offers the right balance between fairness and urgency and the risks and rewards
- allows for the delivery of an effective consumer communications campaign that includes suitable phasing, and both builds awareness and prompts response, with multiple 'nudges' and increasing weight and intensity of messaging as the deadline approaches
- is long enough to allow us to monitor the campaign and to refine it if needed, particularly in the run up to the deadline
- is sufficiently far away in time to avoid provoking extreme volume spikes (though we will also seek to manage this risk through careful design of the timing and intensity of the campaign's phases) and to give firms (and the Ombudsman service) opportunity to put in place suitable resourcing and contingency planning

The scope of the deadline – which PPI complaints are caught?

3.15 We propose that the deadline should:

- apply to new complaints about PPI policies sold on or before the start date of the rule; and
- not apply to new complaints about PPI policies sold *after* that date.

3.16 We propose restricting the scope of the deadline in this way to avoid disadvantaging consumers who buy PPI in the future. It also ensures that no consumer will be affected by the deadline who has not already had at least 2 years in which to complain about their sale.

3.17 Customers who bought PPI between 2012 and the start date of the rule (in 2016) would, therefore, have less time to complain than under our existing rules.[52] However, we consider that this is reasonable, given that they are likely to be more aware of the generic issues around PPI given they bought after the FSA's interventions in 2010 and the judicial review in 2011 and the accompanying publicity. These consumers are also likely to have better recall of their purchase and be more sensitive to our proposed consumer communications campaign, which is likely to have greater immediate significance for them. We note also that PPI selling was much reduced in that period, and of an improved standard, with no single premium PPI sold at all.

3.18 We further propose that the deadline should:

- Apply to complaints that concern matters relating to the sale of the PPI.
- Apply to complaints to the seller of a PPI policy about an insurer's rejection of claims on the policy on the grounds of ineligibility or exclusion. This is because we consider such complaints concern matters relating to the sale and so fall naturally within the scope of the proposed deadline on complaints about PPI mis-selling.
- *Not* apply to any PPI complaint about matters that are *unrelated* to the sale, such as, for example, delays in claims handling or administrative matters such as taking the incorrect amount of premium.

52 Which give the consumer at least six years from their sale to complain about it.

Q2: Do you agree with the proposed nature, date and scope of the proposed deadline?

The proposed communications campaign

3.19 Our approach to the proposed consumer communications campaign is based on insights drawn from our quantitative and qualitative consumer research (discussed in Chapter 2), and additional input from external media agency Manning Gottlieb OMD.

Key consumer insights and campaign role

3.20 Our consumer research highlighted some key consumer insights, including existing barriers to complaining, some of which could be addressed with a consumer communication campaign which:

- raises awareness of the deadline, to prompt those who intend to complain, or to check whether they had PPI, to act ahead of the deadline
- provides information to consumers on how to check if they had PPI if they are not sure and have any concerns
- clarifies the PPI mis-selling issue, and complaints about it, and helps consumers consider whether they should be concerned
- explains clearly how to make a PPI complaint and dispels existing myths and confusion about the PPI complaints process
- sign-posts consumers to appropriate help and
- is supported by messaging from firms that would reassure PPI consumers about how they would be treated if they complain

3.21 We will need to undertake further detailed campaign design, including message testing, creative development and detailed media planning. However, the following table summarises the key elements of our current thinking:

Key consumer insight	Campaign objective and role
Some consumers are 'on the brink' of complaining about PPI but for many it is 'not top of mind' and some may not get round to it for several years.	Raising awareness of the deadline; announcing "new news" about a deadline could prompt 'on the brink' consumers in particular to complain sooner than otherwise. Sign-post consumers to appropriate help and assistance.
Some consumers intend to check whether they had PPI but for many it is "not top of mind" and some may not get round to it for several years.	Raising awareness of the deadline; announcing 'new news' about a deadline could prompt checking action sooner than otherwise. Providing information to consumers on how to check if they had PPI if they are not sure and have any concerns. Sign-post consumers to appropriate help and assistance.
Some confusion (to which CMC marketing has contributed) about which consumers who had PPI might have grounds to complain	Authoritatively clarifying the PPI mis-selling issue, and complaints about it, as something involving potential types of poor sales conduct towards some customers, including in some cases undisclosed high commission, and thereby helping consumers to consider whether they should be concerned. Sign-post consumers to appropriate help and assistance.
Some confusion (to which CMC marketing has contributed) about the PPI complaints process and how to complain	Explain clearly how to make a PPI complaint and dispel existing myths and confusion about the PPI complaints process Sign-post consumers to appropriate help and assistance.
Lack of trust that firms would help consumers with PPI complaints	Campaign to be backed by supportive messaging from firms We will explore with firms how this can best be done.

Campaign audience

3.22 Although the broad 'mind-sets' identified in our research were helpful for designing the key campaign elements above, they were not associated with any objective demographic characteristics that would allow us to segment the audience and target specific messaging more precisely.

3.23 Accordingly, the proposed campaign will be designed to reach all UK adults to ensure that all potential PPI consumers have reasonable opportunity to see or hear our key messages.

Campaign channels, phasing and evaluation

3.24 Given the scale of the audience and the communication challenge, our proposed plan would include broadcast and other high reach channels (TV and outdoor advertising) to raise awareness of the deadline.

3.25 This would be combined with direct marketing and digital advertising that sign-posts consumers to a dedicated online hub and helpline for information and advice. This would offer ongoing support to consumers, guiding them to the appropriate complaints route, and potentially triggering recall of older PPI products and reconnecting them with the relevant firms.

3.26 The campaign would also include a programme of public relations and partnership activity, including communications to reach vulnerable consumers, or consumers with relevant protected characteristics (for example, the visually impaired), who may be harder to reach via traditional marketing channels.

3.27 We have yet to determine the exact phasing and timing of the campaign. Our initial planning proposes four bursts of advertising activity, across the two-year period before the deadline, increasing in weight as the deadline approaches. The campaign would also, as outlined in 3.25, include 'always on' elements such as the online hub.

3.28 We intend to develop a campaign evaluation framework with clear key performance indicators as part of our detailed planning. We envisage building a robust and frequent tracker to monitor the campaign, in particular its reach, enabling us to adapt and optimise our channels and messages to maximise effectiveness throughout the two year period.

3.29 In sum, we consider that, in the present circumstances of the PPI issue, our proposed high profile consumer communications campaign, supported by messaging and channels from our potential partners, including firms and consumer groups, will be effective and fair and proportionate. We would, however, keep its progress under close review, and consider altering or expanding it if that was necessary to fulfil our campaign aims.

Campaign budget and value for money

3.30 The FCA has existing OJEU procured contracts[53] with the external suppliers Manning Gottlieb OMD (media planning and buying agency) and M&C Saatchi (advertising agency), who we would commission to implement the campaign.

3.31 We have worked with our external suppliers and used internal benchmarks to develop a budget proposal for the two year campaign of £42.2m (including VAT).

3.32 This proposed budget is the total sum of campaign cost estimates over the two year period[54], comprising the following:

- Media planning and buying
- Creative development and production
- Helpline and website
- PR and partnerships
- Creative testing
- Campaign tracking and evaluation
- Supplier fees
- Additional fixed term FCA headcount to run the campaign

53 OJEU stands for the Official Journal of the European Union and is the publication where all tenders from the public sector that are valued above a certain financial threshold (according to EU legislation) must be published. The legislation covers organisations and projects that receive public money. Organisations such as Local Authorities, NHS Trusts, Central Government Departments and Educational Establishments are all covered by the legislation.

54 Individual supplier cost estimates are not published in this document to protect agency confidentiality.

3.33 The campaign budget has been set to deliver effective audience reach and contact frequency across 2 years, in line with campaign objectives and industry benchmarks. Campaign impact and channel mix would be reviewed on an ongoing basis, in order to optimise the use of the budget.

3.34 In addition to campaign tracking and monitoring, the FCA will drive value for money via regular media audits to review media pricing and quality.

Q3: Do you agree with the proposed aims of the proposed consumer communications campaign?

Q4: Do you agree with the proposed audience, channels and costs of the proposed consumer communications campaign?

Alternative interventions we have considered

3.35 We have considered carefully a number of potential alternatives to the proposed deadline and consumer communications campaign.

A communications campaign without any deadline

3.36 A communications campaign without any deadline would avoid any risk of detriment to any consumers who do not see or respond to the campaign.

3.37 However, we consider that without the additional focus of a deadline, the campaign would be unlikely to prompt as many consumers to complain or to complain sooner. Also, there would still be no formal closure to the PPI issue or certainty. For these reasons, we consider this option would not achieve the potential benefits we identified above in our rationale for intervening.

Requiring letter writing by firms to trigger the existing 3 year limit to complain

3.38 We have once more considered the option previously recommended to us by the Parliamentary Committee on Banking Standards (PCBS). In June 2013, the PCBS said that we should consider the case for requiring firms to send contact letters to all customers they could identify as having been sold PPI (who had not already complained) in order to explain to them potential mis-selling issues and detriment. The PCBS felt this approach would help reach as many consumers who may have been mis-sold PPI as possible and give them chance to seek redress, and help bring the PPI issue to a close (by triggering in recipients 'constructive knowledge' of potential issues with their PPI and thus the start of the three-year time limit for complaining that is set out in our rules).

3.39 We note that firms are already mailing 5.5m high-risk customers in a targeted way.

3.40 Also, firms have told us that the size, variety and age of their PPI back books mean that they have substantial gaps in their records. As a result, there are many customers they cannot identify at all, or do not have current addresses for. Even for those parts of the back book without complete gaps, many firms would face significant expense and practical challenges interrogating and collating the information they do hold into an accurate database they could use to make the mailings.[55]

3.41 Moreover, these substantial gaps in records mean there will be many customers that firms will be unable to write to with sufficient detail about their individual sales and potential loss

55 For example, because the data is held on a number of legacy databases or storage media, such as microfiche.

as to trigger, under our existing rules, 'awareness' and the start of the 3 year time period. Consequently, firms would not be able to comply with such a requirement through-out their PPI back books, and this would mean the PPI issue as a whole would not be brought to a formal close in the way the PCBS envisaged.

3.42 Overall, therefore, we consider that, at this advanced stage in the PPI redress exercise, making rules to require firms to send out communications to *all* identifiable PPI customers would be impractical, disproportionate and hard to justify.

Establishing a 15 year 'long stop' time limit for complaints about PPI

3.43 We have considered the option of introducing a 'long stop' time limit for PPI, which would give consumers 15 years from the date they were sold PPI to complain about that sale. This limit, like the deadline we are consulting on, but unlike the existing 3 year limit, would apply regardless of whether or what the consumer knew about the PPI issue or any potential issues with their individual sale.

3.44 However, given PPI sales continued in large volume to 2008, and in smaller volumes thereafter, such long-stop would not bring the PPI issue to a close until well after 2024. We also consider that the long stop is a more complex mechanism than a single deadline date, because it is contingent on the date of each consumer's sale, and so would be harder to explain to them, and thus less likely to prompt them into timely action. For these reasons, we consider a 15 year longstop for PPI complaints would not achieve the potential benefits we identified above in our rationale for intervening.

Equality impact assessment

3.45 For our consideration and assessment of the equality impact issues that may arise from the proposals discussed in this chapter, see Annex 3.

4.
Areas for consultation (III): Our proposed fee rule to pay for the consumer communications campaign

4.1 We propose that the £42.2m cost of the proposed communications campaign should be met through a new fee rule (under FEES 3).

4.2 We have given careful thought to how to allocate this fee.

The proposed basis of allocation

4.3 First, we have carefully considered what the most relevant, fair and proportionate basis for allocating the fee would be.

4.4 The number of reported complaints regarding advising, selling and arranging PPI[56] gives us an indication of the number of consumers with concerns about the way the firm sold them PPI. In turn, at a broad level, this typically relates to the scale of the firm's PPI mis-selling. When developing its strategy for PPI redress, the FSA stated 'that on average, more PPI complaints (relative to sales) will tend to be made to those firms more likely to have made non-compliant sales.'[57] Using this basis for funding the proposed campaign is fair and reasonable and in line with our guiding principle of charging the firms most responsible for PPI complaints, who will also gain the most from the certainty and other associated benefits our proposed deadline will bring.

4.5 At the practical level, we hold comprehensive and up to date information about PPI complaints to individual firms.[58] This gives us a complete picture of PPI complaints regarding advising, selling and arranging reported to us from 1 August 2009 and allows us to compare firms.

4.6 We have also considered, but do not propose, the following alternative bases of allocation:

- *Upheld PPI complaints or total PPI redress paid;* it might be argued that the outcomes of complaints would be a more accurate reflection of the harm a firm has caused. However, we are concerned that this approach may lead to a disproportionate allocation of fees to firms that have been fairer or otherwise more generous in their assessment of complaints or redress calculations.

- *Total PPI provisions made by firms for future PPI liabilities*[59]; we accept that, in principle, provisions which accurately reflected future complaint numbers and liabilities could provide an alternative. In practice, however:

56 Complaints regarding advising, selling and arranging PPI as reported in 17(A) Complaints Return (DISP 1 Annex 1R)
57 FSA Consultation paper 10/6 "The Assessment and redress of Payment Protection Insurance complaints" March 2010, page 29
58 Complaints regarding advising selling and arranging PPI as reported in 17(A) Complaints Return (DISP 1 Annex 1R)
59 Firms have a duty under IAS 37 Provisions, Contingent Liabilities and Contingent Assets.

- PPI provisions have been shown to be inaccurate, often under-estimating the amount needed
- firms calculate provisions differently, depending on their accountancy model and underlying assumptions (for example, some firms include administrative costs and/or Ombudsman service fees, others do not), and some firms may be more cautious in their provisioning than others, and
- the latest provisions, like past complaint volumes, do not, as far as we are aware, include or take account of the potential impact of *Plevin* and our proposed rules and guidance on future complaint volumes

- *A combination of complaint volumes and provisions;* we could include those firms with high past complaint volumes, but allocate the exact amount to each based on their respective provisions for future complaints liabilities. This hybrid basis has the advantage of less reliance on either single basis.

  However, we think this advantage is marginal. It is also outweighed by the added complexity, and disadvantages around provisions (discussed above), that it brings, compared to the simpler complaints based approach we favour.

- *Historic PPI sales:* it might be argued that the PPI market was generally problematic, for example in its weak competition, and that therefore, PPI sales may better reflect the harm a firm caused, as it does not rely on whether or not its customers knew they had PPI and had concerns and complained. Additionally, focusing on complaint numbers may weigh too heavily on firms with better known brands and too lightly on firms that are less well known. For example, of the 4000 firms we know sold PPI, nearly 50% have not reported a single PPI complaint from 1 August 2009 up to 1 August 2015.

  However, we, and the FSA before us, consider that, despite the wider weaknesses of competition in the market, some firms genuinely sold PPI more fairly than others, and that these firms are likely to receive fewer complaints in proportion to their sales than other firms.

The proposed number of firms to be charged a fee and the level of fee

4.7 Having decided on a proposed basis for allocation, we have also considered which, and how many, firms it would be appropriate to apply the fee to. This is a question of proportionality, efficiency, and making good use of our own regulatory resources.

4.8 We propose to allocate the fee to 18 firms which have each reported over 100,000 complaints cumulatively regarding advising, selling and arranging PPI under 17(A)in their Complaints Return (DISP 1 Annex 1R) from 1 August 2009 (when reporting began) to 1 August 2015. Together, they represent over 90% of all PPI complaints regarding advising, selling and arranging PPI under 17(A)DISP 1 Annex 1R reported in that period.[60]

4.9 We consider that confining the fee to these firms is appropriate because they are most responsible for causing PPI complaints, and will receive the most benefit from the certainty and other effects of the proposed deadline that the campaign will support.

60 In line with other fee allocation exercises, the allocation would be at legal entity level, which is also how complaints are reported to us, including where there are several legal entities reporting from the same group.

4.10 We propose to allocate the fee to these firms on a pro-rata basis in line with the total number of PPI complaints each of these firms reported to us from 1 August 2009 up to 1 August 2015. The fee that would result is £3.64 for each PPI complaint reported in that period. This fee is not material in the context of these firms' businesses or their past and likely future PPI complaint liabilities.

4.11 We have considered, but do not propose, the following alternative allocations:

- *To charge the 1,780 firms which have reported at least one PPI complaint to us from 1 August 2009 up to 1 August 2015.* We consider that the cost and resource of invoicing all these firms would be disproportionate compared with the resulting fee. Over 1,310 of these firms received 15 complaints or less and so would be charged a fee of £50 or less. Collection at this level would not be cost effective for us or a proportionate use of our, or the firms', resources

- *To charge the 244 firms which have reported over 100 complaints from 1 August 2009 up to 1 August 2015.* Under this proposal the 18 firms with the most reported complaints would still pay the majority of the fee. The firm with the highest number of complaints would pay c £645k less and the eighteenth firm c £37k less in fees. We would then allocate the remaining sum of £3.5m to the next c 244 firms, most of which would be charged very small amounts in comparison to the top 18 firms. While it could technically be cost effective to collect the fee from some of these other additional firms, we consider that, overall, it is not a proportionate use of our, or the firms', resources. It is also not in line with our guiding principle of charging the firms most responsible for PPI complaints, who will also gain the most benefits from the certainty our proposed deadline would bring.

4.12 We propose that the amounts the 18 firms must pay are split in two halves across the two years of the proposed consumer communications campaign. Each firm would be sent a first invoice for half the sum during the month after the date the proposed rule comes into force and the second invoice for the remaining half a year later. Payment would be due within 30 days of the date of the invoice.

4.13 During the consultation period, we will write to those firms affected by the proposed rule, setting out the total complaints they have reported and the amount of their proposed fee.

4.14 The FCA has worked with independent external agencies and used industry benchmarks to estimate the cost of the campaign. In the event that there is an under spend, monies will be returned to the affected firms on a pro-rata basis.

Q5: Do you agree with our proposed fee rule for allocating the costs of the proposed consumer communications campaign?

5.
Areas for consultation (IV): our proposed rules and guidance on PPI complaints and *Plevin*

Outline of the *Plevin* judgment

5.1 In 2006, Mrs Plevin was sold single premium PPI by a credit broker to cover a secured loan from Paragon Personal Finance Ltd.

5.2 Sections 140A and B of the CCA provide a court with a wide power to make an order (including the payment of redress) if the relationship arising out of a credit agreement (or another agreement related to it) is unfair. Under s.140B(9), where the consumer alleges that the relationship under the credit agreement is unfair, the burden is on the firm to prove that it is not.

5.3 On 12 November 2014, the Supreme Court (with Lord Sumption giving the lead judgment) overruled two previous Court of Appeal decisions and held that the failure by the lender to disclose to Mrs Plevin the large commissions payable out of her PPI premium (71.8% in total) created an unfair relationship between the lender and her.[61] Lord Sumption did not say where the 'tipping point' for unfairness was, but said 71.8% was a 'long way beyond it'.

5.4 Where the relationship is unfair, the Supreme Court referred in *Plevin* to reopening it, rather than setting aside the transaction. The Supreme Court made no finding as to whether or not Mrs Plevin would have bought the PPI, had she been told about the commission, but noted that she did not have to take PPI and would have questioned whether the product was value for money and whether it was a sensible transaction to enter into.

5.5 The Supreme Court did not decide redress and remitted the case to the County Court in Manchester to determine. There, the judge ordered the return to Mrs Plevin of all the commission (i.e. all that part of the PPI price which had not gone to the insurer) plus interest. He did not hold that Mrs Plevin would definitely not have bought the PPI, and the remedy is consistent with that view.

Rationale for the proposed intervention

5.6 The *Plevin* decision is in the public domain. Some complaints have already been made to firms and to the Ombudsman service about lack of commission disclosure in PPI sales. CMCs are well aware of the *Plevin* judgment and it is likely that PPI complaints referencing *Plevin* and undisclosed commission will soon be made in growing volumes.

5.7 We recognise that disclosure of commission to consumers was not required by our insurance conduct of business rules (ICOB/ICOBS), such that firms' failure to disclose was not in breach of

61 According to the judgment, of the £5,780 premium, 71.8% (£4150) was taken in commissions from the premium before it was remitted by the lender to the insurer. The credit broker received £1,870 (32.4% of the premium) and the lender retained £2,280 (39.4%).

any FSA or FCA regulatory requirements at the time, nor by the industry codes which preceded those rules.[62]

5.8 However, given that firms are required to assess complaints fairly, including taking into account relevant decisions from the Ombudsman service, and that the Ombudsman service is required to consider the general law when deciding complaints in accordance with its fair and reasonable remit, *Plevin* cannot be ignored. But firms are uncertain how they should take the judgment into account in the context of PPI complaints made to them and their interpretation of *Plevin* varies. So, the issue is how best to address the judgment.

5.9 We have carefully considered whether the availability of the Ombudsman service alone is enough or whether there should be regulatory intervention.

5.10 We think that, on balance, the rationale for us exercising our regulatory judgement about appropriate assessment and, where appropriate, redress of relevant PPI complaints in light of s.140A-B, taking account of *Plevin,* and making rules and guidance now for firms to follow when handling PPI complaints, is stronger, because:

- **Firms will then take a fair and consistent approach to handling *Plevin* complaints.** Otherwise, given the variety of industry views of *Plevin*'s significance, it is likely that individual firms will adopt different approaches to handling such complaints. This will create inconsistency in PPI complaints handling and likely increased demands on the Ombudsman service. Additionally, many consumers may not complain to the Ombudsman service.

- **Our ability to take future action is enhanced.** By giving firms a clear idea of how we expect relevant complaints to be dealt with in light of *Plevin*, it will be easier for us to ensure that firms act fairly and consistently.

- **It is more appropriate for us, as a policy making body, to set out a framework approach in rules and guidance.** The FCA has the power to make rules and guidance to help ensure firms reach fair and consistent outcomes for complainants on cases with common issues and similar fact patterns. This helps to ensure the best outcomes for consumers when making complaints to firms at the earliest stage in the complaint process. The Ombudsman service must focus on individual cases and be careful not to prioritise standard approaches over individual case circumstances. The Ombudsman service is required to take our rules and guidance (amongst other things) into account when determining cases.

5.11 It may be argued that in *Plevin* the Supreme Court did not settle definitively or in detail all matters potentially relevant to deciding relevant PPI complaints, and so we should not propose rules and guidance yet but wait for further clarity and more granular decisions from the courts. However, having considered this aspect, our view is that:

- There may or may not be relevant higher court cases in due course, and they may or may not decide key points, and could well take several years to do so anyway. In the meantime, relevant consumer complaints need to be decided, including by the Ombudsman service, to avoid detriment to consumers and prolonged uncertainty for firms, with resulting disorderly and inconsistent complaint handling. Given that, we cannot realistically stay relevant PPI complaints for what could be several years.

- The courts themselves are likely to give some weight to what we, as the sector regulator, set out as our approach.

62 Firms were required by ICOB/ICOBS and by the preceding industry codes to disclose commission to commercial customers if they asked. Since 1 April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for commission disclosure by credit brokers.

- We would have the option of reviewing our proposed rules and guidance if a higher court subsequently does take a very different view in relation to *Plevin* – albeit we recognise that this would not be ideal.

5.12 We stress that by proposing rules and guidance on PPI in light of *Plevin* we do not in any way seek to usurp the prerogative or discretion of the courts to apply s.140A and 140B. Nor are we asserting that the Supreme Court created a set of binding rules that can be applied strictly across to all other PPI complaints where non-disclosure of commission is relevant. Instead, we would be exercising our regulatory judgement about appropriate assessment and, where appropriate redress of relevant PPI complaints in light of s.140A-140B, taking account of *Plevin*. Our aim is to provide consistency of interpretation and outcome to relevant PPI complaints in light of *Plevin* (whilst at the same time ensuring there is flexibility for firms to take into account the circumstances of every case). We think this approach is consistent with the aim of the Civil Procedure Rules which is to encourage alternative methods of dispute resolution.

Q6: Do you agree with our rationale for proposing rules and guidance now concerning the handling of PPI complaints in light of *Plevin*, and that it is preferable in the circumstances that we, not the Ombudsman service, take the lead in this?

The proposed scope of the rules and guidance

s.140A-B Consumer Credit Act

5.13 The proposed rules and guidance apply only to PPI complaints where a claim could be made against a lender[63] under s.140A and an order made to remedy any unfair relationship under s.140B of the CCA[64]. That means in particular[65] that the rules and guidance will apply if the PPI states it covered or covers[66] a credit agreement where sums are payable, or capable of becoming payable[67] under it on or after 6 April 2008.

5.14 Those credit agreements that are excluded under s.140A(5) of the CCA – regulated mortgage contracts and regulated home purchase plans – are also excluded from these rules and guidance.

5.15 We have also considered applying the proposed rules and guidance to PPI complaints where a claim could *not* be made against a lender under s.140A-B CCA.

5.16 The main argument in favour of this wider approach is that the issue of failing to disclose high commission is a matter of principle and fair dealing that should apply more widely, including when firms are handling complaints fairly in accordance with DISP.

63 The scope of the proposed rules and guidance is intended to reflect that of s.140A-140C CCA. These sections are concerned about the relationship between a "creditor" and a "debtor" and so a claim under s.140A would be against a "creditor" within the meaning of s.140C. In our rules and guidance, the complaint would also need to be against the "creditor" (who we refer to as a "lender" in this paper).

64 Sections 140A-C were inserted in the CCA by the Consumer Credit Act 2006. Section 140A provides the court with wide powers under s.140B in connection with a credit agreement where it considers that the relationship between a debtor or creditor arising out of the agreement (or the agreement taken with any related agreement) is unfair because of various things, including anything done (or not done) by or on behalf of the creditor. Sections 140A-C came into force on 6 April 2007.

65 It is possible that an order could be made under s.140B in other factual scenarios – one example is where a credit agreement was made after 6 April 2007 and completed before 6 April 2008.

66 This includes partial coverage, for example, when only part of the term of a credit agreement is covered.

67 A common example would be where a credit card agreement remains in place after April 2008 but, as a matter of fact, there happens to be a zero balance. In this case, no sums need to be paid, but sums are still capable of being paid under the agreement, were the credit facility to be subsequently used by the cardholder.

5.17 However, we have decided against this wider approach because it is clear that the Supreme Court addressed the question of unfairness under s.140A in *Plevin* and firms were not required to disclose commission to consumers under ICOB/ICOBS. So we do not think it would be appropriate under our consumer protection objective to extend the application of our proposed complaints handling rules and guidance beyond the scope of that legislation.

Which types of PPI policy and sales are in scope?

5.18 Mrs Plevin's case had a number of specific features, as it concerned:

- an *advised* sale
- of a *single premium* PPI policy
- to cover a *secured loan* (second charge mortgage)
- by an insurance and loan *broker* who was separate and independent from the lending firm, which was in turn separate and independent from the insurer that underwrote the PPI policy

5.19 We have considered whether we should limit the scope of our proposed rules and guidance to include only those PPI complaints (where the underlying credit agreement falls under s.140A-B) which share some or all of these other specific features of *Plevin*.

5.20 However, we have not found any relevant differences in other types of PPI policy, credit agreement or form of sale, that lead us to conclude that the broad principle in *Plevin*, of the potential of undisclosed high commission on the PPI to create an unfair relationship between lender and borrower, should not be applied across more broadly.

5.21 As a result we consider that it would not be appropriate to restrict our proposed rules and guidance in this way. Further, doing so would also not meet our policy intention of ensuring certainty of interpretation and fair and consistent outcomes in handling PPI complaints. This is because only a small minority of PPI sales would share all the characteristics of *Plevin*, whereas a much wider range of PPI complaints are likely to be made and raise the issue of undisclosed commission.

5.22 Specifically, we consider that:

- There is no relevant difference between advised and non-advised sales of PPI that means *Plevin*'s logic and our proposed rules and guidance should not apply to non-advised sales. The Supreme Court was not focusing on commission as a potential incentive to the seller to mis-advise. Indeed, it might be argued that in a non-advised sale it is more incumbent on the lender to make sure it tells the customer about the level of commission, so they can make an informed decision.
- There is no relevant difference between sales of PPI where the seller of the PPI policy, the provider of the credit agreement it covered and the underwriter of the policy were separate and independent firms, and sales where the selling and/or lending and/or underwriting were undertaken by entities within a single financial group, that would mean *Plevin*'s logic and our proposed rules and guidance should not apply to the latter single group scenario. The Supreme Court was not focusing on commission as an incentive to mis-advise. Nor did it appear to be overly influenced by whether or not there was an intermediary between the buyer of the PPI and the lender or insurer, and nor by the fact that the lender's commission was around half of the total commission and thus much less (39.4%) than 50% of what

Mrs Plevin paid. Instead, the Court's focus was on the broad money flows and we do not consider that the presence or absence in the sale of a broker would have affected the Court's analysis. Indeed, from the perspective of *Plevin*, disclosing commission would arguably have been even *more* important in a PPI sale conducted by a single group, as the consumer would typically have had less cause, given the lack of intermediaries, to think that so much of the premium would be taken as commission.

- There is no *relevant* difference between sales of single premium PPI and sales of regular premium PPI that means *Plevin*'s logic and our proposed rules and guidance should not apply to regular premium PPI. While we recognise that the absolute levels of commission payment for regular premium PPI (in particular credit card PPI) may often, though not always, be less than for single premium PPI, a credit card or other regular premium PPI customer may still have paid commission and so the proportion of commission would still be relevant. Equally, even if we accept that it may have generally been easier for a consumer to end a regular premium PPI policy and any related credit relationship than a single premium PPI policy and related loan, it is not clear that this is overly important given the Supreme Court's focus on what happened at the point of sale and entry into the relationship. Indeed, arguably commission disclosure would have been just as important in, for example, a regular premium credit card PPI sale, given the average card agreement remains live for many more years than most personal loans and single premium PPI.

- There is no *relevant* difference between sales of PPI where the premium was financed by the lender and those where the premium was financed differently, that means *Plevin*'s logic and our proposed rules and guidance should not apply to the latter. We believe that non-disclosure by the lender of the high commission they would receive for a standalone PPI policy that was not financed under the credit agreement can still create an unfair relationship under s.140A.

Q7: Do you agree with the scope of our proposed rules and guidance concerning the handling of PPI complaints in light of *Plevin*?

The proposed approach to handling PPI complaints in light of *Plevin*

The two step approach: relationship with existing rules and guidance in DISP App 3

5.23 Our proposed rules and guidance introduce a new second step into the existing rules and guidance in DISP App 3. They mean that, where the credit agreement covered by the PPI policy is in the scope of s.140A-B, then:

- a lender that receives a complaint about the PPI does *not* have to assess the complaint against the proposed new rules and guidance ('Step 2') *if* it sold the policy and has already concluded, under the existing rules and guidance ('Step 1'), that the complaint should be upheld (because the PPI was mis-sold) and paid redress of full return of premium and the interest paid on that premium;

- the lender should assess the PPI complaint under Step 2 *if*:

- it sold the PPI and decides under Step 1 that it would reject the complaint because the PPI was not mis-sold or, in some single premium PPI cases, uphold it but pay only 'alternative redress'[68] or

- it did not sell the PPI to the consumer and so cannot consider whether it was mis-sold under Step 1

5.24 We think that the proposed approach to assessing complaints at Step 2 should be based on the existing approach to assessing complaints (at Step 1) that selling firms will already be familiar with. In particular, we propose to apply the existing guidance in DISP App 3.2 to Step 2. This will mean, in summary, that firms should take the following steps when assessing complaints at Step 2:

- consider, in light of all the information provided by the complainant and otherwise already held by or available to the firm, whether there was non-disclosure of commission

- seek to establish the true substance of the complaint, rather than taking a narrow interpretation of the issues raised, and not focus solely on the specific expression of the complaint

- consider whether they need to contact the complainant directly to understand fully the issues raised

- consider evidence that is uncovered during the assessment of the complaint as if it were part of the complaint (even if not raised in the complaint) and

- take into account information it already holds about the sale and consider other issues that may be relevant to the sale which the firm has identified through other means (e.g. root cause analysis)

5.25 We believe this two-step approach is proportionate, in what it requires of firms, and fair, insofar as it limits the risk that a complainant could seek to 'double dip' and get a sum of redress that incorporated both the full return of premium (for mis-selling) *and* some amount (for undisclosed high commission) that was equivalent to part of that premium. (See below for discussion of where lender and PPI seller are not the same firm.)

5.26 More fundamentally, however, this proposed two step approach reflects our view that *Plevin* deals with the specific question of whether an unfair relationship between lender and borrower was created by undisclosed high commission on the PPI. This question is different from, and narrower than, the question behind our existing rules and guidance, namely: did the conduct of the firm that sold the PPI fall so short, at point of sale, of the fair conduct we would expect under our Principles and ICOB/ICOBS rules, that it was a mis-sale?

5.27 We have carefully considered an alternative approach which merges considerations about undisclosed commission into the existing rules and guidance about mis-selling to create a single test. However, we concluded that such an approach would not be appropriate because:

- We do not consider the non-disclosure of commission in PPI sales to have been a breach of our Principles or ICOB/ICOBS rules, whereas we do consider the various sales failings set out in the existing rules and guidance to be such.

68 'Alternative redress' refers to the 'Alternative approach to redress: single premium policies' set out at 3.7.7E-3.7.15E in our current DISP App 3 rules and guidance.

- It would lead us, and firms, into difficult considerations of whether a consumer would still have bought the PPI if they had been told about the level of commission.

- Additionally, if we were to force firms to make these assessments it would result in complaint outcomes which would be both arbitrary and inappropriately 'all or nothing'. It could give too little – nothing – to many consumers who had suffered an unfair relationship, and too much – full return of premium and interest – to many consumers who had benefitted from the PPI cover. (See below for further discussion of our proposed approach to redress.)

- We would, anyway, have to leave scope for a complaint where undisclosed commission may be relevant to be assessed by a lender that did not sell the PPI and so could not assess whether it was mis-sold under our existing rules and guidance.

Operating the two stage approach where the lender and PPI seller are different firms

5.28 Currently, around 5% of PPI complaints are to firms who sold the consumer PPI but did not provide the credit agreement that PPI covered.

5.29 Following *Plevin*, a consumer may be able to make a complaint about their PPI policy to both the seller and, where different, the lender.

5.30 If a lender receives a PPI complaint about a PPI policy that it did not sell then it should:

- assess the complaint under Step 2 only

- respond to the complainant with its decision, including paying redress where appropriate

5.31 Under the existing complaints forwarding rules[69], the lender may also forward any part of the complaint which alleges mis-selling in writing to the firm that sold the PPI provided it:

- does so promptly; and

- informs the complainant promptly in a final response of why the complaint has been forwarded by it to the other firm, and of the other firm's contact details

5.32 If a PPI seller that was not the lender receives a PPI complaint concerning a PPI policy then it should:

- assess the complaint under Step 1 only; and

- respond to the complainant with its decision, including paying redress where appropriate

69 DISP 1.7.1R. Complaints forwarding rules: A respondent that has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in a complaint may forward the complaint, or the relevant part of it, in writing to that other respondent, provided it:
(1) does so promptly;
(2) informs the complainant promptly in a final response of why the complaint has been forwarded by it to the other respondent, and of the other respondent's contact details; and
(3) where jointly responsible for the fault alleged in the complaint, it complies with its own obligations under this chapter in respect of that part of the complaint it has not forwarded.
DISP 1.7.2 R. When a respondent receives a complaint that has been forwarded to it under DISP 1.7.1 R, the complaint is treated for the purposes of DISP as if directly to that respondent, and as if received by it when the forwarded complaint was received.
DISP 1.7.3 G. On receiving a forwarded complaint, the standard time limits will apply from the date on which the respondent receives the forwarded complaint.

5.33 If the firm is rejecting the complaint as not mis-sold, or offering only 'alternative redress', then under the complaints forwarding rules the firm may forward any part of the complaint alleging undisclosed commission in writing to the lender provided it:

- does so promptly; and
- informs the complainant promptly in a final response of why the complaint has been forwarded by it to the other firm, and of the other firm's contact details

5.34 If the complaint is broad and covers a number of different failings including non-disclosure of commission, the two firms may then decide between themselves the payment of any redress that is due. The Ombudsman service also has the ability to determine the proportion which firms must contribute to an overall award to a complainant.[70]

5.35 Some firms, who are not both the seller of the PPI and the lender, have raised concerns that a consumer could complain separately to the seller and lender and so potentially get redress for both a mis-sale and undisclosed commission, that was more than the harm justified.

5.36 We consider that the approach outlined above concerning the two step approach and forwarding rules should mitigate this risk. We would also note that:

- If a firm that sold the PPI had already upheld a consumer's complaint about mis-sold PPI and returned the full return of premium and interest to them as redress, the consumer should not then knowingly make a further complaint to the firm that provided the credit about undisclosed commission.
- Equally, if a consumer has already made a complaint to the lender about undisclosed commission and received redress through our proposed Step 2, the consumer should inform the PPI seller of that fact, and the amount of redress received, if making a further complaint about PPI mis-selling to it in the future.
- We believe it will be fair for firms who are not both lender and PPI seller to make all reasonable efforts to clarify, including by contacting the consumer if necessary, whether complainants have already complained to another relevant firm (or made a claim on the Financial Services Compensation Scheme) and the result (compare DISP App 3.2.3G and 3.3.4G).
- In any event, as noted above, around 95% of PPI complaints currently made are to firms that both sold the PPI and provided the credit it covered.

Shared failure to disclose?

5.37 We have also considered the circumstances in which parties other than the lender, e.g. the insurance broker, loan broker or the insurer, also knew the level of their and the lender's commissions but did not tell the consumer.

5.38 We do not, however, consider that this circumstance requires any change to our proposed two step approach. The Supreme Court judgment focuses on the lender and made clear that, for the purposes of unfair relationships under s.140A, it is the lender who is responsible for failing to disclose the commission to the consumer.

70 DISP 3.6.3G Where a complainant makes complaints against more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate.

Q8: Do you agree with our proposed structuring of the new rules and guidance concerning *Plevin* as a separate 'second step' within our existing PPI complaint handling rules and guidance?

The proposed approach to commission

5.39 We propose, for the purposes of PPI complaint handling only[71], to define 'commission' as: *the proportion of the total amount paid in respect of a payment protection contract that was not due to be passed to and retained by the insurer.*

5.40 This definition is designed to be wide enough to include the aspects of contractual arrangements between lender and insurer which are part of some credit card PPI, where the proportion of commission is not fixed and increases the longer the policy is in force. So, for example, the initial commission may be less than 50% at the point of sale but has the potential to be 50% or more in the future.

5.41 The definition focuses on the share of the premium that was not due to go to and remain with the insurer regardless of the nature of either external business arrangements, or the way a single group allocates and accounts for its revenue between selling, lending and underwriting functions, or their respective costs or margins on their shares of the premium.

5.42 We believe that the definition's disregard of these other aspects is fair and appropriate given that the analysis and decision in *Plevin*:

- Did not consider either the meaning of 'commission' or the various elements that made up the 'commission' and simply treated everything that had not been passed to the insurer as 'commission'.
- Did not seem to turn on the fact that a supposedly independent broker was receiving a high commission and instead saw the unfair relationship being created because Mrs Plevin did not know that so little of what she was paying would go to the insurer to pay for the insurance product she was buying.
- Made clear that *Harrison*[72] (the Court of Appeal decision that was overruled in *Plevin*) was wrongly decided (because of the weight it gave to the lack of a breach of any regulator's rules) but did not distinguish *Harrison* from *Plevin* on the basis of the different facts in the two cases. These facts included that *Harrison* involved an integrated group, no third party intermediaries and on the facts no conflict of interest.
- Made no finding that there was a conflict of interest on the part of Paragon that misled Mrs Plevin into her purchase of PPI, and made clear that the Court of Appeal was wrong to say that the acts or omissions of the credit broker were capable of making Mrs Plevin's relationship with Paragon unfair.
- Did not turn on there being an agency relationship, rejected the argument that Paragon was acting 'on behalf' of the credit broker, and did not appear to consider whether Paragon was acting as agent for the insurer or Mrs Plevin or both.

71 We are not altering the existing FCA glossary definition of 'commission' used in sourcebooks other than DISP.

72 Harrison v Black Horse Ltd [2012] Lloyd's Rep IR 521

5.43 The definition focuses on the 'gross' sum of commission. It does not allow for 'costs' (including profit margin) to be deducted, whether reasonable or not and whether the lender's or the seller's costs. This is because we have not identified any compelling reasons in *Plevin* why such an adjustment downwards of 'commission' in light of 'costs' would be necessary or appropriate. In particular, it is not obvious to us that the consumer's view of the potential value for money of the policy would generally be affected by knowing the detail of the lender's or seller's costs and profit margins.

5.44 For the same reasons, we do not consider that the additional subsequent costs for the lender-seller where a consumer repays or refinances their loans, and cancels the associated PPI and needs to be rebated, should form part of the assessment of commission or used to reduce it.

5.45 We have considered the suggestion that our proposed definition of commission should allow for, and thus be reduced by, that share of the PPI price that pays for insurance premium tax (typically 5% in past PPI sales). However, we are not persuaded by this view. This is largely because our understanding is that it is usually the insurer, rather than, for example, the lender, that bears the obligation to pay the IPT to HMRC. So the IPT will come out of, and also have been previously factored into, the share of the price of the PPI that went to the insurer. So IPT seems to us to be mainly irrelevant to the lender's commission.

5.46 We have also considered the suggestion that where a lender carries out some of the insurance administration services for the PPI for the insurer, and is paid for this out of the PPI price, then this payment should, for the purposes of our proposed rules and guidance, be deductible from the assessment of the lender's 'commission'.

5.47 We do not disagree with this in principle if the lender is genuinely carrying out administration of insurance contracts. However, we do not believe that, in practice, if these costs were deducted, it would significantly reduce the lender's commission. So it would not change the outcome of many decisions at Step 2 of our proposed approach or significantly reduce the amount of redress. Thus, we do not consider it necessary to propose rules or guidance on this point. However, we are open to receiving and considering further details about such scenarios, and whether they are material, in the course of this consultation.

5.48 Our proposed definition of commission does, however, *exclude* any contractual entitlement the lender may have to receive most or all of any money which had initially gone to the insurer but subsequently remains after a fixed time during which claims have been lower than expected. We believe it would not be appropriate to include such 'profit sharing' sums in our definition. This aspect was not covered in *Plevin* and the lender would not usually be able to say at the point of sale and in advance of the event, if they would get such extra money from the insurer or how much.

Q9: Do you agree with our proposed definition of 'commission' for the purposes of handling PPI complaints in light of *Plevin*?

The approach to considering evidence at Step 2 and presumptions

5.49 Under the proposed rules and guidance, firms will need to consider at Step 2 whether they told the complainant, before the PPI contract was made, either:

- the commission; or

- an explanation of the likely commission in the future or the likely range in which it would fall or how it would be calculated.

5.50 If the firm did not make such a disclosure, and is not aware that anyone else did at that time, then it will have to satisfy itself that the non-disclosure did not create an unfair relationship under s.140A. In this respect, the proposed rules and guidance reflect s.140B(9) which provides (in summary) that if the debtor alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.

5.51 When the firm is considering unfairness it should take into account all relevant matters, including whether the non-disclosure prevented the complainant from making a properly informed judgement about the value of the PPI contract.[73]

5.52 We also propose that firms should presume that the failure to disclose did give rise to an unfair relationship if the commission was, or had the potential to be, 50% or more. Equally, we propose that firms should presume that the failure to disclose did not give rise to an unfair relationship if the commission was less than 50%, or did not have the potential to be 50% or more.

5.53 We consider 50% to be appropriate in the context of our regulatory judgement concerning PPI complaints, based on what the Supreme Court said in *Plevin* about undisclosed commission of 71.8% being a 'long way beyond' the 'tipping point' for unfairness. Further, whilst we are aware that it is only one of a number of approaches that may have been taken in the county courts, we have also taken account of the approach adopted by Mr. Justice Platts (sitting in the Manchester County Court) in *Yates and Lorenzelli v. Nemo Personal Finance* (14 May 2010) who considered that a commission of over 50% should be disclosed.

5.54 As context, we know that the average commission on PPI retained by the 12 largest distributors in the years 2002-2006 was around 67% of premium.[74]

5.55 We have also carefully considered whether our proposed rules and guidance should set out different proportions for the presumption of unfairness for different types of PPI policy or sale (to reflect, for example, the potentially different costs associated with their distribution). However, we have not identified any compelling reasons why this approach is either necessary or appropriate. In particular, taking into account our knowledge of the PPI market and consistent with our proposed definition of commission, it is not obvious to us that differences in PPI distribution costs between firms, or between different PPI products of a firm, are relevant or show the need for different proportions to be set for the presumption of unfairness.

5.56 We also note that, in any case, the Competition Commission estimated that the genuine distribution costs (including a reasonable profit margin) of the major PPI distributors, most of whom were also the lenders, were only around 16%. So our proposed figure of 50% for presuming unfairness already provides very substantial headroom for a firm to have had genuinely higher than average distribution costs before it affects that firm.[75]

73 We note, however, that we do not consider that clear, fair and not misleading disclosure of the price of the PPI, in good time before the sale was concluded, would be sufficient in itself to establish that non-disclosure of commission did not give rise to an unfair relationship under s.140A.

74 See Appendix 4.4 of UK Competition Commission report "Market investigation into payment protection insurance" 29 January 2009. Available online at http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542_4_4.pdf

75 See Appendix 4.4 of UK Competition Commission report "Market investigation into payment protection insurance" (29 January 2009).

5.57 Some firms have also argued that it would be inappropriate to fix a presumption of an unfair relationship to a particular percentage of commission because it would have perverse consequences. Specifically, they argued that, for example, since a consumer who bought PPI for a £1000 premium and paid (unknowingly) 40% of this to the lender paid more commission than a consumer who paid a lender 60% of a £500 premium PPI, it would be perverse to presume the former relationship was fair but that the latter was unfair.

5.58 We do not accept this argument. In our view, it introduces a focus on the absolute level of commission and a comparison between products which departs significantly from the reasoning in the *Plevin* judgment in both respects. There, the Supreme Court clearly focused on the relative proportion of the PPI policy's price that went as commission and the impact that proportion might have had on the consumer's thinking about the value for money of that PPI policy if they had known about it.

5.59 It is important to note, however, that the proposed presumptions can be rebutted.

5.60 On the one hand, the proposed rules and guidance give examples of factors which could support the rebuttal of the presumption of an unfair relationship if the commission was, or had the potential to be, 50% or more. These, we propose, might include:

- If the insurer provided the PPI to an intermediary rather than the CCA lender and the CCA lender was not party to the commission agreement.
- If the complainant could reasonably be expected to be aware of the level of commission, because, for example, they worked in a relevant role in the financial services industry.
- If disclosure would have made no difference whatsoever to the complainant's judgement about the value of the PPI. However, in our view this is likely to be relevant in limited circumstances only. If the firm concludes that disclosure would have at least caused the complainant to question whether the PPI represented value for money and whether it was a sensible transaction to enter into (regardless of whether they may or may not have ultimately gone ahead with the purchase), then the presumption is unlikely to be rebutted.

5.61 On the other hand, we also propose examples of factors which might contribute to the rebuttal of the presumption that there was no unfair relationship if the commission was *less* than 50% or did not have the potential to be 50% or more. These, we propose, might include:

- if the complainant was in particularly difficult financial circumstances
- if the complainant can establish that they had a track record of showing a close interest in the commission payable on other purchases

5.62 Lastly, our proposed rules and guidance set out our view that where a firm genuinely lacks records of the level of commission applicable to a particular PPI sale in a complaint, we would expect it to make reasonable assumptions about this. For example, by considering later commission levels that they do have records of, and general commercial trends such as whether commission rates in the industry were heading up or down during the period in question.

Q10: Do you agree with our proposal of a single 50% commission 'tipping point' at which firms should presume, for the purposes of handling PPI complaints, that the failure to disclose commission gave rise to an unfair relationship under s.140A?

Q11: Do you agree with our proposed examples of circumstances in which the presumptions might reasonably be rebutted? Are there other such circumstances which could usefully be specified as examples?

Key elements of the proposed approach to redress at Step 2

5.63 The proposed rules and guidance require a firm to pay redress where it concludes that an unfair relationship under s.140A has arisen by virtue of undisclosed high commission. The proposed key elements of redress are:

1. the difference between the commission the customer paid (e.g. 70% of the premium) and 50% of the premium paid (i.e. 20% of premium in this example); *plus*

2. the historic interest the customer paid on that portion of the premium (where relevant) (ie the interest paid on the 20%); *plus*

3. annual simple interest at 8% on the sum of 1 and 2.

5.64 Where undisclosed commission of less than 50% (e.g. 45%) is assessed in a particular case to have created an unfair relationship under s.140A (as discussed at para 5.61 above), then the redress element in 1) should be altered accordingly, to reflect the difference between the commission the customer paid and, in this case, 45%.

5.65 This proposed approach to redress is intended to *remedy the unfairness under s.140A* created by the undisclosed high commission. It does this by reducing the commission to a level below the point where its non-disclosure tips into unfairness and redresses the consumer for the amount of commission they paid over that point.

5.66 The proposed approach is not seeking to remedy hypothetical situations in which consumers would either not have bought the PPI, or found and bought other PPI with a lower rate of commission had they been told of the high commission. In this, we think our proposed approach is consistent with s.140B, which is a very broad power and does not focus on causation and loss. It is also consistent with the judgment in *Plevin* where the Supreme Court did not find that, or even speculate on whether, Mrs Plevin would not have bought the PPI if she had been told about the high commission.

5.67 The proposed approach reflects our view that, in respect of most PPI complainants entering the proposed Step 2 assessment, it can be assumed, given they have not already been assessed as mis-sold at Step 1, that:

- They have been told, with reasonable clarity and accuracy, about what they were getting with the PPI and how much it would cost.

- The PPI would have broadly worked as they had been told and given them some benefit if they had made a claim.

- Many things *could* have happened had the commission been disclosed to them. It probably would have affected many consumers' expectations and many reasonable people would probably have thought twice and potentially searched for other cover. However, given the

PPI market at the time, it would have been very hard in practice for them to find alternative PPI offerings that were much cheaper and had a much lower rate of commission.

- If the commission had been less than, say 50%, then (in hindsight and in our view) the firm would not have been required to disclose the commission anyway.

- So, redress of the portion of the commission which is over 50% is likely to be a fair outcome in most cases.

5.68 However, our proposed rules and guidance also recognise that this remedy does not cover every case. When firms have identified that an unfair relationship under s.140A was created by not disclosing high commission, they should consider if, given the particular circumstances of the case, they need to pay a different form or level of redress than that indicated by our approach above in order to remedy the unfairness.

5.69 An example of this might be where a firm that was both seller and lender is considering the complaint at both Step 1 and Step 2, and initially concludes at Step 1 that the sale was only narrowly not a mis-sale (for example, because disclosure of the PPI's price and benefits was barely adequate), and then decides, following consideration at Step 2, that not disclosing commission over 50% was the 'straw that broke the back' of the sale as a whole, and concludes that, overall, the customer would not have bought the PPI had they been given better information, including about the commission, at point of sale. Because of this, the firm decides to refund the complainant's full premium (as well as the historic interest they paid on it). We would envisage, however, that marginal cases like this would be relatively few and far between.

5.70 It may be argued that our proposed approach to redress is not correct, because it is less than the full return of commission which the Manchester County Court awarded to Mrs Plevin. However, we do not think that this is a significant objection, because the issue before that court was whether Mrs Plevin should be awarded only the commission element of the premium (which is what Paragon had offered in attempted settlement) or all the premium paid in relation to the PPI policy (as Mrs Plevin claimed). The question of whether any other award might be appropriate was not argued before the court.

5.71 It may also be argued that our proposed approach to redress is not fair or adequate because it does not, for example, address other wider aspects, such as, for example, the high price of the PPI relative to the low claims experience, or wider market failure and weak competition and the implications for value for money considerations. But as these aspects were not discussed in the *Plevin* judgment, we have not felt it to be necessary or appropriate to include it in our proposed approach, given the aim of our rules and guidance is simply to ensure fair and orderly handling of PPI complaints in light of *Plevin*. It does, however, remain open to consumers to complain about other aspects not covered in our proposed rules and guidance.

Q12: Do you agree with the key elements of our proposed approach to redress at Step 2 of our proposed rules and guidance concerning PPI complaint handling in light of *Plevin*?

Alternative approaches we have considered

The significance of 6 April 2007

5.72 We have carefully considered alternative approaches where:

- no unfairness would be identified or redress paid, regardless of the level of commission that was undisclosed, if the credit relationship was entered into before 6 April 2007, when s.140A came into force or

- unfairness may be identified where the credit relationship was entered into before 6 April 2007, but redress would be confined to those premium payments made after 6 April 2007; or, in another option, redress would be confined to the portion of premium payment which, had it been spread evenly over the life of the PPI, would notionally have fallen after 6 April 2007

5.73 However, we do not consider that these approaches can reasonably be inferred from the retrospective transitional provisions enacted by Parliament in relation to s.140A. We also note that on the first of these approaches, Mrs Plevin herself would have received no redress.

A lower rate of interest on the credit?

5.74 We have also considered whether the proposed presumption of an unfair relationship under s.140A where there was undisclosed high commission should be rejected, or the level of redress reduced, where a lender could show that the consumer who bought the PPI had benefitted from a lower interest rate on their associated credit agreement as a result.

5.75 We do not think this scenario happened often. In fact, the Competition Commission's findings suggest that, more typically, it was those borrowers who bought PPI who, in effect, subsidised lower interest rates for borrowers who did not.[76]

5.76 However, even if a firm could show that a borrower had benefitted from a lower interest rate than if they had not bought PPI, we still believe this does not correct the unfair relationship under s.140A created at point of sale by the non-disclosure. Nor does it imply that redress should be reduced.

Successful claims on the policy

5.77 We have also considered whether the proposed presumption of an unfair relationship under s.140A where high commission was not disclosed should be set aside if the complainant made a successful insurance claim on the PPI policy.

5.78 However, we have concluded it should not. In our view, a subsequent successful claim on the policy does not, after the event, correct the unfair relationship under s.140A that was created at point of sale by the non-disclosure of the high commission.

5.79 For the same reason, and unlike our existing approach to redress in DISP App 3, which allows the firm to deduct the value of a previously successful claim, our proposed new rules and guidance do not allow for redress at Step 2 to be reduced in this way. This reflects our view that Step 2 concerns unfairness under s.140A, and is quite different from the issue of whether the policy was mis-sold.

76 http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542_4_5.pdf

Other elements of the proposed approach to redress at step 2

5.80 In addition to the key elements of redress at Step 2 discussed above, our proposed rules and guidance provide for three main differences at Step 2 relative to our established approach at Step 1:

Rebates: The proposed rules and guidance make clear (DISP 3.7A.7E) that where the complainant has (previously) received a rebate on cancelling the PPI policy, the firm should *not* deduct this from any redress it has determined it should pay under Step 2. This is different from our existing approach concerning redress at Step 1. It reflects the fact that the logic of our approach at Step 2 is not to put the customer back in the position they would have been in had they been told of the high commission, but rather to correct the unfair relationship created at the time by the non-disclosure. The subsequent cancellation of the policy by the consumer does not alter the unfair relationship created at point of sale and hence should not (through the rebate) reduce the sum of redress due to the complainant.

Live regular premium policies: For a live regular premium PPI policy, the firm should, as well as any redress offer, tell the complainant the level of commission on the PPI they are paying. They should offer the complainant an informed choice of continuing the PPI policy on that basis or cancelling it without penalty.

Interaction with alternative redress procedure: Our proposed rules and guidance state that if a firm has decided at Step 1 that a customer is due alternative redress (under the existing DISP rule 3.7.9E), then it should also (unless not a lender) consider the complaint under Step 2. If the firm concludes that redress would be due at Step 2, they should pay the complainant the higher of the Step 1 redress or Step 2 redress sums. The firm should also consider (under amended DISP 3.9.4G) whether it is necessary to give the complainant both calculations in their response to ensure the offer is made in a fair and balanced way.

5.81 Other aspects of our established approach to redress at Step 1, however, are carried across by our proposed rules and guidance to Step 2, to ensure the consequences of undisclosed commission above 50% are fully addressed, namely:

- *Loan restructuring (DISP App 3.7.4E);*
- *Cumulative financial loss in a chain of refinanced loans and single premium policies (DISP App 3.9.3G);*
- *Consequential loss (DISP App 3.9.2G); and*
- *8% interest on the redress sum (DISP App 3.7.3E and 3.1.5G(2)).*

Q13: Do you agree with our proposed approaches to the other elements of redress at Step 2? Do you perceive any particular practical or operational difficulties in our proposed approach to these elements?

Root cause analysis

5.82 We note that the existing provisions (DISP App 3.4.1G and 3.4.2G) concerning the need to identify any recurrent sales problems through root cause analysis of complaints, and to then

factor such problems into the consideration of other complaints, even where not raised by the complainant, will apply to complaints assessed under Step 2 of our proposed rules and guidance.

5.83 The position is somewhat different concerning the existing guidance (DISP 3.4.3G) about the need for a firm to consider whether, in light of any recurrent sales failings identified, it should take appropriate and proportionate measures to ensure that non-complainants are given appropriate redress or a proper opportunity to obtain it. This guidance only applies to the extent that Principle 6 applies and in this context, our view is that Principle 6 will only apply to credit agreements that were entered into after, or were outstanding on, 1 April 2014, when credit became a regulated activity under FSMA.

5.84 For those credit agreements where Principle 6 and this guidance does apply, we believe that consumers who may have been affected by undisclosed high commission will get adequate prompts to act from our proposed consumer communications campaign before the proposed deadline on PPI complaints (and from CMC and other consumer body advertising and messaging). Because of this, we believe firms are unlikely to need to take any further action under this guidance.

5.85 We are not proposing a scheme under s404 of FSMA about undisclosed high commission on PPI sales. We believe that requiring firms to proactively contact potentially affected consumers would be inappropriate, given that we did not require commission disclosure in our ICOB/ICOBS rules. Instead, we think it is reasonable in the circumstances for us to continue to rely on a complaints-led approach, as we have mainly done so far for redressing PPI mis-selling generally. In any event, we do not consider that a s.404 scheme could apply to the two thirds of PPI sales made before 2005, or to credit agreements from lenders that did not carry out insurance mediation before 1 April 2014, because of the requirement in s.404 for there to have been a regulated activity.

5.86 In summary, we do not propose to require (or otherwise expect) firms to proactively review, or take other proactive actions (for example, making targeted contact with relevant customers) in respect of, past PPI policies and sales which fall within the scope of s.140A-B and involved undisclosed commission over 50%.

Previously rejected complaints

5.87 We do *not* propose to require (or otherwise expect) firms to proactively review previously rejected PPI complaints about credit agreements falling under s140A-B against our proposed new rules and guidance. This is because we do not consider the non-disclosure of high commission to have breached our rules. Because of this, we do not consider the firm's failure to have included this aspect when previously assessing the PPI complaint to have been unfair complaint handling.

5.88 Equally, if a consumer previously complained specifically about the non-disclosure of commission on their PPI policy, and the firm considered this but did not uphold the complaint, we think it would be retrospective and wrong for us to require the firm to re-open that complaint. We also do not think that the consumer could re-submit a complaint that is the same or covers the same subject matter as a previously submitted complaint.

5.89 However, a consumer may previously have made a complaint about a PPI sale that did *not* expressly raise undisclosed commission as an issue. If this complaint was rejected, and the underlying credit agreement falls within s.140A-B, then, in light of *Plevin*, we believe they

remain free to raise this additional issue about the policy with the lender, who would have to assess that complaint against our proposed new rules and guidance at Step 2. In this context, we further note that:

- Our view is that a previous generally worded complaint should be interpreted in light of the context that existed at the time it was made and so should generally be taken to be a complaint about mis-selling in the existing DISP App 3 context and not as a complaint about undisclosed commission.

- There may be circumstances in which the consumer is out of time to raise this additional issue about the policy with the lender because of our existing time limits, where it was more than 3 years since the complainant became aware, or ought reasonably to have become aware of the matters raised (though we anticipate that such circumstances are unlikely to have been common), or, in the future, because of our proposed deadline.

- Where a customer previously made a complaint about a PPI sale using a CMC or other paid advocate, our view, and that of the CMR, is that the CMC or advocate would not be able to rely on their previous authorisation from the consumer to make a new complaint about undisclosed commission or to seek a fee from any redress resulting from that new complaint.

Q14: Do you agree that consumers who have previously made rejected PPI complaints that did not mention undisclosed commission, and whose credit agreements fall within the scope of s.140A-B, should be able to raise this additional issue with the lender and have this assessed under our proposed new rules and guidance?

Other court decisions

5.90 We recognise that the courts have considered, and will continue to consider, issues similar to those raised in *Plevin* in other cases. One such case is that of *McWilliam v Norton Finance*. In March 2015, the Court of Appeal held that a fiduciary relationship existed between Mr and Mrs McWilliam and Norton Finance. Norton, an independent credit broker, had not disclosed the amount of commission it received on the sale of a PPI policy, and was found to be in breach of its fiduciary duty by failing to obtain Mr and Mrs McWilliam's informed consent for this.

5.91 We have considered whether our proposed rules and guidance on PPI complaints and *Plevin* should also reflect this case.

5.92 We have concluded that they should not do so at this stage. The Court of Appeal said that the appeal was a very unsuitable vehicle for the resolution of issues applicable to other cases. The Court had to resolve issues without the benefit of adversarial argument. There is also uncertainty as to when a fiduciary relationship arises as a matter of law. However, we will continue to monitor the situation and would not rule out making new rules and guidance in relation to *McWilliam*-type complaints in the future, if these difficulties appear to be less significant as a result, for instance, of developments in the case law.

5.93 The complexities of assessing a *McWilliam*-type complaint, and the fact that the legal remedy for such a complaint would be different from those of our current DISP Appendix 3 rules and guidance for PPI complaints, lead us to consider that it would be appropriate to carve out such PPI complaints from that Appendix. Such complaints will instead have to be dealt with under

the high level complaint handling rule in DISP 1.4.1R. This approach will give firms flexibility to consider any *McWilliam*-type complaints about PPI on a case-by-case basis. Such complaints would, however, be caught by the proposed deadline discussed in Chapter 3.

Q15: Do you agree with our proposed approach of handling *McWilliam*-type PPI complaints under our existing high level (non-PPI specific) complaints handling rules only?

Equality impact assessment

5.94 For our consideration and assessment of the equality impact issues that may arise from the proposals discussed in this chapter, see Annex 3.

Other areas

5.95 All the proposals in this chapter are solely in the context of PPI and reflect our specific regulatory judgement of how best to achieve our aim of fair and consistent PPI complaint handling in light of *Plevin*. No inference should be drawn for our regulatory approach in other areas.

6.
Looking forward

Immediate next steps

6.1 This consultation is open for 3 months until 26 February 2016. We will carefully consider comments and evidence received in response to it and also comments already received about our statement of 2 October.

6.2 Depending on our assessment of these responses, and if we go ahead with some or all of our proposed interventions, we would plan to issue a policy statement with finalised rules and guidance shortly before the commencement date of those rules and guidance.

6.3 During the consultation period, we will conduct preparatory work on the proposed consumer communications campaign. This will include work on the detailed plan and design of the campaign and its creative aspects, and also discussion with potential partners. This work does not in any way prejudge the consultation. It is necessary to ensure that, if, following the consultation, we do impose a deadline, we are able to launch the campaign promptly and effectively soon after the rule comes into force.

6.4 We will ensure that expenditure in this period is kept to a reasonable level, in case, following the consultation, the proposed deadline and communications campaign do not go ahead. We will continue to use responses to this consultation in our ongoing consideration and design of the proposed campaign.

PPI complaint handling before any final rules and guidance on *Plevin*

6.5 During the consultation period, and before we make any final rules and guidance on handling PPI complaints in light of *Plevin*, we expect firms to continue to progress to a conclusion, fairly and promptly under our existing rules and guidance, those PPI complaints that would not be affected by our proposed rules and guidance on *Plevin*.

6.6 However, in that period, it will be open to firms, under our existing rules (DISP 1.6.2R(2)), to explain to complainants that they cannot provide a final response for those complaints that could be affected by the proposed rules and guidance on *Plevin*.

6.7 We will take steps in our ongoing supervision of PPI complaint handling to ensure that firms are acting fairly and appropriately, including in these respects.

Looking further ahead

6.8 If, following consultation, we set a deadline, we will hold discussions with firms to ensure they are planning and resourcing appropriately to deal fairly and promptly with the volume of PPI complaints they may receive in the period before the deadline.

6.9 We will continue to monitor and challenge firms to ensure that they continue to deal fairly and promptly with PPI complaints throughout the period and until all complaints made in time have been appropriately assessed and responded to. We will look particularly closely for any sign that firms are seeking to reduce their redress bill by unfairly offering redress for undisclosed commission (under Step 2 of our proposed approach) to complainants who ought properly to be paid full redress for a mis-sale under our current rules and guidance (Step 1). We will take action where firms do this or otherwise fail to act fairly in their PPI complaint handling.

6.10 We will continue to liaise closely with the Ombudsman service concerning firms' PPI complaint handling. That liaison is likely to continue for some time after the deadline, until all PPI cases that have been referred to the Ombudsman service in time have been dealt with.

6.11 We will work closely with the CMR in the run up to the deadline in order to discuss what steps it can take to encourage CMCs to give consumers balanced information about the potential costs and risks of taking PPI claims to court once new PPI complaints to firms or the Ombudsman service are out of time.

Annex 1
List of consultation questions

Q1: Do you agree with our assessment of the PPI landscape and trends, and that we should now seek to draw the PPI issue to an orderly close through the proposed deadline and proposed consumer communications campaign?

Q2: Do you agree with the proposed nature, date and scope of the proposed deadline?

Q3: Do you agree with the proposed aims of the proposed consumer communications campaign?

Q4: Do you agree with the proposed audience, channels, and cost of the proposed consumer communications campaign?

Q5: Do you agree with our proposed fee rule for allocating the costs of the proposed consumer communications campaign?

Q6: Do you agree with our rationale for proposing rules and guidance now concerning the handling of PPI complaints in light of *Plevin*, and that it is preferable in the circumstances that we, not the Ombudsman service, take the lead in this?

Q7: Do you agree with the scope of our proposed rules and guidance concerning the handling of PPI complaints in light of *Plevin*?

Q8: Do you agree with our proposed structuring of the new rules and guidance concerning *Plevin* as a separate 'second step' within our existing PPI complaint handling rules and guidance?

Q9: Do you agree with our proposed definition of 'commission' for the purposes of handling PPI complaints in light of *Plevin*?

Q10: **Do you agree with our proposal of a single 50% commission 'tipping point' at which firms should presume, for the purposes of handling PPI complaints, that the failure to disclose commission gave rise to an unfair relationship under s.140A?**

Q11: **Do you agree with our proposed examples of circumstances in which the presumptions might reasonably be rebutted? Are there other such circumstances which could usefully be specified as examples?**

Q12: **Do you agree with the key elements of our proposed approach to redress at Step 2 of our proposed rules and guidance concerning PPI complaint handling in light of *Plevin*?**

Q13: **Do you agree with our proposed approaches to the other elements of redress at Step 2? Do you perceive any particular practical or operational difficulties in our proposed approach to these elements ?**

Q14: **Do you agree that consumers who have previously made rejected PPI complaints that did not mention undisclosed commission, and whose credit agreements fall within the scope of s.140A-B, should be able to raise this additional issue with the lender and have this assessed under our proposed new rules and guidance?**

Q15: **Do you agree with our proposed approach of handling *McWilliam*-type PPI complaints under our existing high level (non-PPI specific) complaints handling rules only?**

Q16: **Do you have any comments on our cost benefit analysis?**

Q17: **Do you agree with our initial assessment of the impacts of our various proposals on the protected groups and vulnerable consumers? Are there any other potential impacts we should consider?**

Q18: **Do you have any comments on our compatibility statement? In particular, do you have any comments on any issues relating to mutual societies that you believe would arise from our proposals?**

Annex 2
Cost benefit analysis of proposed PPI complaint deadline, proposed consumer communications campaign, proposed fee rule, and proposed rules and guidance on handling PPI complaints in light of *Plevin*

Introduction

1.1 FSMA requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs, together with an analysis of the benefits' that the proposed rules will bring. It also requires us to include estimates of those costs and benefits, unless we cannot reasonably estimate them or it is not reasonably practicable for us to produce this estimate.

1.2 This analysis considers the following package of proposals as a whole:

a. A deadline for new PPI complaints, falling in 2018 (see chapter 3 of this consultation paper)

b. An FCA-led consumer communications campaign preceding the deadline (see chapter 3 of this consultation paper)

c. A fee, levied on 18 firms, requiring them to pay £42.2m, over two years, to fund this consumer communications campaign (see chapter 4 of this consultation paper)

d. Additional rules and guidance on how to handle relevant PPI complaints fairly in light of the *Plevin* judgment (see chapter 5 of this consultation paper).

Market failure analysis and rationale for the proposals

2.1 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 a credit product, and thus not realising it was optional, or how much it cost, and not understanding fully the cover and its exclusions. 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.

2.2 The current set of rules and guidance on PPI complaints handling came into force in December 2010. The complaints-led approach to redressing PPI mis-selling which those rules has supported has continued on a larger scale and for longer than was anticipated then.

2.3 In 2015, we commissioned consumer research to investigate consumer knowledge of PPI and mis-selling and the attitudes and intentions of consumers to PPI complaints. The results suggest that behavioural inertia is preventing many former PPI customers who intend to complain, or to check whether they had PPI and should be concerned, from doing so in a timely manner (see section 2.19 – 2.20 of this Consultation Paper).

2.4 The *Plevin* ruling has added a further dimension to PPI redress (see sections 5.1-5.5 of this Consultation Paper). If we do not issue rules and guidance about how firms should handle PPI complaints in the light of the *Plevin* ruling, the matter will instead evolve over time through a combination of Ombudsman service decisions and court rulings. In such a scenario it is likely that:

a. fewer consumers will obtain redress;

b. redress may be awarded on a basis that is inconsistent between firms;

c. Ombudsman-related costs, including case fees to firms, would be higher.

2.5 Our proposed intervention package (1.2 above) is intended primarily to address the issues in 2.3 and 2.4 above, and thus help advance our objectives of securing an appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system.

The effects of the proposals, and their costs and benefits

Effects on redress payments and complaint volumes

3.1 The proposed package of interventions will have the following effects on the level of PPI complaints and associated redress:

a. Some consumers who would not have complained will now do so before the deadline. They will do so in response to one or more of (i) our consumer communications campaign; (ii) other publicity about the deadline, the *Plevin* judgment and our rules and guidance about it (e.g. from CMCs and general media); (iii) the prompting effect of the deadline itself. Many of these consumers will get redress that they would not have received without the proposed package of interventions.

b. Some consumers who were not mis-sold but may not have been told about high commission will complain before the deadline and get redress. Among these will be some people whose previous complaints about mis-selling were rejected.

c. Some consumers who would have complained eventually will not do so before the deadline (for example, because they do not respond to the communications campaign). Such consumers will not obtain the redress to which some of them would have been entitled.

3.2 Together, these effects represent the change in the number of complaints and the level of redress payable under the proposed interventions compared with the alternative of continuing with the existing arrangement of rules and guidance for handling PPI complaints. We have considered the likely magnitude of these respective effects. We note that:

a. Given the historical and ongoing level of publicity from CMCs[77] and our own proposed communications campaign, there are likely to be very few consumers who will not be aware of PPI redress possibilities by the time of the deadline.

77 The FCA is aware there are current proposals for a cap on the charges of CMCs. Depending on the scale and timing of such a cap, CMCs may be expected to reduce their levels of advertising or direct marketing spend related to PPI complaints.

b. The deadline and communications campaign will encourage consumers who are currently thinking of complaining to do so in a reasonable time frame before the deadline, helping them to overcome the behavioural inertia that some consumers experience.

c. Consumers were not previously aware of the issue of non-disclosure of commission and their potential grounds for complaining about this. This new information, added to the current scope for complaining about mis-selling, is likely to increase the number of PPI complaints. Our consumer research indicates that the size of such an increase could be significant (see paragraphs 2.48 – 2.49 in the Consultation Paper).

d. Providing rules and guidance to firms on the fair handling of complaints involving commission non-disclosure is also likely to increase the volume of such complaints, compared to the alternative of consumers having to resort to and rely on the Ombudsman service or the courts to have their complaint considered fairly.

e. However, we recognise that even after the FCA-led communications campaign and CMC publicity, some consumers who would have eventually complained may not do so by the proposed deadline. Some of these consumers will thus miss out on redress to which they would have been entitled – or alternatively they will have to resort to court action, where possible, after the deadline to obtain any redress.

3.3 The FCA-led communications campaign, which will clarify the PPI issue and how to complain, is likely to increase the number of complaints made directly to firms, rather than through CMCs. This will in turn result in these complainants receiving higher average net levels of redress because less of it will go in fees to CMCs.

3.4 As welfare economists have shown, if society has a degree of aversion to inequality, then transfers from higher income to lower income groups can produce net benefits, even where some of the transfer is lost in "leakages" such as administrative costs[78]. In this sense, to the extent that the recipients of PPI redress have lower average incomes than those who ultimately bear the cost, the increased redress payments anticipated from our intervention package will generate social benefits.

3.5 In addition to deriving outright benefit from the redress received, recipients who are in debt may benefit from being paid their redress earlier. This will be true for recipients who (a) make their PPI complaint sooner because of our intervention, and (b) use their redress to pay off debts with interest rates higher than the 8% annual PPI redress uplift which is applied for each year between the PPI sale and redress date. We believe, given the socio-economic profile of PPI complainants[79], that such cases will significantly outnumber those in which the complainant would be better off being paid later and receiving 8% additional redress for each additional year of delay.

Estimating redress payments and complaint volumes

3.6 We have considered whether we can estimate the scale of the impact on the number of complaints and the consequent value of redress of our proposals. We have found practical issues as well as a number of inherent difficulties with doing this.

78 Welfare economists can infer an 'inequality aversion' in society by examining, for example, evidence that individuals exhibit diminishing marginal gains from extra income as their income rises. See Cowell and Gardiner (1999). 'Welfare Weights', Economics Research Paper 20, STICERD, London School of Economics, UK. Available online at http://darp.lse.ac.uk/papersDB/Cowell-Gardiner_(OFT).pdf (a research paper commissioned by the UK Office of Fair Trading).

79 PPI consumers are more likely to earn less than the UK national average income or come from socio-economic groups C and D. See UK Competition Commission report, "Market investigation into payment protection insurance" 29 January 2009, page 3. Available online at http://webarchive.nationalarchives.gov.uk/20140402141250/http:/www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542.pdf

3.7 In practical terms, we have examined the past trends in PPI complaints and PPI redress payments, as well as advertising spend by CMCs, to try to predict the likely future level of complaints and how it will change over time if there is no further intervention. This included getting an advertising agency's view on the likely time path of redress, taking into account advertising spending by CMCs. We also asked firms for their view on the future time path of complaints, assuming there was no deadline. However, there is only a relatively short history of useful past complaints data (since the peak in 2012) on which to base a prediction of the future.[80]

3.8 More fundamentally, there are a number of developments, such as the impact of the *Plevin* judgement and the government's planned proposal for a cap on CMC charges, which mean that the past pattern of PPI complaints is not a reliable predictor of the future.

3.9 We concluded that no amount of data or effort could give us reasonably precise and meaningful numbers on the future path of PPI complaints. As a result, we cannot construct a meaningful benchmark against which to *quantify* the effects of our proposed package of interventions.

3.10 In assessing the effects of a deadline, we also note that there is no precedent for a comparable deadline that would allow us to estimate how consumers will respond to it.

3.11 Because of these considerations, we cannot reasonably estimate the costs and benefits flowing from the change in the level of complaints and redress (and s138I (8)(a) FSMA applies).

3.12 While we cannot reasonably estimate the costs and benefits, the dynamics explained in paragraphs 3.1 – 3.5 above **provide a reasonable basis for expecting that the proposed interventions will lead to a higher level of complaints and redress than would arise otherwise.** However, given the difficulties set out in paragraphs 3.6 – 3.10, this judgement is necessarily subject to a degree of uncertainty.

3.13 The additional PPI redress payments we expect to be made following our proposals will create a cost to firms and a benefit to consumers.

Uncertainty and Finality

3.14 The public attention that continues to be directed to the PPI mis-selling episode is continuing to undermine the orderly operation of the UK retail financial sector. The main firms concerned are multi-product firms at the heart of this sector. Bringing the redress programme, and its associated reminders of past misconduct, to an orderly conclusion will contribute to an environment where consumers feel more confident about buying the financial products that they need.

3.15 Our proposed intervention package will reduce long-term uncertainty about firms' PPI liabilities. This is because firms will stop paying redress after the deadline (except to complainants successfully taking claims to the courts).

3.16 Conversely, the intervention package also has the potential to increase uncertainty about these liabilities in the period before the deadline, especially given the difficulty of predicting how PPI customers and CMCs will react.

80 Previous projections of future PPI complaints based on past data have tended to be poor predictions just a few months ahead, let alone a few years ahead (this observation applies both to firms' future provisioning for PPI liabilities as well as the FSA's estimates in CP09/23, CP10/6 and PS10/12 during 2009/10).

3.17 Capital market participants tend to incorporate uncertainty about the level of future liabilities into their judgements of the riskiness of providing funding for firms. As a result, an overall reduction in uncertainty about PPI liabilities could be expected to lower firms' long-term weighted average cost of capital (WACC).

3.18 It is theoretically possible to quantify the effects of this reduction in the cost of capital by assessing the effects of 'news' about expected PPI liabilities on indicators of the cost of capital, such as the premiums for Credit Default Swaps. One of the practical difficulties in estimating this effect is that 'news' about changes in expected PPI liabilities may only filter into the market gradually and so the impact may be difficult to detect among many other factors affecting securities' prices. We examined a number of potential 'news' events such as the Supreme Court ruling on *Plevin* but could not identify a discernable impact on how the market assessed risk.

3.19 However, reduced uncertainty about PPI liabilities is clearly a benefit in terms of lowered risk in the banking system. Reducing the potential for future shocks to banks' capital lowers the probability of future financial crises, and is therefore of benefit to the economy[81]. That said, the precise relationship between bank capital and financial crisis has not been established under the present monetary policy conditions, and it is therefore not reasonably practicable for us to estimate this benefit (s138I(8)(b)) FSMA.

Campaign costs

3.20 We estimate the cost of our proposed consumer communications campaign as £42.2m. We propose recovering this cost by a fee levied on 18 firms, with each contributing in proportion to their respective level of reported PPI complaints in the period 1 August 2009 to 31 August 2015.

Administrative costs and savings

3.21 The additional PPI complaints we expect to be made will create additional administrative costs for firms. Firms' own estimates put these costs at approximately £310 per complaint where the complainant held PPI (regardless of complaint outcome). For complaints where the complainant had not held PPI, the cost is approximately £75. Firms expect such 'No-PPI' complaints to make up approximately 27% of total complaints in the next three years.

3.22 If a complaint is rejected, the complainant has the right to take the case to the Ombudsman service for further investigation and adjudication. Regardless of outcome, the firm facing the complaint is currently charged an Ombudsman fee of £550 per case. In 2012-2014, approximately 6.5% of all submitted PPI complaints were taken to the Ombudsman service in this way.

3.23 Firms will therefore have to pay an increased level of Ombudsman service fees for the additional volume of complaints that we expect will result from our proposals.

3.24 Our proposals would, however, result in a lower proportion of complaints involving undisclosed commission being referred to the Ombudsman service than would otherwise be the case. This is because, without FCA rules and guidance on PPI complaint handling in light of *Plevin*, there would be considerable uncertainty about which complaints must be considered and how.

81 See de-Ramon, Iscenko, Osborne, Straughan, and Andrews (2012). 'Measuring the impact of prudential policy on the macroeconomy', Financial Services Authority Occasional Paper Series #42. Available online at www.fsa.gov.uk/static/pubs/occpapers/op42.pdf

Certainty about which complaints must be considered and how they should be handled would instead have to be established over time through cases taken to the Ombudsman service and the courts. We therefore expect our proposals to significantly reduce the Ombudsman service fee 'burden' on firms *per PPI complaint involving undisclosed commission*.

3.25 Although, as noted in 3.2e above, the deadline will cut off from potential redress some consumers who would have complained at a later date but who are not prompted to do so before the deadline, it will also cut off the so-called 'No PPI' complaints discussed at para 3.21 above. Investigating these 'No PPI' complaints creates costs for firms, and firms estimate they are a rising proportion of total complaints.

3.26 Firms will have lower administrative costs for complaints that are submitted sooner, due to our intervention package, than they would if the same complaints were allowed to 'age'. Firms estimate that complaints about older sales are currently slightly more costly for them to handle.

3.27 After the deadline, our own overall PPI supervision costs will reduce substantially. We do not expect these costs to differ significantly from their current level until then.

Corporate restructuring in the retail financial sector

3.28 It could be argued that a further benefit of reducing uncertainty over PPI redress liabilities would be to assist efficient corporate restructuring in the retail financial sector. After a financial crisis, such as that of 2007-9, one might expect some significant restructuring of the sector. One reason this may not have happened is a reluctance to take on uncertain PPI liabilities.

3.29 That said, firms could potentially write legal agreements that "contract around" PPI liabilities. For example, to facilitate the Lloyds-TSB demerger Lloyds provided a conduct indemnity to TSB in respect of past misconduct complaints and associated regulatory actions, specifically including PPI. However, there are costs associated with creating such arrangements.

3.30 Quantifying the benefits of enabling this kind of potential restructuring is extremely challenging. Doing so would require not only estimating the degree to which potential restructuring is being held back by uncertainty over post-2018 PPI liabilities, but also modelling what kind of restructuring might take place, and then estimating what consumer benefits, if any, such restructure might subsequently bring. As such, this benefit is both highly uncertain in principle and not reasonably practical for us to estimate (s138I(8)(b) FSMA is applicable).

Missing PPI-market

3.31 Ongoing publicity surrounding PPI redress may be negatively colouring people's perception of PPI as a product to be re-launched by the sector. A PPI deadline would help bring the mis-selling issue to an orderly conclusion, and so potentially contribute to creating the conditions for an effective new market for such debt or income protection products. Given firms' experience of the consequences of historical PPI mis-selling, a new market is likely to work better for consumers than the previous one.

3.32 However, the specific contribution that a deadline and consumer communications campaign would make to the wider conditions that could lead to the creation of a new PPI or protection market is uncertain. Furthermore, the size of the "missing" market is unknown. The previous

size of the PPI market provides little guide because the number of policies sold was substantially inflated by mis-selling and the price was generally geared to cross-subsidising profits and commissions on related credit products, rather than paying for the underlying insurance cover itself. In light of these considerations, although we consider there to be a benefit in facilitating the successful re-launch of better PPI-like products, it is not reasonably practicable for us to estimate the benefit (s138I(8)(b) FSMA is applicable).

Other considerations

4. There could be a risk that imposing a deadline on PPI complaints and redress might reduce the disincentive for firms to mis-sell in future. However, firms have already paid £21bn in redress and, under our proposed deadline, will continue paying redress for several more years, and at a level that we expect to be higher than would otherwise be the case. For these reasons, we do not believe this to be a significant risk.

Summary table

5. For the reasons given, the costs and benefits of our proposed intervention package cannot be reasonably estimated (s138I (8)(a)) FSMA or are not reasonably practicable to estimate (s138I(8)(b)) FSMA. That said, the dynamics we have explained above provide us with a reasonable basis for expecting that it will deliver a net benefit for consumers, as set out in the table below. However, given the uncertainties involved, we recognise that our overall conclusion is not guaranteed.

	Firms	Consumers	Wider economy
Costs	Increased redress payments	Lost redress after deadline	
	Administrative costs of complaint handling		
	Increased Ombudsman service fees		
	Communications campaign fee		
Benefits	Reduced Ombudsman service fees per complaint involving undisclosed commission	Increased redress receipts	
		Earlier receipt of redress	
		Saved time/effort in making complaints involving undisclosed commission	Reduced supervision costs after the deadline
	Reduced uncertainty over PPI liabilities lowers weighted average cost of capital	Lower weighted average cost of capital and efficient corporate restructuring in the retail financial sector lead to reduced prices of financial products	Reduced uncertainty over PPI liabilities allows efficient corporate restructuring in retail finance sector

Q16: Do you have any comments on our cost benefit analysis?

Annex 3
Equality impact assessment

Introduction

1. We are required under the Equality Act 2010 to:

   - consider whether our proposals could have a potentially discriminatory impact on groups with protected characteristics (age, gender, disability, race or ethnicity, pregnancy and maternity, religion, sexual orientation and gender reassignment)

   - have due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.

2. We also consider that our consumer protection objective requires us to consider the position of vulnerable consumers.[82]

Initial assessment

Proposed deadline and consumer communications campaign

3. We have conducted an initial equality impact assessment of our proposed deadline to ensure that the equality and diversity implications are considered.

4. Our initial assessment is that the proposal does not have a potentially discriminatory impact on any of the groups with protected characteristics as we have designed the proposal to avoid this. We will also act with due regard to the need to eliminate discrimination and advance equality of opportunity when carrying out our activities.

5. We also did not find evidence that the proposed deadline will have particular impacts on protected groups. Our consumer research concerning consumer awareness and experience of the PPI issue, and intentions to complain, did not indicate that any particular group was likely to be differently adversely affected by the proposed deadline. However, we acknowledge that our research focused on individuals of specific interest because they had previously taken out a PPI policy – it did not focus on protected groups.

82 'It is one of the FCA's objectives to secure an appropriate degree of protection for consumers. The FCA must have regard to "the differing degrees of experience and expertise that consumers may have" (Financial Services and Markets Act, 2000 1C). This acknowledges that different types of consumers may need different treatment. The risk of detriment from a failure to address vulnerability is high, so this clearly falls within the regulator's consumer protection objective. As the FCA's research shows, the impact of vulnerability on everyday life should not be underestimated. Vulnerability is often characterised by a range of emotional and practical consequences that impact on peoples' ability to deal with their finances and interactions with firms. Detriment could take many forms including emotional aspects such as stress and anxiety; financial detriment arising from sub-optimal or reduced choices, a debt spiral, or inappropriate purchases; and, wasted time spent in resolving issues. A negative and unfair experience with a financial service can have a disproportionate effect on people in vulnerable situations, often making a difficult situation worse.' FCA Occasional Paper No. 8: Consumer Vulnerability (February 2015) http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-8

6. Our initial assessment is that the proposed deadline probably does have potential to present a greater risk of adverse outcomes to some vulnerable consumers (in particular those who have little fluency in reading, writing or speaking English) and some consumers with protected characteristics (for example those who are very elderly or have serious physical or mental health conditions) if we do not take these risks and characteristics into account in the design of our communications campaign.

7. We consider, however, that we can mitigate potential adverse impacts, should the proposed deadline be put in place, by ensuring that the proposed consumer communications campaign leading up to it is as inclusive as possible, so that messages get through to and engage vulnerable consumers and those in such protected groups. Our proposed campaign would include a programme of partnership activity, in addition to traditional marketing channels, to help us achieve this. Through this partnership activity we would also seek to ensure that due regard is paid to the need to eliminate discrimination and advance equality of opportunity in carrying out our activities.

Proposed rules and guidance on PPI complaints and *Plevin*

8. We have conducted an initial equality impact assessment of our proposed rules and guidance to ensure that the equality and diversity implications are considered.

9. Our initial assessment is that the proposal does not have a potentially discriminatory impact on any of the groups with protected characteristics.

10. We also did not find evidence that the proposed rules and guidance will have particular impacts on protected groups. Our consumer research concerning consumer awareness and understanding of *Plevin*, the issue of high commission in PPI and intentions to complain, did not indicate that any particular group was likely to be differently adversely affected by the proposed rules and guidance. However, we acknowledge that our research focused on individuals of specific interest because they had previously taken out a PPI policy – it did not focus on protected groups.

11. Our initial assessment is that the issues of undisclosed commission raised by *Plevin* and reflected in our proposed rules and guidance are complex. They are likely to be quite difficult for the average consumer to understand, and harder still for many consumers who are vulnerable, for example because of weak English language skills, or who have a protected characteristic such as learning disabilities.

12. We consider, however, that we can adequately mitigate this potential adverse impact through:

- the inclusive approach to communications described above, which will include appropriate information about undisclosed commission and
- the provisions in our current and proposed rules and guidance which, together, have the effect of generally expecting firms to consider the issue of undisclosed commission when assessing complaints about relevant PPI sales, even if this issue is not explicitly raised on the face of the complaint (as complainants with weak English skills or learning difficulties, for example, may be particularly unlikely to do).

Next steps

13. During the consultation on these proposals, we will continue to ensure that we consider issues relevant to protected groups and vulnerable consumers.

14. So we would welcome comments or information that respondents may have on any equality and diversity issues they believe arise from our proposals, to help us further assess, and where necessary mitigate, their potential impacts.

Q17: Do you agree with our initial assessment of the impacts of our proposals on the protected groups and vulnerable consumers? Are there any other potential impacts we should consider?

Annex 4
Compatibility statement

1. This Annex explains our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, we are required by section 138I(2)(d) FSMA to include an explanation of why we believe making the proposed rules is consistent with our strategic objective, advances one or more of our operational objectives, and has regard to the regulatory principles in section 3B FSMA.

3. This Annex also sets out our view of how the rules proposed in this consultation are compatible with the duty on us to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.

4. We are also required by section 138K(2) FSMA to prepare a statement setting out our opinion on whether the proposed rules will have an impact on mutual societies which is significantly different from the impact on other authorised persons. This Annex sets out that opinion.

5. This Annex also comments on our duties under the Legislative and Regulatory Reform Act 2006.

Our proposals

6. We have set out in detail below the reasons why we are content that our proposals in each of the substantive areas covered by this consultation are compatible with our strategic objective and our operational objectives, that we have had regard to our regulatory principles in developing the proposals, and that the proposals are consistent with our competition duty.

Proposed deadline and consumer communications campaign

Compatibility with our objectives

7. We propose a new rule that would set a deadline by which consumers would need to make their PPI complaints or else lose their right to have them assessed by firms or by the Ombudsman service, and an FCA-led communications campaign designed to inform consumers of the deadline. We consider these proposals would prompt many consumers who want to complain, or to check whether they had PPI, but have not yet done so, into action, resulting in them potentially getting redress sooner, and giving some of them the opportunity to pay off costly debt; and bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector. Overall, we think that the proposed deadline and consumer communications campaign would help bring finality and certainty in a way that advances our operational objectives of securing an

appropriate degree of protection for consumers and of protecting and enhancing the integrity of the UK financial system. For these reasons, and given that confidence and certainty are key to ensuring markets work well, we consider that the proposal is consistent with our strategic objective of making markets work well.

Compatibility with our principles of regulation

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

8. We have had regard to this principle and do not believe that our proposals will have a significant impact on our resources or the way in which we use them. The main resource demands on us, if and when the final deadline rules are made, would be some ongoing leadership and monitoring of the associated consumer communications campaign, and supervisory monitoring of firms' handling of PPI complaints in the period up to (and for a while after) the deadline, including their dealings with the Ombudsman service, at a level broadly similar to, or somewhat less than, that carried out by us now.

The principle that a burden or restriction should be proportionate to the expected benefits

9. The costs and burdens (other than the campaign fee) which the proposed deadline and consumer communications campaign will impose on firms are mainly in the form of handling costs and redress arising from PPI complaints received before the deadline. These costs may well be greater as a result of our proposed intervention than otherwise. However, we consider such costs are proportionate insofar as they will mostly be incurred in ensuring that complaints from consumers who may have lost out from PPI mis-selling or undisclosed commission are handled fairly, including being redressed where appropriate. The costs to firms will not be disproportionate compared to the detriment they caused to consumers, or to the benefits that such fair handling and redress will bring to consumers, or to the benefits of certainty that the deadline will give to firms.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

10. We have had regard to this principle and do not believe our proposed deadline and consumer communications campaign would undermine it. We consider they would bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector. Confidence and certainty are key to ensuring markets work well. But although PPI has not been widely sold for many years, the long tail of complaints has looked set to continue, with the consequent negative effect on confidence. Uncertainty for firms about long-term PPI liabilities also potentially 'overhangs' their operational and financial planning. So bringing the PPI issue to an orderly conclusion will reduce uncertainty for firms and help promote market confidence, including public trust in the integrity of the retail financial sector, particularly given the firms mainly concerned are multi-product firms at the heart of most retail financial markets. These effects do not undermine, and may assist, sustainable growth in the UK economy.

The general principle that consumers should take responsibility for their decisions

11. Our proposals support this general principle. PPI consumers would need to complain to a firm before the deadline or else lose their right to have their complaint assessed by the firm or by the Ombudsman service. The consumer communications campaign would aim to raise awareness of the deadline, to prompt those who intend to complain, or to check whether they had PPI, to act promptly and before the deadline.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

12. We have had regard to this principle and do not believe our proposals undermine it. We have previously sought formal undertakings and attestations from firms' senior managements in our PPI complaint supervision, and we could do so again going forward if firms do not handle complaints fairly, for example if they fail to send prompt and accurate acknowledgments of complaints received.

The desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of businesses carried on by different persons

13. We have had regard to this principle and do not believe our proposals undermine it. The proposed deadline and communications campaign are not, in themselves, imposing new obligations on firms, and so do not play out differently or with differential impact for businesses of different types. All types of retail businesses should benefit in a similar fashion from the benefits of certainty outlined in our rationale, albeit the firms that sold more PPI and receive more complaints will be likely to gain a greater share of such benefits than other firms.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

14. As set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter, or any of our findings or conclusions of an investigation except as described in chapter 6 of the Enforcement Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.

The principle that we should exercise our functions as transparently as possible

15. We are an open and transparent regulator. As we have developed these proposals, we have liaised with relevant stakeholders to ensure we have acted as transparently as possible. On 2 October, we indicated our intention to consult and set out our key intended proposals.

Compatibility with our competition duty

16. The deadline and consumer communications campaign proposals in this consultation paper act principally to advance our consumer protection and market integrity objectives. The scope for promoting effective competition in a way that would remain compatible with advancing those objectives is limited. However, we consider that these proposals promote effective competition in the interests of consumers in so far as is compatible with acting in a way which advances the consumer protection and market integrity objectives, in accordance with our duty under section 1B(4)FSMA. Our proposed deadline would apply to firms that sold or sell PPI before the commencement date of the rule. We do not believe it would have a significant effect on competition between firms who sold PPI before or sell it after that date, and also do not believe it would have a disproportionate impact on the ability of new firms to enter the market. Moreover, the finality and certainty of closure our proposal would bring may stimulate innovation and the supply of improved PPI or post-PPI debt protection, and corporate restructuring in the retail banking sector, and thereby potentially help promote competition in that sector.

Proposed fee rule

17. For fees proposals we only comment on the most relevant principles.

Compatibility with our objectives

18. We estimate the cost of the proposed consumer communications campaign as £42.2m over two years. To fund this, we are proposing a new fee rule that would apply to 18 firms that each received over 100,000 PPI complaints between 1 August 2009 and 31 August 2015 and together received 90% of reported PPI complaints in that period. The rule would require these firms to pay this sum over two years, with their individual contributions allocated in proportion to their PPI complaints between 1 August 2009 and 31 August 2015. By supporting the consumer communication campaign that supports the proposed deadline, this fee rule will help to advance our operational objectives of securing an appropriate degree of protection for consumers and promoting market integrity, and our strategic objective of making markets work well.

Compatibility with our principles of regulation

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

19. We have had regard to this principle and do not believe that our proposal will have a significant impact on our resources or the way in which we use them. In particular, by proposing to apply the fee rule to only 18 firms, it will limit the work of administration and collection that we have to carry out (relative, for example, to alternative approaches that we considered which would have spread the fee more thinly over many more firms).

The principle that a burden or restriction should be proportionate to the expected benefits

20. The share of fees that would fall to each of the 18 firms is not material relative to either their overall businesses or past and likely future PPI liabilities and we consider these costs are proportionate to the benefits those firms will receive from the certainty provided by the deadline and communications campaign, and the benefits to consumers (some of whom will have been mis-sold by these firms) who are prompted to complain by the campaign.

The desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of businesses carried on by different persons

21. The proposed share of the fees that would fall to each of the 18 firms takes into account the extent of PPI business undertaken by these firms, which are broadly similar in relevant respects, insofar as they provided personal loans, credit cards and other credit agreements and sold PPI to consumers alongside these.

The principle that we should exercise our functions as transparently as possible

22. We have set out our reasons for the way we are proposing to apply the fee rule and our reasons for not proposing the alternatives considered.

Compatibility with our competition duty

23. The fee proposal acts principally to support the deadline and consumer communications campaign and advance our consumer protection and market integrity objectives. The scope for promoting effective competition in a way that would remain compatible with advancing those objectives is limited. However, we consider that these proposals promote effective competition in the interests of consumers in so far as is compatible with acting in a way which advances the consumer protection and market integrity objectives, in accordance with our duty under section 1B(4)FSMA. The respective share of fees that would fall to each of the 18 firms is not material relative to their overall businesses and we do not consider that it will make them less competitive than the firms which we are not proposing to impose the fee rule on. Since the fee only applies to 18 existing firms, on the basis of complaints about their past PPI sales, we also do not believe the proposed rule would have a disproportionate impact on the ability of new firms to enter the market.

Proposed rules and guidance on PPI complaints and *Plevin*

Compatibility with our objectives

24. We propose new rules and guidance on the handling of PPI complaints in light of the Supreme Court's decision in *Plevin.* These proposals would reduce uncertainty and enable firms to continue to take a fair and consistent approach to handling PPI complaints, thereby securing an appropriate degree of protection for consumers, and consistency with our strategic objective of making markets work well.

Compatibility with our principles of regulation

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

25. We have had regard to this principle and do not believe that our proposals will have a significant impact on our resources or the way in which we use them.

26. On the contrary, we consider that the proposed rules and guidance, by reducing uncertainty for firms in handling relevant complaint and consequent potential inconsistency, will mean that we have to make less supervisory interventions in firms' PPI complaint handling than otherwise.

The principle that a burden or restriction should be proportionate to the expected benefits

27. We consider that the burden on firms implied by our proposals is proportionate in light of the expected benefits of (for firms) certainty about the correct approach to handling PPI complaints in light of *Plevin* and (for consumers) fair and consistent outcomes to relevant complaints (including redress where appropriate).

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

28. We have had regard to this principle and do not believe our proposals undermine it.

The general principle that consumers should take responsibility for their decisions

29. We have had regard to this principle and do not believe our proposals undermine it. We are not expecting firms to proactively review relevant sales against our proposed rules and guidance, so only consumers who complain about PPI (in time before the proposed deadline) will have their sales considered against our proposed rules and guidance.

The responsibility of senior management of persons subject to requirements imposed by or under FSMA, including those affecting consumers, in relation to compliance with those requirements

30. We have had regard to this principle and do not believe our proposals undermine it. We would expect firms' senior management to implement PPI complaint handling processes and procedures that comply with our proposed rules and guidance on handling PPI complaints in light of *Plevin*. We have previously sought formal undertakings and attestations from firms' senior managements in our PPI complaint supervision, and we could do so again going forward if firms do not comply with our proposed new rules and guidance.

The desirability of the FCA exercising its functions in a way which recognises differences in the nature and objectives of businesses carried on by different persons

31. We have had regard to this principle and do not believe our proposals undermine it. We gave careful consideration, in formulating our proposals, to the implications of *Plevin*, and our proposed rules and guidance in light of *Plevin*, for lenders, insurance and loan brokers, and insurers respectively, including where some or all of these roles were played by a single firm or within a single financial group.

The desirability of publishing information relating to persons on whom requirements are imposed by or under FSMA

32. As set out in the Enforcement Guide, we will not normally make public the fact that we are or are not investigating a particular matter, or any of our findings or conclusions of an investigation except as described in chapter 6 of the Enforcement Guide. The proposals contained in this consultation paper do not provide for any changes in this regard.

The principle that we should exercise of our functions as transparently as possible

33. We are an open and transparent regulator. As we have developed these proposals, we have liaised with relevant stakeholders to ensure we have acted as transparently as possible. On 2 October, we indicated our intention to consult and set out our key intended proposals. We have set out in detail in this consultation paper the thinking behind our proposed rules and guidance and reading of *Plevin.*

Compatibility with our competition duty

34. The deadline proposals in this consultation paper act principally to advance our consumer protection and market integrity objectives. The scope for promoting effective competition in a way that would remain compatible with advancing those objectives is limited. However, we consider that these proposals promote effective competition in the interests of consumers in so far as is compatible with acting in a way which advances the consumer protection and market integrity objectives, in accordance with our duty under section 1B(4)FSMA. We do not consider that our proposed rules and guidance about handling complaints about some past PPI sales in light of *Plevin* would have a significant effect on competition between firms, or a disproportionate impact on the ability of new firms to enter the market.

Expected effect on mutual societies

35. Section 138K of FSMA requires us to state whether, in our opinion, our proposed rules have a significantly different impact on authorised persons who are mutual societies, in comparison with other authorised persons.

36. We have given thought to the potential impact of our various proposals on mutuals, but we have not identified any likely significantly different impact on them. Mutual firms, to the extent they sold PPI, will benefit from the certainty and other benefits the proposed deadline and consumer communications campaign will bring, and the certainty around handling relevant PPI complaints in light of *Plevin* which our proposed rules and guidance would give.

37. We would welcome any comments or information respondents may have on any issues relating to mutual societies that they believe would arise from our proposals.

Legislative and Regulatory Reform Act 2006 (LRRA)

38. We have had regard to the principles in the LRRA and the Regulator's Compliance Code for the parts of the proposals that consist of general policies, principles or guidance. We have engaged with firms and other stakeholders in this process, and consider that the proposals are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition. We have been transparent with external stakeholders as far as possible in terms of informing stakeholders of the work being undertaken (in January and May) and direction of travel (in October). A core aim of the proposed rules and guidance about PPI complaints and *Plevin* is to deliver consistent outcomes to consumers and provide certainty to firms and ensure consistent complaint handling by them.

Q18: **Do you have any comments on our compatibility statement? In particular, do you have any comments on any issues relating to mutual societies that you believe would arise from our proposals?**

Annex 5
Firms' experience at the Financial Ombudsman Service

1. Some consumer bodies have told us that they believe our view of firms' PPI complaint handling is too positive, and talk of closure of the PPI issue premature, given many firms, including some of the largest, still have very high overturn rates at the Ombudsman service.

2. The very high proportion of firms' PPI complaint decisions being overturned by the Ombudsman service in favour of the consumer was certainly one of the factors that caused the FSA significant concern in 2009 and contributed to its intervening in PPI. The FSA noted that, at the time, firms were rejecting around 60% of PPI complaints, but the Ombudsman service was overturning firms' decisions in 80% of the PPI cases reaching it.

3. The FSA was very concerned by this, because it implied a significant difference in consumer outcome between the many PPI complaints to firms and the minority that were referred to the Ombudsman service. The FSA attributed this not only to firms' deficiencies in the general assessment of PPI complaints, but to firms' specific failure to consider appropriately PPI sales standards (including the Principles).

4. Firms' overturn rates at the Ombudsman service remain an important factor in our risk assessment of firms' PPI complaint handling, because they serve as an independent cross-check on the fairness of firms' decisions.

5. We agree, therefore, that it is disappointing that the further fall in the overturn rate that we had anticipated (in our August 2014 report) has not happened. Instead, the 56% overturn rate in the second half of 2013[83] *rose* to 57% in the second half of 2014 and to 76% in the first half of 2015.

6. At first glance, this latest overturn rate appears similar to the worrying level in 2009/10. However, it is important to put these rates in context:

   - unlike in 2009, firms are now, on average, upholding 75% of PPI complaints, not rejecting the majority;

   - there has been significant movement from many firms, following the Ombudsman service's explanation of its approach in various types of cases, albeit there are still some significant areas where firms aren't aligned with the Ombudsman service's general approach as illustrated in their decisions;

   - from time to time large firms now agree to reassess large sets of similar previously rejected PPI complaints together, in light of more recent learnings from significant Ombudsman decisions and relevant improvements in their own processes. This leads to large volumes of these cases now being upheld by the firms in the consumer's favour (or otherwise settled).

83 This compared to 88% in the second half of 2011 and 60% in the second half of 2012.

This brings positive outcomes of reducing the Ombudsman service's workload and giving quicker redress to the consumer. However, these cases still count as 'overturns' in the statistics, so to that extent, the statistics do not necessarily fully reflect the firms' current improved approaches to more recent complaints; and

- the overturn rate in the first half of 2015 has been affected by the fact that the Ombudsman service has not been able to conclude a number of non-uphold cases whilst its investigation into the possible impact of the *Plevin* judgment on those cases is ongoing.

7. Overall, we do not consider that the current overturn rates at the Ombudsman service constitute a serious threat to consumers. Nor do we consider that they undermine our view of the PPI redress exercise as, overall, successful, or prevent our considering whether, and proposing that, the complaints-led approach should now be drawn to an orderly close.

8. However, as noted, we will continue to monitor and assess firms' handling of PPI complaints, including in light of their experience and performance at the Ombudsman service, and we will take action where firms fail to deal with PPI complaints fairly.

Annex 6
Quantitative Consumer Research – sub-group bases

Sub-group reference (as cited in text)	Page cited (first instance in text)	Sub-group definition	Question number	Unweighted base size (no. respondents)
Those who are aware of PPI	18	All adults who are aware of PPI	Q3	14,932
Those who aware of problems or issues with PPI	18	All adults who are aware of problems and/or issues with PPI	Q5	11,590
Those who have had PPI (PPI holders)	18	All adults who have ever had a PPI policy	Q9	4,385
Those who are unsure if they ever had PPI/those who may have had PPI	18	All adults who are 'not 100% sure' or 'really don't know' if they have ever had a PPI policy	Q9	2,117
Those who had or may have had PPI	18	All adults who have ever had a PPI policy and those who are 'not 100% sure' or 'really don't know' if they have ever had a PPI policy	Q9	6,502
Those who will check if they have PPI	18	All adults who are unsure if they ever had PPI and are likely to check if they had it	Q16	780
PPI holders who do not intend to complain	19	All adults who do not intend to complain, or complain again, about any of their PPI policies	Q35	1,563
Those who have had PPI and complained	19	All adults who ever had PPI and complained about at least one policy	Q23	2,068
PPI holders who intend to complain	19	All adults who intend to complain, or complain again, about any of their PPI policies	Q35	508
Those with repayments and without insurance	25	All adults who have borrowing and/or repayment, or do not know if they do	Q56	3,342
PPI holders who already intend to complain	27	All adults who intend to complain, or complain again, about any of their PPI policies	Q35	508
PPI holders who previously did not know whether they intended to complain	27	All adults who do not know if intend to complain, or complain again, about any of their PPI policies	Q35	383

Appendix 1: Draft Handbook text

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT) INSTRUMENT 2016

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 138C (Evidential provisions);
(4) section 139A (Power of the FCA to give guidance);
(5) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
(6) paragraph 13(1)(a) 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 [XX].

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment) Instrument 2016.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

CCA lender	has the same meaning as "creditor" under section 140C of the *CCA* which is, in summary: (a) a "creditor" is a *person* who provides the debtor with credit of any amount; (b) references to a "creditor" include: (i) a *person* to whom his rights and duties under the credit agreement have passed by assignment or operation of law; (ii) where two or more *persons* are the creditor to any one or more of those *persons*.
PPI campaign fee	the fee raised by the *FCA* to pay for the *PPI consumer communications campaign costs.*
PPI consumer communications campaign costs	the total amount of costs the *FCA* has estimated it will incur in running the *PPI consumer communications campaign*.
PPI consumer communications campaign	the *FCA's* consumer communications campaign highlighting the introduction of the 2-year PPI complaint deadline.

Amend the following definitions as shown.

commission	(1) (in *DISP* Appendix 3) the proportion of the total amount paid in respect of a *payment protection contract* that was not due to be passed to and retained by the *insurer*. (2) (other than in *DISP* Appendix 3) any form of commission or remuneration, including a benefit of any kind, offered or given in connection with: (a) *designated investment business* (other than commission equivalent); (b) *insurance mediation activity* in connection with a *non-*

investment insurance contract; or

(c) the sale of a *packaged product*, that is offered or given by the *product provider*.

credit agreement (1) (in *DISP* Appendix 3) has the same meaning as "credit agreement" for the purposes of sections 140A to 140C of the *CCA* which is, in summary, an agreement which meets the following conditions:

(a) it is between an individual (the 'debtor') and any other *person* (the 'creditor') under which the creditor provides the debtor with credit of any amount;

(b) an order under section 140B of the *CCA* could be made in relation to it; in summary, orders can be made under section 140B of the *CCA* in relation to credit agreements except where:

(i) the exclusion under section 140A(5) of the *CCA* applies (this relates to *regulated mortgage contracts* and regulated home purchase plans); or

(ii) the agreement was made before 6 April 2007 and became a completed agreement before 6 April 2008.

For the avoidance of doubt, the reference to agreements in relation to which orders may be made under section 140B is to those agreements as affected by amendments to enactments from time to time.

(2) (other than in *DISP* Appendix 3) in accordance with article 60B of the *Regulated Activities Order*, an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount.

Annex B

Amendments to the Fees manual (FEES)

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

3 Application, Notification and Vetting Fees

…

3.2 Obligation to pay fees

…

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee Payable	Due date
…		
(zu) Any *firm* that meets the test in *FEES* 3 Annex 10B 1 R(1) (PPI Campaign Fees)	*FEES* 3 Annex 10B 1 R(2)	Within 30 *days* of the date of the invoice.

…

After FEES 3Annex 10A, insert the following new annex. The text is not underlined.

3 Annex 10B PPI Campaign Fees

1 R (1) A *firm* must pay a *PPI campaign fee* calculated in accordance with (2) if it has:

(a) reported over 100,000 *complaints* cumulatively under 17(A) (payment protection insurance – advising, selling and arranging) of the complaints return form in *DISP* 1 Annex 1R; and

(b) reported these *complaints* from 1 August 2009 up to 1 August 2015.

(2) The *PPI campaign fee* is calculated by multiplying:

(a) the number of *complaints* cumulatively reported to the *FCA* under 17(A) of *DISP* 1 Annex 1R for the *firm* from 1 August 2009 up to 1 August 2015; by

(b) £3.64.

2 G (1) A *firm's PPI campaign fee* will be a proportion of the *PPI consumer communications campaign costs*.

(2) (a) The *FCA* will invoice the *PPI campaign fee* in equal amounts over two years.

(b) The *FCA* will invoice the first part of the fee during the *month* following *FEES* 3 Annex 10B coming into force and will invoice the second part one calendar year later.

(3) The *FCA* will write to each *firm* that meets the test at *FEES* 3 Annex 10B 1 R(1) before sending out its first invoice, setting out:

(a) the number of complaints reported to the *FCA* under 17(A) of *DISP* 1 Annex 1R for that *firm* from 1 August 2009 up to 1 August 2015; and

(b) the basis on which it has calculated the *PPI campaign fee* for that *firm*.

(4) Any amounts raised that are in excess of the actual cost of the *PPI consumer communications campaign* will be refunded to fee payers under *FEES* 3 Annex 10B on a pro rata basis.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

…

2.8.2 R The *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) …

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* within that period and has a written acknowledgement or some other record of the *complaint* having been received; or

(2A) after [XX] where the *complaint*:

(a) relates to the sale of a *payment protection contract* that took place on or before [XX]; and

(b) expresses dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling or administrative matters such as taking the incorrect amount of premium);

unless the complainant referred the *complaint* to the *respondent* or to the *Ombudsman* before that date and has a written acknowledgement or some other record of the *complaint* having been received;

…

…

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

App 3.1.1 G (1) This appendix sets out how:

(a) a *firm* should handle *complaints* relating to the sale of a *payment protection contract* by the *firm* which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling); and

(b) a *firm* that is a *CCA lender* should handle complaints encompassing a failure to disclose the level of *commission* in relation to the sale of a *payment protection contract* which covers or covered or purported to cover a *credit agreement* (this includes partial coverage).

(2) It relates to the sale of any *payment protection contract* whenever the sale took place and irrespective of whether it was on an advised or non-advised basis; conducted through any sales channel; in connection with any type of loan or credit product, or none; whether the *insurer* was in the same group as the *firm* or not; whether the premium was financed by the credit product or not; and for a regular premium or single premium payment. It applies whether the *policy* is currently in force, was cancelled during the *policy* term or ran its full term.

(3) It provides for a two step approach to handling complaints. A *firm* that is not a *CCA lender* should only consider step 1. A *firm* that is a *CCA lender* should consider step 1 in all cases and consider step 2 in those cases where it has provided no or only partial redress at step 1.

App 3.1.2 G ~~The~~ At step 1, the aspects of *complaint* handling dealt with in this appendix are how the *firm* should:

(1) assess a *complaint* in order to establish whether 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 (taking into account relevant materials published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*). In this appendix this is referred to as a "breach or failing" by the *firm*;

(2) determine the way the complainant would have acted if a breach or failing by the *firm* had not occurred; and

(3) determine appropriate redress (if any) to offer to a complainant.

However, this appendix does not require *firms* to assess whether the *firm's* conduct of the sale was in breach of a fiduciary duty where there has been a failure to disclose either the existence of, or the level of, any commission paid. *Complaints* concerning such issues should be dealt with under *DISP* 1.4.1R.

App 3.1.3 G ~~Where~~ Under step 1, where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing. This appendix establishes presumptions for the *firm* to apply about how the complainant would have acted if there had instead been no breach or failing by the *firm*. The presumptions are:

(1) for some breaches or failings (see *DISP* App 3.6.2E), the *firm* should presume that the complainant would not have bought the *payment protection contract* he bought; and

(2) for certain of those breaches or failings (see *DISP* App 3.7.7E), where the complainant bought a single premium *payment protection contract*, the *firm* may presume that the complainant would have bought a regular premium *payment protection contract* instead of the *payment protection contract* he bought.

App 3.1.4 G There may also be instances where a *firm* concludes after investigation at step 1 that, notwithstanding breaches or failings by the *firm*, the complainant would nevertheless still have proceeded to buy the *payment protection contract* he bought. *CCA lenders* should still go on to consider step 2 in such cases.

App 3.1.4A G At step 2, the aspects of *complaint* handling dealt with in this appendix are how a *CCA lender* should:

(1) assess a *complaint* in order to establish whether non-disclosure of the level of *commission* in relation to the sale of a *payment protection contract* would be likely to give rise to an unfair relationship under section 140A of the *CCA*; and

(2) determine the appropriate redress (if any) to offer to a complainant.

…

App 3.2 The assessment of a complaint

App 3.2.-1 G This section applies to both step 1 and step 2.

App 3.2.1 G The *firm* should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the *firm*, whether (at step 1) there was a breach or failing by the *firm* or (at step 2) whether there was non-disclosure of the level of *commission* in relation to the sale of

the *payment protection contract*.

…

App 3.2.5 G If, during the assessment of the *complaint*, the *firm* uncovers evidence of a breach or failing, or a failure to disclose the level of *commission*, that was not raised in the *complaint*, the *firm* should consider those other aspects as if they were part of the *complaint*.

…

App 3.2.7 G The *firm* should consider all of its sales of *payment protection contracts* to the complainant in respect of re-financed loans that were rolled up into the loan covered by the *payment protection contract* that is the subject of the *complaint*. The *firm* should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales or any previous failures to disclosure the level of *commission*.

…

App 3.3 The approach to considering evidence at step 1

App 3.3.-1 G This section applies to step 1. However, *CCA lenders* should also consider it at step 2 to the extent that their consideration of unfairness takes into account any of the matters dealt with here.

…

App 3.3A The approach to considering evidence at step 2

App 3.3A.1 E This section applies to a *CCA lender* at step 2.

App 3.3A.2 E Where the *firm* did not disclose to the complainant in advance of a *payment protection contract* being entered into (and is not aware that any other *person* did so at that time) either:

(1) the *commission*; or

(2) an explanation of what the *commission* was likely to be in the future or the likely range in which it would fall or how it would be calculated;

the *firm* should take steps to satisfy itself that this did not give rise to an unfair relationship under section 140A of the *CCA*. The *firm's* consideration of unfairness should take into account all relevant matters, including whether the non-disclosure prevented the complainant from making a properly informed judgment about the value of the *payment protection contract*.

App 3.3A.3 G *DISP* App 3.3A.2E reflects section 140B(9) of the *CCA* which provides (in summary) that if the debtor alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.

App 3.3A.4 E (1) The *firm* should presume that the failure to disclose gave rise to an unfair relationship under section 140A of the *CCA* if the *commission* was, or had the potential to be, 50% or more.

(2) The *firm* should presume that the failure to disclose did not give rise to an unfair relationship under section 140A of the *CCA* if the *commission* was less than 50% or did not have the potential to be 50% or more.

App 3.3A.5 G The presumption in *DISP* App 3.3A.4E(1) is rebuttable. Examples of factors which may contribute to its rebuttal include:

(1) where the *insurer* provided the *payment protection contract* to an intermediary rather than the *CCA lender* and the *CCA lender* was not party to the *commission* agreement;

(2) the complainant could reasonably be expected to be aware of the level of *commission* (e.g. because they worked in a relevant role in the financial services industry);

(3) disclosure would have made no difference whatsoever to the complainant's judgment about the value of the *payment protection contract*.

App 3.3A.6 G *DISP* App 3.3A.5G(3) is only likely to be relevant in limited circumstances. If the *firm* concludes that disclosure would have at least caused the complainant to question whether the *payment protection contract* represented value for money and whether it was a sensible transaction to enter into (regardless of whether they may or may not have ultimately gone ahead with the purchase), then the presumption in *DISP* App 3.3A.4E(1) is unlikely to be rebutted on the ground set out in *DISP* App 3.3A.5G(3).

App 3.3A.7 G The presumption in *DISP* App 3.3A.4E(2) is rebuttable. Examples of factors which may contribute to its rebuttal include:

(1) the complainant was in particularly difficult financial circumstances;

(2) the complainant can establish that they had a track record of showing a close interest in the commission payable on other purchases.

App 3.3A.8 G Where the *firm* lacks a record of the level of *commission* applicable to a particular *payment protection contract* sale, it should make reasonable assumptions about it based on, for example, *commission* levels in respect of which records are held and general commercial trends in the industry during

the period in question.

App 3.4 Root cause analysis

App 3.4.-1 G This section applies to both step 1 and step 2.

…

App 3.4.2 G Where consideration of the root causes of *complaints* suggests recurring or systemic problems in the *firm's* sales practices for *payment protection contracts*, the *firm* should, in assessing an individual *complaint*, consider whether the problems were likely to have contributed to a breach or failing or to the non-disclosure of the level of *commission* in the individual case, even if those problems were not referred to specifically by the complainant.

…

App 3.5 Re-assessing rejected claims at step 1

App 3.5.-1 E This section applies to step 1.

…

App 3.6 Determining the effect of a breach or failing at step 1

App 3.6.-1 E This section applies to step 1.

…

App 3.7 Approach to redress at step 1

App 3.7.-1 E This section applies to step 1.

…

App 3.7A Approach to redress at step 2

App 3.7A.1 E This section applies to a *CCA lender* at step 2.

App 3.7A.2 E Where the *firm* concludes in accordance with *DISP* App 3.3A that the non-disclosure has given rise to an unfair relationship under section 140A of the *CCA*, the *firm* should remedy the unfairness.

App 3.7A.3 E Except where *DISP* 3.7A.4E applies, the *firm* should pay to the complainant a sum equal to the total *commission* paid by the complainant in respect of the *payment protection contract* minus 50% of the total amount paid by the complainant in respect of the *payment protection contract*, plus historic

interest where relevant on that sum (plus simple interest on the whole amount).

App 3.7A.4 E In cases where the presumption in *DISP* App 3.3A.4E(2) has been rebutted and the *firm* has concluded that the non-disclosure gave rise to an unfair relationship under section 140A of the *CCA*, the *firm* should consider what level of *commission* would not have given rise to unfairness in that case and pay to the complainant a sum equal to the total *commission* paid by the complainant in respect of the *payment protection contract* minus that level of *commission*, plus historic interest where relevant on that sum (plus simple interest on the whole amount).

App 3.7A.5 E Additionally, where a single premium was added to a loan:

(1) for live *policies*:

(a) where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be restructured (without charge to the complainant but using any applicable cancellation value) with the effect of:

(i) removing a sum equal to the total *commission* paid minus 50% of the total amount paid (or such amount that would not give rise to unfairness if the approach in *DISP* App 3.7A.4E has been taken); and

(ii) ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the complainant had paid *commission* of 50% of the total amount paid (or such amount that would not give rise to unfairness if the approach in *DISP* App 3.7A.4E has been taken); or

(2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if a sum equal to the total *commission* paid minus 50% of the total amount paid (or such amount that would not give rise to unfairness if the approach in *DISP* App 3.7A.4E has been taken) had not been added (plus simple interest) minus any applicable cancellation value.

App 3.7A.6 E Additionally, for a regular premium *payment protection contract*, where the *policy* is live the *firm* should disclose the level of *commission* within the premium and give the complainant the choice of continuing with the policy without change or cancelling the policy without penalty.

App 3.7A.7 E Where a claim was previously paid on the *policy* or the complainant has received any rebate, the *firm* should not deduct this from the redress paid.

App 3.7A.8 E Where the *firm* has determined that redress is due under *DISP* App 3.7.9E at step 1, it should pay the higher of that amount or the amount that is due under this section.

App 3.7A.9 E Where the *firm* has determined that *DISP* App 3.7.12E applies at step 1, the *firm* should apply either that approach or the approach in *DISP* App 3.7A.5E depending on which is most favourable to the complainant.

App 3.8 Other appropriate redress at steps 1 and 2

Step 1

App 3.8.1 E The remedies in *DISP* App 3.7 are not exhaustive.

App 3.8.2 E. When applying a remedy other than those set out in *DISP* App 3.7, the *firm* should satisfy itself that the remedy is appropriate to the matter complained of and is appropriate and fair in the individual circumstances.

Step 2

App 3.8.3 E The remedy in *DISP* App 3.7A is not exhaustive.

App 3.8.4 E *Firms* should depart from the remedy set out in *DISP* App 3.7A if there are factors in a particular matter which require a different amount or form of redress in order to remedy the unfairness found.

App 3.9 Other matters concerning redress at steps 1 and 2

…

App 3.9.2 G In assessing redress, the *firm* should consider whether there are any other further losses that flow from its breach or failing, or from its failure to disclose the level of *commission*, that were reasonably foreseeable as a consequence of the *firm's* breach or failing or from its failure to disclose the level of *commission*, for example, where the *payment protection contract's* cost or rejected claims contributed to affordability issues for the associated loan or credit which led to arrears charges, default interest, penal interest rates or other penalties levied by the lender.

App 3.9.3 G Where, for single premium *policies*, there were previous breaches or failings or previous failures to disclose the level of *commission* (see *DISP* App 3.2.7G) the redress to the complainant should address the cumulative financial impact.

App 3.9.4 G The *firm* should make any offer of redress to the complainant in a fair and balanced way. In particular, the *firm* should explain clearly to the complainant the basis for the redress offered including how any compensation is calculated and, where relevant, the rescheduling of the loan, and the consequences of accepting the offer of redress. Where the *firm* makes an offer of redress under *DISP* App 3.7A.8E and *DISP* App 3.7A.9E, it should consider whether it is necessary to provide both calculations in order to ensure the offer is made in a fair and balanced way.

…

App 3.10 Application: evidential provisions

App 3.10.1 E (1) The *evidential provisions* ~~in this appendix~~ for step 1 (*DISP* App 3.5.-1E to 3.5.1E, 3.6.-1E to 3.6.3E, 3.7.-1E to 3.7.15E and 3.8.1E to 3.8.2E) apply in relation to *complaints* about sales that took place on or after 14 January 2005.

(2) The *evidential provisions* for step 2 (*DISP* App 3.3A.1E, 3.3A.2E, 3.3A.4E, 3.7A.1E to 3.7A.9E and 3.8.3E to 3.8.4E) apply in relation to complaints received by *CCA lenders* about sales where the *payment protection contract* covers or covered or purported to cover (this includes partial coverage) a *credit agreement*.

App 3.10.2 G For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* ~~in this appendix~~ for step 1 (*DISP* App 3.5.-1E to 3.5.1E, 3.6.-1E to 3.6.3E, 3.7.-1E to 3.7.15E and 3.8.1E to 3.8.2E) as if they were *guidance*.

…

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