Financial Conduct Authority

Consultation Paper CP16/20***

Rules and guidance on payment protection insurance complaints: feedback on CP15/39 and further consultation

August 2016

Contents

In this paper we give feedback on the responses to CP15/39 Rules and Guidance on payment protection insurance complaints, and further consult on an amended set of proposals.

You can send them to us using the form on our website at:
www.the-fca.org.uk/cp16-20-response-form.

Please send any comments or enquiries by 11 October 2016 to:

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Abbreviations used in this paper

BBA	British Bankers' Association
CBA	cost benefit analysis
CCA	Consumer Credit Act 1974
CC	Competition Commission
CCA	Consumer Credit Act 1974
CMC	claims management company
CMR	Claims Management Regulator
DSAR	data subject access request
DISP	Dispute resolution: Complaints sourcebook
EIA	equality impact assessment
FCA	Financial Conduct Authority
FEES	Fees manual
FSA	Financial Services Authority (the regulatory body preceding the FCA and Prudential Regulatory Authority)
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GCL	Goss Consultancy Ltd
ICO	Information Commissioner's Office
ICOB	Insurance: Conduct of Business sourcebook
ICOBS	Insurance: New Conduct of Business sourcebook
IPT	insurance premium tax
OJEU	Official Journal of the European Union
Plevin	Supreme Court judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61

PPI	payment protection insurance
Principles	FCA's Principles for Businesses
RPPPI	regular premium PPI
s.140A	section 140A of the CCA, which came into force in 2007
s.140B	section 140B of the CCA, which came into force in 2007
s.140C	section 140C of the CCA, which came into force in 2007
s.404	section 404 of FSMA, which, as revised, came into force in 2010
SPPPI	single premium PPI

1. Overview

Introduction

1.1 In CP15/39 (November 2015),[1] we proposed:

- a new rule that would set a deadline by which consumers would need to make their payment protection insurance (PPI) complaints or lose their right to have them assessed by firms or by the Financial Ombudsman Service
- an FCA-led communications campaign designed to inform consumers of the deadline
- a new fee rule on 18 firms to fund 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[2] *(Plevin)*

1.2 We asked for feedback on these proposals by 26 February 2016. We received 71 responses, many of them detailed, from firms, trade bodies, consumer organisations, claims management companies (CMCs) and individuals.

High level summary of feedback and our response

1.3 On the proposed deadline, consumer communications campaign and fee rule:

- most responses from industry broadly supported our proposals, though some raised concerns about some aspects
- most responses from consumer bodies and CMCs did not agree there should be such a deadline, and expressed doubts about the effectiveness of the campaign

1.4 On our proposed rules and guidance on PPI complaints and *Plevin*:

- most responses from industry broadly supported our proposals, though some raised concerns about some aspects, particularly the inclusion of regular premium PPI

1 https://www.fca.org.uk/your-fca/documents/consultation-papers/cp1539-payment-protection-insurance-complaints-rules-and-guidance This followed our earlier announcements in January 2015, when we said we would gather evidence and assess whether the current approach to redressing PPI mis-selling was continuing to meet our objectives or whether further interventions by us were needed: The Financial Conduct Authority to gather evidence on how the PPI complaints process is working, and in May 2015, when we said we would also consider the implications for PPI complaint handling of the Supreme Court judgment in *Plevin*: Statement on Plevin v Paragon Personal Finance Ltd.

2 The Supreme Court issued its decision in November 2014. It ruled 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 section 140A of the Consumer Credit Act 1974 (s.140A).

- most responses from consumer bodies and CMCs agreed with our rationale for intervening but disagreed with the key elements of our proposed approach

1.5 We have carefully considered all this feedback and also factored in:

- our further preparatory work on the proposed consumer communications campaign which we explained in CP15/39 we would undertake
- the results of our further work on identifying and mitigating the potential impact of our proposals on consumers with protected characteristics[3] or who are vulnerable
- our discussions with firms and consumer organisations about specific potential improvements in PPI complaint-related customer service before the launch of any campaign

1.6 Following our consideration, we still consider that our proposed package of measures would help bring finality and certainty to the PPI issue 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. This includes reducing uncertainty about how firms should handle relevant PPI complaints in light of *Plevin*.

1.7 However, we do propose some specific changes to the rules and guidance on PPI complaint handling and *Plevin*. The main changes are to:

- now include profit share sums[4] in our approach, as well as commission
- clarify how our approach should work where commission, and now profit share rates, vary during the life of the PPI policy
- now say that sums rebated to a consumer when they cancelled a single premium PPI policy early can be partly included in, and so reduce, any redress due

1.8 In our view, these changes and clarifications would:

- lead to significantly more redress being paid by firms, relative to our original proposals, for complaints concerning undisclosed commission
- not increase total PPI redress to the same degree, as most complaints will still concern mis-selling and be redressed on that basis under our existing rules
- not alter the conclusion of the cost benefit analysis we set out in CP15/39

1.9 We are also making other smaller amendments to the proposed rules and guidance. These are primarily minor consequential changes or changes for clarity or Handbook simplification purposes and not all are specifically discussed below. Readers are therefore encouraged to read carefully the revised proposed rules and guidance at Appendix 1.

1.10 Given the importance of the issues raised in our original and amended package of proposals, we have decided to consult further, for 10 weeks, on the whole amended package. This will allow us to further test and debate our proposed approach.

3 As defined in the Equality Act 2010.

4 Arrangements (often including contractual entitlements) that firms typically have to receive back most or all of any PPI premium money which had initially gone to the insurer, for example to cover potential claims on policies, but which remained unspent after a fixed period, for example because actual claims did not exceed certain levels.

1.11 Accordingly, we ask specific consultation questions on the changes proposed above, but also invite further comments on the whole package of measures. In particular, we ask at the end of this publication:

> **Do you consider that, taken as a whole, our proposed package of measures – the proposed deadline rule, proposed consumer communication campaign, proposed fee rule, and proposed rules and guidance (as amended) concerning PPI complaint handling and *Plevin* – is a justified, appropriate and proportionate response to past PPI mis-selling and present trends in PPI complaints handling?**

1.12 We ask for comments on the new aspects of our proposals, and for new comments on the aspects that are not new. We are not seeking repetitions of the previous comments reported on here. However, we would ask respondents to indicate the extent, if any, to which they maintain their previous comments to us. We have not yet completed our deliberations and will consider all views.

Purpose of this feedback statement and further consultation

1.13 In this paper we:

- outline the feedback we received on our proposals in CP15/39
- provide our responses to that feedback
- highlight areas where we have amended our proposals because of feedback
- set out revised proposed rules and guidance reflecting those amendments
- invite further comments on our revised proposed package as a whole
- outline what happens next

Who should read this document?

1.14 This feedback statement and further consultation affects:

- consumers who were – or may have been – sold PPI
- 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
- anyone interested in the FCA's performance and accountability

What happens next?

1.15 Please comment on the proposed package of measures, as amended, by **11 October 2016**.

1.16 We will then consider the further feedback we receive before completing our deliberations and deciding whether or not to proceed with our proposals. See Chapter 6 for a potential timeline if we do decide to proceed.

1.17 Consumers who are unhappy about PPI should continue to complain to the firms concerned. They should also continue to complain to the Financial Ombudsman Service if they are not satisfied with firms' responses to their complaints. Consumers who intend to complain about PPI should do so as soon as possible. Making such complaints is free to consumers, unless they choose to use a CMC or other paid advocate.

1.18 We will continue to monitor and challenge firms to ensure that they deal fairly and promptly with PPI complaints, including cooperating with the Financial Ombudsman Service. We will take action where firms fail to act fairly.

2.
PPI trends and the rationale for the proposed deadline and consumer communications campaign

Introduction

2.1 In Chapter 2 of CP15/39 we set out in detail the evidence about the PPI landscape and trends which we had considered, our assessment of whether the current approach was continuing to meet our objectives and whether we needed to intervene further.

2.2 We concluded that there was a case for intervening and proposed:

- a two year deadline for complaining about PPI[5]: 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 Financial Ombudsman Service[6]
- an FCA-led high profile consumer communications campaign with appropriate messaging before the deadline

2.3 We considered that, together, these measures:

- 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
- may encourage more consumers to complain directly to firms, rather than through CMCs or other paid advocates
- may increase the efficiency of PPI complaints handling, benefitting consumers and firms
- would bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about their long-term PPI liabilities and helping rebuild public trust in the retail financial sector
- overall, 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

2.4 We asked:

> ***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?***

2.5 This chapter summarises the main feedback we received and provides our responses.

5 That is, we proposed that the deadline would fall two years after the start date of the proposed rule.
6 See chapter 3 below for more detail on the proposed nature, effect and scope of the proposed deadline rule.

Feedback received and our responses

2.6 Most responses from industry agreed that we should set a deadline for complaining about PPI and lead a consumer communications campaign. Many of these responses echoed reasons we had given in support of this intervention, including its:

- being in the best interests of customers, because it would prompt them into action and result in redress being paid to many of them sooner
- potentially increasing the efficiency of PPI complaints handling, by limiting the further widening of the time gap between complaints and point of sale evidence
- being in the best interests of rebuilding public trust in, and maintaining the integrity of, the UK financial system
- providing a set timescale for dealing with the PPI issue which could potentially encourage the development of new and transparent protection products, and reduce consumers' current reluctance to engage with such products and the risk of them not being protected, and
- consumers becoming increasingly tired with the level of contact from CMCs, potentially resulting in inaction about the PPI issue

2.7 Some responses from industry, while broadly agreeing in principle with our proposed intervention, expressed concerns about its potential impact on some firms because:

- while bringing long term certainty, we had not assessed the increase in PPI complaints volumes it would prompt, and the operational, cash-flow and capital markets uncertainty this would cause small and medium firms
- these impacts create a serious risk that some smaller firms, particularly in the financing, running-account and restricted-use credit sectors, will become financially unviable, which would be inconsistent with the FCA's integrity objective and lead to claims on the Financial Services Compensation Scheme (FSCS)

Our response

As we explained in CP15/39, we considered that no amount of data or effort could give us reasonably precise and meaningful numbers on the future path of PPI complaints if we did not intervene. As a result, we could not construct a meaningful benchmark against which to quantify the effects of our proposed package of interventions. So we could not reasonably estimate the aggregate costs and benefits flowing from the change in the level of complaints and redress.

For the same reasons, we cannot estimate what the likely increase in complaint volumes or costs may be for specific sectors, types of firms or individual firms, and so cannot repeat the kind of assessment the Financial Services Authority (FSA) gave in CP10/6[7] and PS10/12[8] of the particular financial and potential prudential impact of our original PPI rules on, for example, general insurance intermediaries and secured lenders.

7 Consultation Paper 10/6 (March 2010) www.fsa.gov.uk/pubs/cp/cp10_06.pdf
8 Policy Statement 10/12 (August 2010) www.fsa.gov.uk/pubs/policy/ps10_12.pdf

Generally, our view is that the additional PPI redress payments we would expect following our intervention would create a cost to firms and a benefit to consumers, and we consider this reasonable in the circumstances. However, we recognise that complaint volumes in the period before the deadline date could potentially create operational and even financial pressures for some firms. However, as noted, we cannot reasonably estimate what these would be or identify in advance which firms might be affected by this.

If firms find themselves in difficulty, they can discuss with us potential methods within the regulatory framework to manage these pressures and avoid detriment to consumers or disproportionate consequences for firms or the FSCS. For example, our existing rules on complaint handling already provide firms with flexibility around the usual time limits for handling complaints if there is a good reason for delay.[9] We stand ready to work closely with firms that need to use this flexibility, including by providing individual guidance if appropriate. We have already been working with them to understand the implications for them of our proposed campaign and the information requests and complaints it may prompt.

2.8 Some responses from industry said that:

- we had given insufficient thought to the impact on firms of the increased volume of speculative complaints, including cases where it turns out the complainant was never sold PPI in the first place, and data subject access requests (DSARs), which our intervention would prompt, especially from CMCs
- this would especially impact firms who had sold little or no PPI but who already receive high volumes of speculative complaints and DSARs, and who will get even more in the short term, without sharing in most of the long term benefits of our intervention
- we should act more robustly on CMC behaviour to reduce such unnecessary burdens and costs on firms

Our response

It is true that many PPI complaints are framed simply, often on the basis of example complaint letters available on the internet. However, the fact that some of these complaints are not upheld does not mean they are 'speculative' or 'fraudulent' or otherwise unreasonable, especially given the widespread weaknesses in selling practices which the FSA previously identified and set out.

We recognise that there is a significant proportion of cases where the complainant turns out never to have been sold PPI in the first place ('no PPI' cases), and also a growing number of DSARs. We accept that our intervention may intensify these trends in the short term, though we would take steps to try to limit that effect (see chapter 3 below). However, it will also be important that firms deal accurately and pragmatically with these issues at all times, including by giving:

9 See DISP 1.6.2R(2) in particular.

- accurate first time assessments, without intervention by the Financial Ombudsman Service, of whether a consumer has been sold PPI or not, which would increase confidence, including among CMCs, in firms' processes and encourage them to make enquiries of the firm before submitting any complaint

- accurate first time responses to informal enquiries about whether a consumer has been sold PPI, which would increase confidence, including among CMCs, in firms' processes and encourage them not to make formal DSARs

We do not regulate CMCs yet[10] and so cannot currently intervene to make rules and guidance for them and their involvement in PPI complaints. However, we have discussions with the Financial Ombudsman Service, the Claims Management Regulator (CMR) and CMC trade bodies concerning PPI complaints, CMC conduct and CMCs' experiences with firms, and would continue to do so following any intervention. If firms suffer from particularly high proportions of 'no PPI' complaints or speculative DSARs, we would work closely with these bodies to try to reduce these cases, which are fruitless for the CMCs and complainants themselves.

2.9 Some responses from industry agreed that there should be a deadline but said there should not be an FCA-led consumer communications campaign because:

- PPI mis-selling has had a high public profile for a long time and consumer awareness is already high, as our own research (in CP15/39) shows, so the probability of any customer being unaware of the issue is remote.

- The main barriers to complaining are lack of time and energy, as our own research showed, so it is not clear how an advertising campaign would help.

- The proposed campaign would primarily benefit CMCs' advertising and business, to the cost of those customers who then choose to use them.

- Many firms already have efficient operations and those that do not would find it hard to increase resources to handle the volumes of complaints the campaign would prompt.

- Our proposal indiscriminately places burdens on firms who have already made considerable effort to undertake past business reviews and pay redress. So we should use more targeted supervisory tools to directly tackle only those firms that have not properly addressed the PPI mis-selling issue.

10 The Chancellor announced in March that regulation of CMCs would be transferring from the Claims Management Regulator to the FCA.

Our response

We do not agree that it would be fair to impose a deadline on consumers' right to complain about PPI without conducting an extensive communications campaign to warn them of that deadline before it passes and prompt them to check whether they had PPI, or complain, before it.

While the PPI issue has had a high profile for several years and general awareness among the public may be high, our research showed that awareness is still far from universal, and real understanding of the issue and its potential personal relevance is even less widespread. So we do not think the proposed communications campaign would be superfluous or disproportionate.

Although consumers often refer to lack of time and energy as an obstacle, our research showed that communicating a deadline would prompt action among many consumers. It also showed that a campaign would help address people's mis-perceptions that complaining is difficult and time consuming and reduce barriers to checking and complaining.

We accept that the proposed deadline and campaign might well lead to a growth in the absolute numbers of complaints made via CMCs in the period before the deadline. But many of those consumers will still receive redress through these complaints, albeit less than if they complained directly, so they will still benefit from our intervention. However, our communications will continue to make clear our longstanding view that most consumers do not need a CMC to complain effectively about PPI and we will provide information to help consumers complain themselves.

We consider there would be some longer term efficiencies from our intervention. For example, the deadline would limit the scope for future PPI complaints to be made longer and longer after the sales they concern with the associated difficulties in gathering and checking evidence. We do, however, accept that before the deadline falls, operational difficulties for some firms may arise from potential increased complaint volumes. We discussed this aspect above and how we might respond to firms who find themselves in such difficulties.

It is true that many firms have already received large numbers of PPI complaints, including those prompted by their own consumer contact exercises. However, we do not consider that this undermines the rationale for a campaign to accompany the deadline, or means that the campaign and its effects would be unduly burdensome for these firms. As we noted in CP15/39, a majority of the PPI policies sold have not been complained about or contacted in firms' past business review exercises (which have mainly concerned sales made after January 2005). So the deadline and campaign will still be relevant and beneficial to the majority of most firms' past PPI sales and customers. Targeted supervisory action now against only some firms would not achieve our wider aim of bringing certainty and an orderly conclusion to the PPI issue.

2.10 Some responses from consumer bodies and CMCs also broadly supported our proposed deadline and consumer communications campaign. They felt that:

- Significant numbers of PPI consumers remain in a position to seek redress for potential mis-selling but have not done so despite more than 6 years of high profile coverage.
- The declining level of complaints since 2012 shows that consumer engagement with the PPI issue was highest in the early years of our complaints-led approach to redress. Subsequent media attention and CMC marketing created fatigue, with 'more of the same' messaging having a diminishing effect.
- The current situation, with little impetus for consumers to complain but financial institutions keeping large, uncertain liabilities, is the 'worst of both worlds'.
- There was no better way to resolve this and ensure that consumers engage with the process of complaining about mis-sold PPI than setting a deadline and coordinating a large scale communications campaign.

2.11 However, these generally supportive responses also said that:

- the concept of a complaints deadline and a media-based campaign should be seen as a specific response to the special circumstances of PPI and not as setting any precedent for other mis-selling or misconduct issues
- the deadline may well prompt a surge in cold calls from CMCs, which will:
  - have a detrimental effect on the public generally who are already tired of receiving unsolicited marketing approaches
  - cause vulnerable consumers who are less able to resist such marketing to sign up with CMCs and pay them significant charges for making often straightforward complaints
- the deadline's introduction should be aligned with the introduction of the CMR's proposed cap on the level of CMC fees

Our response

We proposed the deadline and consumer communication campaign only after careful assessment of the PPI issue and trends in complaints and redress. Our proposed intervention is designed in the specific context of the PPI issue. We do not consider that it would set any precedent for how we might approach other misconduct issues or redress exercises in the future. We would consider those issues, and our potential interventions in them, on their own merits at the time, in light of their specific details and our regulatory objectives and priorities.

Whilst we agree that the proposed deadline would probably prompt increased activity by CMCs in the short term, including cold calling, we do not see this as a reason not to proceed with the deadline. Rather, it is something that we will take account of as part of the campaign, for example, by providing information on how people can check or complain directly.

We discuss the position of vulnerable consumers in detail in Chapter 3, including how the design of our campaign and our partnership work would specifically reach them and support their potential checking and complaining. However, we accept that some vulnerable consumers, for example those with especially complex financial affairs or limited financial literacy, may be more likely than other consumers to benefit from using CMCs' services. Clearly, however, both the CMR now, and we in the future, would expect CMCs to treat vulnerable consumers fairly.

We are aware of the CMR's proposed cap on CMC fees, which is currently being consulted on, and continue to liaise closely with the CMR on its thinking. Such cap may be in force during the period before our proposed deadline falls. However, we do not propose to delay or halt our proposed interventions in the event that the fee cap is delayed or not pursued.

2.12 Most responses from CMCs and consumer bodies strongly disagreed with our proposed deadline and campaign, on various grounds which we consider in turn below.

The proposed intervention is premature, inadequate and inefficient

2.13 Some responses from CMCs and consumer bodies said our proposed intervention was:

- premature, as it is based on the incorrect assumption that PPI redress is near completion when in fact the PPI redressed so far is a minority of what was sold
- inadequate, as it merely continues the inadequacies and inefficiencies of the existing complaints-led approach which:
  - has delivered only limited redress so far
  - has included only belated and limited contact exercises by firms, with poorly designed letters prompting only one third of recipients to complain in response
  - has had the costly side effect of creating a substantial and active CMC sector that has diverted large sums of redress from consumers
  - is mainly untargeted, and so more inefficient and costly for firms and consumers than alternative proactive targeted approaches we could use (including under s.404 of the Financial Services and Markets Act 2000 (FSMA))

Our response

We do not agree that, because the majority of PPI policies have not been complained about, the proposed deadline is premature or that continuing the complaints-led approach through our proposed campaign is inadequate. This feedback rests on a view of all PPI policies as flawed, of all sales as mis-sales, of the redress process as a kind of product recall, and of anything less than all PPI consumers receiving redress as a failure of our approach. We do not share this view or consider it accurate. The PPI market was large, long-established and diverse in its products and their benefits and limitations, costs and value for money, and the channels and ways in which it was sold. Amid this diversity, we remain of the view that not all PPI was mis-sold and that, properly sold, PPI could meet some consumers' genuine credit protection needs. Also, as our existing rules and guidance (at DISP App 3) make clear, not all failings in sales processes or practice made sales substantially flawed, and even substantially flawed sales did not always mean that there had been consumer detriment, as in some cases the consumer would likely have bought the PPI in any case and has not suffered detriment.

Therefore, we remain of the view that, in the circumstances, it was fair and proportionate for us to pursue an approach that mainly relies on consumers who are dissatisfied with their PPI policy identifying themselves to firms through complaints. As we set out in CP15/39, complaints made by consumers, including in response to the large-scale mailings to high risk consumers by firms, have led to substantial sums of redress to millions of mis-sold consumers. We remain of the view that overall it has provided a fair and effective solution to redressing PPI mis-selling. We note that our research, cited in CP15/39, showed that in our 20,000 consumer sample, nearly half (47%) of those consumers who said they have or had PPI (4385), had complained.

We do not agree that firms' proactive contact exercises, once carried out, have been limited in scope or ineffectual. Firms have written targeted letters to 5.5m consumers identified as being at high risk of mis-sale, a third of whom complained in response. These response rates are in line with previous major mailing exercises. We have no reason to think that those who received these letters but have not complained feel they were mis-sold.

We acknowledged in CP15/39 the significant growth of the CMC sector and share of redress it has taken, and the costs firms have incurred in handling 'no PPI' complaints. We have given careful thought to the lessons to be learned from both PPI and other redress exercises. We have used a variety of approaches in recent times and continue to develop our thinking about how to design and operate approaches to redress that are fair and effective for consumers, and proportionate and efficient for firms.

Overall, therefore, we do not consider that there are strong grounds to significantly depart from this complaints-led approach now, in the period before the proposed deadline, or that it would be proportionate to do so.

The proposed intervention is not justified, benefiting firms and harming consumers

2.14 Some responses from consumer bodies and CMCs said that:

- our proposed intervention was unjust and undermines consumer protection, as it strips consumers of their right to complain in the UK's largest mis-selling scandal, to their clear detriment
- we had not provided any convincing evidence or proper basis for our conclusion that it would benefit affected consumers who have yet to complain or the wider market, and had merely assumed this
- a deadline will instead simply lead to a lower long term level of complaints and redress, to the great benefit of firms but unfairly harming consumers, in particular the vulnerable and heavily indebted

2.15 These responses also criticised in detail the specific evidence we had put forward in support of our proposed intervention, saying variously that we had:

- unfairly framed the gradual decline in complaint volumes as a problematic 'long tail' that is bad for consumers and the market, whereas it is entirely natural – consumers should remain able to complain whenever best suits them
- given too much weight to our view that the perceived open-ended nature of the current complaints-led approach contributes to consumer inertia and can be corrected by a deadline, as:
  - consumers' actual behaviour is likely to be different from, and less responsive to a deadline than their stated intentions in the survey
  - the research methodology under-represents the financially vulnerable and unsophisticated, due to sampling bias through self-selection and online survey techniques, which National Readership Survey (NRS) data weighting does not adequately mitigate
- given too much weight to drawing an end to cold calls from CMCs, as this is a separate issue that should be addressed in a targeted and proportionate way by the relevant regulator, not by the blunt instrument of a deadline
- given too much unsupported credence to firms' allegations that consumers delay their complaints to accrue more years of 8% interest
- ignored the likelihood that our intervention would lead firms to handle complaints less fairly and efficiently, due to overstrained capacity, or deliberately so as to reduce redress
- failed to acknowledge that a deadline would fail to bring an orderly resolution, as it will simply lead to more actions in the courts, creating a burden on that system, more costs for firms, and more dependency of consumers on CMCs
- presented little or no evidence that our intervention will:
  - improve public trust in the integrity of retail financial services or otherwise promote market confidence
  - stimulate corporate restructuring or the supply and demand of improved debt protection products

Our response

A prolonged decline of PPI complaint volumes may be natural, but this does not necessarily mean it is helpful for consumers or advances our objectives. We remain of the view that it creates the potential disadvantages to consumers and firms that we highlighted in CP15/39.

We undertook large scale quantitative research with over 20,000 consumers to gather information about PPI. For the quantitative survey the sample data was weighted to the profile of all UK adults aged 18 or over (including non-telephone owning households) by gender, age, socio-economic grade and region. The quota was based on the NRS 2013 and this is set out in the ComRes Technical Report published alongside CP15/39. We consider that the data gathered provides a robust source to inform our decision making on whether to intervene further on PPI.

We also undertook large scale qualitative research with 286 consumers via focus groups and face to face interviews to obtain more detailed insights on the barriers facing consumers who may hold PPI, which has also heavily influenced our rationale for the communications campaign.

Our view is that the research carried out is of appropriate size and level of detail to properly inform our decision. We discuss the particular position of more vulnerable consumers in detail in Chapter 3, in the context of feedback on the details of our proposed communications campaign.

Whether some consumers are irritated by CMC cold calls, or incur costs by answering them, is not a factor to which we give weight in our assessment in CP15/39, as these aspects are not a threat to our current objectives. Rather, our concern was how such contact potentially contributes to putting some consumers off making a complaint and how our proposed communications campaign could cut through and overcome such effects and prompt consumers who intend to act to do so promptly.

We clearly said that we had *not* seen evidence of consumers deliberately putting off complaining about PPI in order to gain further years of 8% interest on their potential redress.

As we acknowledged above, our proposed intervention could increase PPI complaint volumes and strain some firms' handling capacities. We explained how we would seek to reduce the risks of such strain, or mitigate them if they crystalise. We would also put in place a robust strategy of supervisory monitoring and challenge in the period before the deadline (see Chapter 3) and take action if firms fail to handle complaints fairly.

We agree that it would remain open to consumers to take claims about PPI mis-selling to the courts after our proposed deadline. However, we anticipate that our proposed communications campaign, if planned and implemented successfully, would prompt many consumers to use the free complaints handling framework and alternative dispute resolution mechanism of the Financial Ombudsman Service before the deadline, and so limit the likely future flow of PPI cases to the courts.

We were careful in CP15/39 not to overstate points or go beyond what the evidence would support. We remain of the view that it is reasonable for us to see:

- confidence and certainty as key to ensuring markets work well
- the potential long tail of PPI complaints as creating uncertainty that overhangs firms' planning and negatively affects confidence
- our proposed intervention as bringing an orderly conclusion to the PPI issue that would reduce uncertainty and help promote market confidence,

including, given the firms mainly concerned are multi-product firms at the heart of most retail financial markets, public trust in the integrity of the retail financial sector.

We said only that 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 sold PPI or post-PPI debt protection products, or by stimulating innovation and the supply of these products or corporate restructuring in the retail banking sector (their main likely distributor).

Overall, we remain of the view that the dynamics we identified and set out in CP15/39 are valid and provide us with a reasonable basis for expecting that our proposals will deliver benefits, including for consumers. However, we recognise that this overall conclusion is not guaranteed, given the uncertainties involved.

The proposed intervention will harm certain types of consumer in particular

2.16 Some responses from CMCs and consumer bodies argued that we had provided particularly weak evidence that our proposals would benefit vulnerable consumers. In particular, they said that we did not sufficiently take into account that:

- Consumers in financial difficulties often have multiple credit products and potential PPI mis-selling complaints, but lack expertise to resolve these. They can tend to ignore financial communications and miss deadlines.
- Many of the mis-sales which have not been complained about yet are as valid as those already redressed. But they are likely to be less straight forward cases and involve consumers who struggle with forms and processes.
- Consumers in financial difficulties who fail to complain before the deadline will not only not receive redress but have to continue to pay interest and charges on the repayment debts that their mis-sold PPI premiums contributed to.

Our response

We do not think that the complaints which would be made in the next few years are any less valid than those made previously. We also accept that many potential remaining complainants may be those with especially complex financial circumstances. However, we do not believe this is a reason not to intervene. Rather, these consumers are precisely those who will get most potential benefit from being prompted to act and from getting redress which will help them with their difficult financial circumstances.

We set out more details on how we propose to reach out to more vulnerable consumers and make things easier for them to complain in Chapter 3.

2.17 Some responses argued that we had not fulfilled our obligations under the Public Sector Equality Duty because we had failed to fully consider and address the impact of our proposals on people who share a relevant protected characteristic (for the purposes of s.149 of the Equality Act 2010) or provide enough information to allow readers of the consultation to provide informed comment about this impact.

Our response

We clearly acknowledged in our initial equality impact assessment (EIA) in CP15/39 that our proposed deadline and communications campaign could present a greater risk of poor outcomes to some vulnerable consumers. This was particularly true for those with little fluency in reading, writing or speaking English, and for some consumers with protected characteristics, for example, the very old or those with serious physical or mental health conditions.

However, we also said that we could mitigate these potential adverse impacts by ensuring that the proposed consumer communications campaign is as inclusive as possible, including through a programme of appropriate partnership activity.

In Chapter 3 and Annex 3, we set out more details on the potential impact of our proposals on vulnerable consumers and those with relevant protected characteristics, and how we propose to either eliminate or mitigate any adverse impact on them.

The rationale for proposed intervention is biased against CMCs

2.18 Some responses from CMCs argued that our assessment and rationale was especially deficient and biased concerning their role, when in fact many consumers would lose out if it was not for the involvement of CMCs. These responses said that we:

- made much of CMCs supposedly having a deterrent effect, even though:
  - most people who had used a CMC were happy with the results, as our own research showed, and nearly half of other consumers said they would pay for help complaining
  - those 'put off' by CMCs were a minority
  - we provided no information about what the CMCs were meant to have done wrong in this respect
  - there are already guidelines in place to prevent CMC misconduct, so either the criticisms are unfounded or the CMR is failing to supervise those that break the rules
- did not explore why CMCs are now representing a larger proportion of complainants, or acknowledge the value they provide; in their view, consumers are at a significant disadvantage when complaining themselves because:
  - firms' processes create obstacles to complaining
  - most consumers have limited appreciation of how mis-selling may have occurred through unsuitability, poor disclosure or other nuances

  - firms decline many valid complaints, as they know that few consumers on their own feel confident to take their cases on to the Financial Ombudsman Service[11]

- failed to acknowledge that it is CMCs, not the FCA, that pick up on various systemic failings in firms' PPI complaint handling and redress calculations

Our response

We provided a factual representation of our consumer research findings about CMCs. These did show up some negative impacts from CMCs' marketing, such as the impression they created in the minds of some consumers of PPI complaints being a scam, and the misconceptions they fostered in the minds of some consumers about how long and difficult the complaints process would be. The research found that such impressions and misconceptions did discourage some consumers at least from engaging with the PPI issue and potentially complaining.

We have always acknowledged that some consumers may reasonably prefer to pay for the assistance of a CMC in making their complaint. We also acknowledge that some CMCs have played an effective role in identifying and challenging some examples of poor complaint handling by firms, and that our own supervisory work has benefitted from the examples these CMCs have provided to us.

We discuss what our proposed campaign might say about the role of CMCs in PPI complaints in Chapter 3 below.

A deadline is inappropriate given continued poor complaint handling

2.19 Some responses from CMCs and consumer bodies said that a deadline was particularly inappropriate given what they saw as firms' continued and persistent poor handling of PPI complaints. They argued this was also evidenced by FCA enforcement actions and high overturn rates in favour of the consumer at the Financial Ombudsman Service.

2.20 Some of these responses also suggested that any deadline should be conditional and apply only to firms that show significant improvement, for example, by reducing their overturn rate at the Financial Ombudsman Service to 20%, and not apply to customers of any firm fined by the FCA for poor PPI practice during the period before the deadline.

Our response

We agree that many firms still need to improve their performance at the Financial Ombudsman Service. We will monitor firms' handling of PPI complaints in the period leading up to the deadline and immediately afterwards, including through appropriate ongoing information sharing with the Financial Ombudsman Service, to ensure firms deal fairly with PPI complaints throughout. We would take action where they failed to do so.

11 Some CMC responses said they receive large numbers of enquiries from consumers who have tried to complain directly to the lender, received a rejection letter, and would like a CMC's help in referring the case to the Financial Ombudsman Service because they do not feel that is something they can do themselves. These CMCs say they do not take on these cases, but encourage the consumers to go to the Financial Ombudsman Service directly themselves.

Also, as we set out in Chapter 3, we are asking firms to commit to improving PPI complainants' 'customer journey' to ensure that the process works smoothly and efficiently for those that want to check if they had PPI or complain.

However, we do not propose to make the deadline *contingent* on such improvements. The reasons for this are:

- We do not consider that there is still a significant problem with PPI complaint handling. Around three quarters of PPI complaints are already upheld and redressed by firms.
- We could not make the deadline contingent on firms achieving a particular overturn rate at the Financial Ombudsman Service, as, for the reasons we explained in CP15/39, the headline figures do not necessarily provide a straightforward indication of the quality of firms' PPI complaint handling.
- To make the deadline contingent on firms improving complaints handling undermines our rationale for a deadline - which, among other things, is about reducing consumer inertia and obstacles to complaining. From this perspective, the deadline will help more consumers to complain and sooner. If we become aware of firms handling those complaints poorly, we will still be able to intervene, including after the deadline, to correct unfair outcomes for complaints that were made in time.
- The notion of dependency or linkage would cause practical issues. For example, if we said that there was a deadline for customers of 'improved' firms but not for others, this would make for a complex and almost certainly less effective communications campaign, undermining our efforts to prompt consumers into action. It could also imply public censure of the 'non-improvers' who were not included in the deadline, which FSMA says we cannot do without full prior enforcement procedures, including the opportunity to make representations and ultimately go to the Tribunal.

The proposed intervention is politically motivated and sets a bad precedent

2.21 Lastly, some responses from CMCs and consumer bodies said that our proposed intervention:

- is politically motivated, aiming to provide certainty to the banks, primarily for provisioning purposes, so that publically owned assets can be sold off without any political fallout over the valuation of the shares
- sets a bad precedent which would:
  - inappropriately benefit a sector which, rather than acknowledging the PPI issue quickly and putting it right, had obstructed resolution[12]
  - best reward those firms that have dragged their feet the most
  - send the message to the industry that if it behaves badly enough and makes a big enough mess the regulator will step in to limit its liabilities

12 By, for example, in their view, ignoring mis-selling concerns for years, and then challenging eventual remedial interventions by the Competition Commission and FSA through legal action.

– cause firms to see it as rational to delay remedial action, reject complaints and lobby for another early cut-off when new misconduct issues arise in the future

Our response

The extent of PPI mis-selling did grow larger before 2009 than it should have done. However, remedying the PPI issue has caused the industry considerable costs of redress and administration, and negative publicity and reputational damage.

In CP15/39 we carefully assessed a wide range of facts, trends and considerations, from the perspectives of both our consumer protection and integrity objectives. Having done so, we reached the view that our proposed intervention was a balanced proposition that would bring benefits, including finality and certainty, under both these objectives. In particular, we expressed our view that there was 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 in the way we proposed.

Firms will face further considerable costs of redress and administration during the proposed communications campaign and in the period up to the proposed deadline. By the deadline, firms would have been handling significant numbers of PPI complaints for a decade. Therefore, we do not see that it can reasonably be said that we are bringing the issue to a premature close or inappropriately rewarding firms for poor conduct.

If we do see firms being slow to address any future misconduct issues or redress, or otherwise being obstructive of what we consider to be fair outcomes, we will take action. Learning lessons from the past, we are now better able to identify such problems early and make early interventions to address them.

Conclusion

2.22 Overall, having carefully considered all the feedback we received, we still consider that our rationale for proposing a deadline for making new PPI complaints, and an FCA-led high profile consumer communications campaign with appropriate messaging, is sound.

2.23 We consider the proposed details of this deadline and communications campaign, and the feedback we received on those details, in the next chapter.

3. The details of the proposed deadline and consumer communications campaign

3.1 This chapter summarises the main feedback we received on our proposals and questions in Chapter 3 of CP15/39, together with our responses. First, we discuss feedback on the details we put forward concerning the proposed consumer communications campaign. Then we discuss feedback on the details of the proposed deadline rule itself.

The aims of the proposed consumer communications campaign

3.2 In paragraphs 3.19-3.21 of CP15/39, we outlined key insights, including about existing barriers to complaining, that were drawn from our quantitative and qualitative consumer research and input from our external media agency. In light of these insights, we proposed that a high profile FCA-led 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 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
- sign-post consumers to appropriate help
- explore with firms how they can best back the campaign with supportive messaging

3.3 We asked:

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

3.4 Among responses from industry:

- most broadly agreed with our proposed aims
- many emphasised that we should aim to discourage the use of CMCs and encourage consumers to complain directly and without charge

- some said that other key aims should be to avoid prompting speculative complaints, and to highlight consumer responsibilities as well as rights
- some said we should ensure that vulnerable consumers in particular are made aware of the deadline and of how they can complain

3.5 Among responses from consumer bodies and CMCs:

- some broadly agreed with our proposed aims and underlying consumer insights
- some felt the campaign aims should give greater emphasis to helping vulnerable consumers and consumers with protected characteristics under the Equality Act 2010, some of whom may be hard to reach or need additional assistance in understanding the deadline, considering their own position and complaining
- some did not agree with the aim of raising awareness of the deadline, as they did not support a deadline, but did support the other aims

3.6 Some responses from CMCs:

- expressed concern that the proposed campaign would:
  - broadcast negative and biased messaging against CMCs and their work, unfairly undermining it, and portraying all CMCs as low value and high cost
  - fail to give consumers the full range of options about how they could complain, to the detriment of those least able to complain themselves
  - dissuade consumers, including vulnerable consumers, from using CMCs at the precise time they most needed their help – ie before the deadline
- said that a responsible campaign should make consumers aware of all available channels to complain and promote the services of responsible CMCs, particularly to vulnerable consumers and those with multiple debt and PPI products

Our response

Vulnerable consumers and consumers with protected characteristics
In light of feedback, and to reflect appropriately:

- our updated EIA and its findings (see Annex 3), which takes account of the report we commissioned from equality and diversity experts Goss Consultancy Ltd (GCL), published alongside this publication
- the extensive additional work we have conducted, and evidence we have gathered, since CP15/39, which informs our updated EIA and is summarised there and in the GCL report
- the comprehensive actions we have taken, or will be taking, in light of the updated EIA, to eliminate or otherwise mitigate the potential adverse impacts we have identified for groups of consumers who are vulnerable or have certain protected characteristics

we are adding the following commitment to our other campaign objectives:

Take account of the recommendations in the EIA and implement them as far as reasonably practicable when designing the campaign.

We set out how we propose to deliver on this objective in the rest of this chapter and in the EIA.

CMCs
We do not propose to advise consumers against using CMCs in our proposed consumer communications campaign, but merely to reiterate our view that most consumers are able to make PPI complaints effectively by themselves. Our website already sets out that the process for making a complaint for mis-sold PPI is free, straightforward and can be done directly by the consumer.

Our intention in the campaign is to inform consumers in more detail about how to complain directly. Part of our rationale for proposing a deadline was that an FCA-led communications campaign may empower consumers and encourage more of them to complain directly to the firms concerned, rather than using CMCs and other paid advocates, and therefore benefit in full from the redress paid out. We also propose to encourage additional measures that will help consumers to do this, such as a simpler complaints form (see below).

Having said that, we recognise that some consumers may still choose to use a CMC. In those circumstances, we will suggest that consumers may wish to:

- check the terms and conditions and that they are comfortable with the amount of the fee being charged
- check the CMR website, to ensure the CMC is authorised, at: https://www.claimsregulation.gov.uk/search.aspx

Consumer responsibility and speculative complaints
As noted in Chapter 2, we are not intending to change the mainly complaint-led approach that has been taken to date, which puts the onus on consumers to make a complaint where they have a concern about PPI.

Our campaign will clearly explain the kinds of reasons why consumers may want to complain, so they can make an informed decision about whether to do so. We will also make it clear that those who have already received full redress would not be owed more money if they make a new complaint, for example about *Plevin*.

We will continue to monitor the types of complaints being received by firms and the outcomes throughout the period. If there are increases in, for example 'no PPI' cases, we would discuss the reasons behind this with firms, and relevant bodies such as the CMR, and consider implications for our on-going campaign messaging.

3.7 Some responses from consumer bodies and CMCs argued that another campaign aim should be to explain not only PPI mis-selling but the undisclosed commission issue in *Plevin* and, in particular, to convey the message that many consumers who had previously complained, but been rejected as not mis-sold, can now make a new complaint about undisclosed commission (as we proposed in CP15/39 para 5.89).

3.8 Some responses from industry also said clear messaging about *Plevin* was needed, so consumers would understand the circumstances in which they would be entitled to complain about non-disclosed commission. However, these responses emphasised that:

- this is likely to be a complicated message for customers to understand and needs to be positioned carefully
- the message on *Plevin* needs to be clearly distinguished from grounds for mis-selling complaints, so that customers do not mix up these separate grounds
- messaging should make clear that consumers who have been fully redressed should not make another complaint, as they would not receive any further redress
- the scope of s.140A and which credit agreements fall within it should be explicitly set out in the campaign

Our response

Our communications campaign, in particular our website and helpline, will:

- explain the *Plevin* issue, including clarifying which credit agreements would fall within the scope of our new rules and guidance
- highlight consumers' right to complain about undisclosed high commission, including when they have already previously unsuccessfully complained about mis-selling
- make clear that those who have already received full redress should not make a further complaint based on *Plevin*

We are exploring with firms and the Financial Ombudsman Service a streamlined complaint process for complaints which only involve *Plevin* issues, for example, because the complainant has already previously complained unsuccessfully about mis-selling (see chapter 5).

As noted above, we will continue to monitor the types of complaints being received by firms and the outcomes throughout the period.

The audience, channels and costs of the proposed communications campaign

3.9 In paragraphs 3.22-3.34 of CP15/39, we proposed:

- that the consumer communications campaign would be designed to reach all adults in the United Kingdom, and therefore include:

  - broadcast and high reach channels (TV and outdoor advertising) to raise awareness of the deadline, combined with digital advertising signposting consumers to a dedicated online hub and helpline for information and advice

  - a programme of public relations and partnership activity, including communications to reach consumers who may be harder to reach via traditional marketing channels

- a budget for this campaign of £42.2m over two years

3.10 At paragraphs 3.35-3.44 of CP15/39, we outlined various alternative interventions that we had considered but not proposed, including requiring firms to send contact letters to all customers they could identify as having been sold PPI.

3.11 We asked:

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

3.12 Most responses from industry:

- Agreed that establishing a credible and authoritative voice for the campaign would be crucial to its success. Some further suggested that this could be achieved by our partnering with other key stakeholders such as trusted consumer bodies.

- Broadly agreed with the proposed audience for the campaign, and it being conducted through multi-channel marketing, public relations and partnerships. However, some also said that there should be more focus in the design and budget allocation on targeting those consumers not yet reached who are vulnerable or otherwise harder to reach.

- Emphasised the importance of industry involvement in taking forward the operational and marketing aspects of the campaign. This includes mapping the customer journey and the public relations elements, to ensure the campaign is as effective and good value as possible.

- Stressed the importance of reviewing and learning from the campaign as it evolves.

- Underlined the importance of phasing the advertising bursts to avoid unmanageable spikes in complaints, particularly just before the deadline. They also stressed the importance of our telling firms in advance of the scheduling, so they can resource accordingly to handle the flow of complaints.

- Stated that firms would support the campaign through their own initiatives and information provision – though some asked for a clearer steer concerning what we might expect of them.

3.13 Some responses from consumer bodies also broadly agreed with the details of our proposed campaign, but said it would need consumer body involvement, as trusted partners, to reassure consumers.

Our response

Since CP15/39, we have met with the British Bankers' Association (BBA), the Finance and Leasing Association (FLA), and some of their member firms in order to discuss the operational implications if the campaign proceeds. We have also begun to discuss how firms might draw their customers' attention to the deadline and to the steps a consumer should take if they want to check or complain about PPI. This includes an analysis of the different points at which a customer might be reached by our campaign and the steps they might take as a result, including visiting our website, calling our helpline, or contacting their bank or a consumer organisation – we refer to this as the 'customer journey'. We are encouraged that the majority of firms indicated in their responses that they were keen to support the proposed campaign by issuing communications to their customers in order to raise awareness of the deadline. We have not stipulated what type of support firms should provide, as firms will hold information about customers' preferred method of contact and have their own views about how best to promote the deadline. However, we would expect to see more detailed plans from firms for this closer to the time of any campaign launch.

Similarly, we have met with consumer organisations and organisations that support vulnerable consumers in order to understand their experience of the PPI complaint process, customer journey and, in particular, the barriers that vulnerable consumers may face. We intend to continue these discussions with a number of organisations.

Our own helpline staff are trained to identify vulnerable consumers or those with specific communication needs. We anticipate that we would be able to support the vast majority of consumers that come through to us but we are also exploring with consumer bodies and other potential partners whether it would be appropriate to refer certain consumers to them where it is clear that they require additional assistance. We set out more information on our approach to partnerships below.

If we proceed with our proposals, we will monitor the campaign throughout the two year period to assess its impact against our objectives, including the levels of consumer awareness of the deadline and whether those consumers who want to check or complain know where to get the information they need. We discuss and outline key performance indicators below.

3.14 Most responses from consumer bodies and CMCs, however, expressed concerns about our proposed campaign and its potential effectiveness.

3.15 Some said that we had not provided sufficient details on:

- the campaign to enable stakeholders to comment on its potential effectiveness
- the impact of a deadline and campaign on consumers with protected characteristics, breaching our obligations under the Equality Act 2010
- how the campaign will work for vulnerable consumers

Our response

Our research highlighted that some consumers have 'switched off' to messages about PPI, and so our intention is to help consumers re-engage with PPI, decide whether or not to complain and if so, to act ahead of the deadline. Our research shows that consumers require an authoritative, impartial, multi-channel campaign to overcome the barriers they face when engaging with PPI.

Vulnerable consumers and consumers with protected characteristics
In our updated EIA at Annex 3, we set out:

- the detailed feedback received in relation to protected groups and vulnerable consumers
- the steps we have taken since CP15/39, including instructing equality and diversity experts GCL to produce a report on the potential impacts of the proposals for protected groups and vulnerable consumers
- additional steps we would take, as a result of our further analysis, when designing and conducting the campaign
- how this assessment has impacted our consideration of whether to proceed or not with the proposals

Audience
Our target audience is all UK adults who are 23 years old or over, because we know that those younger than this would not have been 18 or over when the majority of PPI policies were sold and therefore were not eligible for it and are unlikely to have been sold it.

Building on the wealth of consumer insights we gathered ahead of the consultation, we have undertaken further quantitative research to help us identify, target and reach key audience segments. Our three main identified audience segments are 'Likely PPI Holders' (including some who say that they know if they have or had PPI, and some who say that they do not know) who we think, respectively:

- *intend to make a decision on engaging with PPI* (informed by high financial engagement and high propensity to complain)
- *haven't made a decision on engaging with PPI* (informed by high financial engagement and low propensity to complain)
- *are unsure about engaging with PPI* (informed by low financial engagement)

These audience segments have been built into the media industry database target group index (TGI) which our media planning agency uses to assess media consumption patterns. This will indicate how best to target these segments among adults aged 23 or over.

Our campaign will also address people who know they have PPI but either do not want to make a mis-selling complaint or have complained previously but been rejected. We will re-engage these consumers with PPI, in particular by informing them about *Plevin* and undisclosed commission and signposting them to further information and help about this.

Given the scale of the PPI audience and the communication challenge, our proposed campaign will take the form of a fully integrated multi-channel communications campaign.

Advertising
We will use broadcast and high reach channels such as TV, out of home media (e.g. billboards) and digital display advertising to create awareness of the deadline, highlight the credit products PPI was associated with and signpost people to further help and support. Using a combination of these channels we would intend to reach 96% of our target audience. Our approach would:

- Be designed to align with those moments when consumers are looking at finance related content online.
- Have longevity whilst being cost effective by using large bursts of broadcast media (i.e. TV ads), with lower weight media (i.e. billboards and other out of home, digital and selected targeted websites, and public relations activities) running in-between to capitalise on awareness. We will measure the effectiveness throughout and adjust our campaign as necessary.
- Achieve a seamless consumer journey so that people who respond to our broadcast advertising channels, or click on a digital display advert, can easily find our website or helpline number and get clear, useful information.

We anticipate running four main 'bursts' of advertising over the 2 year period to raise awareness, each lasting four to six weeks. This would be supported by 'always on' communications including, as described below, our website and helpline and through partnerships.

The advertising would be phased and staggered to help avoid an unmanageable 'surge' in complaints. We would keep firms regularly informed of our plans and expect them to put in place sufficient resources to deal with consumer enquiries and complaints, particularly as these are likely to increase as the deadline approaches. Communications through partners and public relations should ensure consumers still have the opportunity to see and hear about the deadline and the campaign messages during the time between bursts of high reach paid-for advertising. This should also help provide a steady flow of responses to firms, our contact centre and our website in between the bursts.

As is usual for a campaign of this scale, we have undertaken preparatory testing of potential advertising concepts. That is, we have produced examples of what the advertising might look like, along with draft scripts and messaging, and tested them with our audience. We are developing and testing the advertising concept to ensure that it would:

- capture our target audience's attention by engaging a broad spectrum of people across different demographics, attitudes and positions concerning PPI, including both people who aren't sure if they had PPI and those people who are sure but have not decided yet if they will complain

- cut through a cluttered PPI advertising landscape and be distinct from other advertisers
- have a clear message and call to action
- be perceived as coming from an authoritative and trustworthy source
- achieve longevity and allow opportunities for developing the idea further across the two year campaign to keep it interesting and relevant to our audience
- have the capacity to deliver a range of messages to overcome the complex barriers around the decision to engage with the campaign, the PPI issue and the deadline

We have tested four distinct advertising concepts designed to deliver against our campaign objectives. We are not able to include detailed information about these concepts, as this would undermine their eventual impact and effectiveness.

To test our creative approach, we conducted large-scale qualitative research, speaking to more than 250 consumers, in 33 focus groups and 39 in-depth interviews. The sample specification was representative in terms of demographic profiles (gender, age, socio-economic group), region and PPI status.

The research included focus groups and interviews with vulnerable consumers and those with protected characteristics of a type we felt could potentially suffer an adverse impact from our proposals, based on our review of financial knowledge, confidence and likelihood to complain. These were older people (in particular those over 65 and those over 75), women, those with disability, sensory and cognitive impairments and members of black and minority ethnic (BAME) communities (some of whom had English as a second language). We spoke with organisations who work closely with these consumers and have taken account of their feedback in selecting the creative route and media channels, and will take into account their advice on adapted communications.

Given our previous work on vulnerability, and on the basis of evidence relating to the lower likelihood of people on lower incomes making complaints, we also tested the advertising concepts with consumers on low incomes, many of whom had low financial confidence.

The results of all this research have indicated a clear choice of creative route to take forward for the proposed campaign and shown it to be the approach most likely to deliver the desired impact with our audience. The research highlighted areas for creative development which will be taken forward prior to re-testing our chosen concept in its developed form.

Public Relations
In addition to running advertising, we intend to proactively share our campaign messages with journalists with a view to generating consumer news stories and features in the press, including TV and radio programmes, newspapers and consumer magazines. This will help raise awareness of the PPI deadline and convey the more nuanced and complex messages, for example concerning the details and implications of *Plevin*.

Website
This would be a dedicated PPI campaign hub, hosted on the FCA's website, and providing clear and simple information. It would be developed and tested to the 'AA' level of accessibility in the Web Content Accessibility Guidelines (WCAG) 2.0, in line with the main FCA website. It would be likely to include, but not be limited to, the following:

- an explanation of what PPI is, and what types of credit product it was associated with
- information about mis-selling and undisclosed high commission
- a step-by-step decision tool to help consumers navigate through PPI information and reach a decision about whether to check if they had PPI, or be concerned or complain
- guidance on how a consumer can check if they had PPI
- a template complaints form based on the Financial Ombudsman Service form
- a link to the CMR's register of authorised CMCs

Helpline
The helpline would be a free phone number and a source of information for consumers about PPI.

For those who do not know whether they had PPI, we will explain what PPI is, the products it could be associated with, how a consumer might check whether they had it, how to complain and what to do if a complaint has been rejected. If consumers know they want to complain and which firm they want to complain to, then the helpline will walk them through the process, which may include directing them to the relevant website or providing contact details. The helpline staff will be trained to identify the additional support required by vulnerable consumers or those with relevant protected characteristics and will either refer them to the firm's specialist support service or to one of our partners.

Partnerships
For a range of reasons, partner organisations can enhance the impact of our proposed campaign with particular audience groups. For example:

- where messages come via a trusted third party, increasing the sense of relevance for particular audience groups
- where messages have been tailored, by us or by the third party organisation, increasing the accessibility of the messages
- where arrangements are in place for third party organisations to have the relevant resources to support audiences in taking action, increasing the likelihood of complaining by those facing the most significant barriers and those least likely to have taken action on PPI so far
- by tapping into the credibility of a range of sector/audience experts and thought leaders

- through social media support, for example blogs, tweets, likes and shares, leading to increased online share of voice (and increased word of mouth marketing)
- by search engine optimisation for our messages in comparison to other stakeholders advertising this issue

Our helpline already has a range of very effective partnerships with organisations that support consumers who may be vulnerable and we brief helpline staff from these organisations. We are exploring how we can continue providing this service during the campaign period.

As set out in CP15/39, we recognise that working with partners to help us reach and assist audiences that are vulnerable or harder to reach will be important to support the proposed campaign. Since then, we have undertaken detailed scoping to inform our partnership strategy. This includes analysis of protected groups affected by a PPI deadline and the mapping of organisations and advocacy groups that can help us reach those audience groups.

We have received expressions of interest from a number of organisations, including four consumer bodies with reach across the UK and a number of other organisations covering:

- disability
- sensory impairment
- cognitive impairment
- mental health
- older age
- financial difficulty
- homelessness
- single parents
- carers

Where we identified that there might be an adverse impact, we have tested our advertising concepts and discussed channel selection with relevant organisations to seek to ensure the campaign will effectively reach and resonate with those audiences. A summary of the actions we have already taken and plan to take in the future is set out in our EIA at Annex 3.

We have started to plan a range of options for partnership communications. We plan to offer partners a suite of communication materials, for example adapted communications for those groups that need it, how-to-guides and tool kits to enable partners to assist consumers with checking or complaining. We will explore how partners can best distribute information related to the campaign and provide communication materials accordingly, for example posters in branches, leaflets, messaging in newsletters, websites and via social media. We would be guided by the advice we have received to date from advocates and any further advice we receive from the proposed partners about what their consumers would need and what their organisation can offer in terms of resource and time.

Mapping the customer journey
The customer journey describes what happens from the point at which our audience sees or hears our campaign, reaches one or both of our touch points (website and helpline), accesses the information we provide there to enable them to make a decision and, if appropriate, takes action. Given there are a number of stakeholders potentially involved in this journey (e.g. firms, consumer organisations, CMCs, the Financial Ombudsman Service), it is critical that we align our offerings and ensure a smooth consumer experience. We are currently working with stakeholders to discuss and consider the most efficient and effective consumer journey. This work will cover:

- enabling consumer decision-making
- avoiding consumer confusion
- avoiding consumers leaving the journey too soon
- the needs of vulnerable consumers e.g. adapted communications, access to translation services, and partnerships with organisations who can offer extended support
- helping all parties to plan to have the right resources in the right place at the right time
- appropriate links or hand-overs to external stakeholders such as the Financial Ombudsman Service

Other feedback on our proposed consumer communications campaign

3.16 As well as the broad points discussed above, most responses from consumer bodies and CMCs also made various specific comments about our proposed campaign and its potential effectiveness.

The proposed campaign approach is not adequate

3.17 Most responses from consumer bodies and CMCs expressed various doubts that the campaign, as proposed, would deliver its aims of 'cutting through' existing 'noise' around PPI and changing consumer behaviour, and said that only firms writing directly to PPI consumers could achieve this.

3.18 Specifically, these responses said the proposed campaign would not work because:

- CMCs have long spent vast sums trying to raise awareness of PPI, accompanied by wide media coverage and consumer body information. Yet many consumers still do not even know they were sold PPI, while the FCA's own research shows that 26% of people had still not heard of PPI at all.

- The proposed FCA campaign follows the same well-trodden marketing routes. It does not look different from, or better than, what has gone before or any more likely to reach many of the remaining potential complainants.
- The campaign being FCA-led will not help its impact because the FCA has low levels of brand awareness among the public.
- In a 30 second advert you can only get a limited amount of information across (i.e. five sentences). No matter how creative the agency, this can only deliver a simple "Act before the Deadline" message, and cannot sufficiently underline the importance of the PPI issue or explain the various misconduct scenarios.
- A general communications campaign won't make people aware of whether they personally have cause to complain and is therefore unlikely to get them to act.
- A deadline-focused message would only appeal to consumers who believe they had PPI. It will not help or register with the many consumers who remain unaware that they had PPI or are wrongly convinced that they did not.
- Without highlighting all of the potential disclosure and suitability issues, the average consumer will still be left without enough knowledge to complain effectively themselves.

3.19 These responses said, therefore, that:

- the proposed campaign needs to be supplemented by firms writing clear letters directly to identifiable PPI customers to explain:
  - that they have or had PPI
  - who their lender was (if different from the PPI distributor)
  - the kinds of issues that have arisen with PPI (types of mis-selling and undisclosed high commission)
  - the various ways of making a complaint (which, CMCs said, should include the fact that the customer can make a complaint through a paid third party)
  - that there was now a deadline for complaining
- such letters should be dual branded by the FCA and firm, and enclose an impartial leaflet
- the letters can be supported by the wider communications campaign, which can ask consumers to 'look out for your letter'

3.20 These responses said that such campaign-supported letters would:

- be a different kind of communication that could cut through the existing advertising that many consumers are ignoring, and help overcome consumers' lack of trust that firms would help them with PPI complaints
- provide important new information to those who weren't sure they had PPI, and correct the misapprehension of those convinced they had not

- be comprehensive enough to explain more complex PPI mis-selling scenarios
- generate sufficient certainty for consumers to know that they personally may have been harmed and have cause for complaint
- help deliver the complex messages to vulnerable and visually or hearing impaired consumers

3.21 These responses in support of letters from firms further commented variously that:

- the cost should be borne by firms in addition to the campaign fee
- we had not evidenced firms' alleged 'records gaps' and anyway should not allow poor record keeping to limit their communications and liabilities
- firms should at least write to those consumers they can identify, as the letters will greatly benefit them, and the campaign can make clear to other consumers that receiving a letter is not necessary to make a complaint
- letters should at least be sent, given there are no such records issues, to:
  - the two thirds of 'high-risk' customers who have already received contact letters from firms but not responded, as additional reminders to act (given that nearly all of those who do respond are redressed)
  - those consumers who had complained previously but whose complaints were rejected or incorrectly handled
  - consumers who were at high risk of past mis-sale due to refinancing and a chain of loans and PPI policies

3.22 In contrast, all responses from industry agreed that firms should not have to write letters directly to consumers because in their view:

- it would be impractical and disproportionate for firms to proactively identify and communicate with all PPI customers
- it would be wasteful to require firms to contact customers with the same messaging as the wider FCA campaign, and confusing to provide different messaging
- letters may have superficial appeal, but experts have shown that letters do not drive the desired behaviours
- there shouldn't be a need for letters if the media campaign messaging is strong enough
- it would be hard to justify, as firms have already conducted extensive customer contact exercises
- many past PPI customers have moved address or are deceased

Our response

Whilst awareness of the FCA brand may be lower than for some consumer bodies, our research showed there was a need for an authoritative 'government'-like brand to make audiences pay attention to PPI. Response in our initial testing to the FCA logo indicated potential for this to provide reassurance. We will explore further in testing the most effective way of ensuring that consumers understand that the communication (in whatever form) is from a source that can be trusted. We also intend to work with well-known consumer groups to bolster the reach of the campaign. In addition, we have 'in principle' agreement from firms to support the campaign. However, as noted, despite this planned involvement of other parties, we know from our consumer research that it is important for any further communication on PPI to be impartial, which is why we remain of the view that the FCA should lead the campaign.

Concerning consumers who are not sure, or have forgotten, whether they had PPI, we remain of the view that it is reasonable, including from the perspective of consumer responsibility, to expect consumers to take steps to check this and to do so within a reasonable timeframe. Prompting such consumers to check would be a key message in our proposed communications campaign, which we are carefully designing to give appropriate prompts at appropriate times. We specifically included in the advertising concept research and testing consumers who were not sure if they hold or held PPI and they agreed the adverts would prompt them to check.

It may be that there are some consumers who are wrongly convinced that they were not sold PPI, for example because they recall clearly saying that they did not want it. We included consumers who did not think they had PPI in our testing of the advertising concepts and we think it is reasonable to expect even these consumers to check this as our proposed campaign would include messages explicitly identifying products which might have had PPI associated with them, in some cases potentially against the consumers' wishes.

We have carefully considered whether we should require firms to write letters to those customers that hold or held PPI.

In CP15/39 (paragraph 3.40), we said that firms had 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, they 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 (for example, because the data is held on a number of legacy databases or storage media, such as microfiche)

Following CP15/39, we asked a sample of firms to provide us with further information about these matters. Broadly, this information suggested that, in respect of any potential mailing to past and present PPI customers:

a) A significant minority for some firms (predominantly among pre-2005 sales) could not be included, due to substantial and irretrievable data gaps about the sales or policyholders (with the relevant records lost or discarded by third parties in some cases).

b) A significant minority for some firms, many of whom still have an active relationship with the firm, probably could be written to, but only after extensive preparatory work including data cleansing (often in legacy systems) and, for some, work to trace their current addresses (often requiring the use of agents[13]).

c) For a significant proportion (predominantly among pre-2005 sales), some firms could not say in advance whether these customers could be included in a mailing following similar extensive and expensive preparatory work, or whether they would remain unidentifiable or un-contactable despite such work. In some of these cases, firms said they had incomplete records and would face data protection and other obstacles in trying to complete them.

Such preparatory work is estimated by firms to take between 18 and 36 months, and cost them several million pounds each. They estimate that conducting the mailing itself would then take around a further 24 months and cost them several tens of millions of pounds each.

Given this additional information, we remain of the view that it would be very difficult, and perhaps impossible, for firms to write to the many consumers for whom they may not hold records, particularly for older sales before 2005, and that firms may struggle to construct comprehensive and accurate databases from such records as they do hold. Accordingly, any mailing exercise is likely, even with firms' best efforts, to leave large numbers of consumers without any letter. This would lead to a risk of confusion, if a consumer who does not receive a letter wrongly assumes that this means they did not have PPI and then disregards our wider campaign messaging.

In light of these considerations, and the substantial cost and reallocation of human resources it would require of most firms to achieve even partial coverage of their back books, and the fact that many firms would probably not be able to prepare and execute the mailing before our proposed 2 year deadline fell, we remain of the view that at this advanced stage in the PPI redress exercise, requiring firms to send out communications to all identifiable PPI customers would be impractical, disproportionate and hard to justify.

In any case, we also consider that such an exercise is not necessary, because, for the reasons set out earlier in this chapter, we are confident that our proposed multi-channel marketing campaign will be sufficiently effective at reaching and prompting consumers to check or complain, including those who are uncertain whether they had PPI or think they did not. In particular, the proposed campaign will run over a two year period and provide multiple reminders to audiences that they need to make a decision about PPI and, if they want to check or complain, do so before the deadline.

13 One firm said that 10% of its customers change address each year.

Firms have already proactively written to consumers about 5.5m policies sold after January 2005 that had been identified as at high risk of having been mis-sold (following root cause analysis of complaints). We estimate that most SPPPI sold with unsecured loans since January 2005 have now been complained about and/or featured in a contact letter, and over half of RPPPI sold with credit cards since January 2005.

We consider that it would be disproportionate to compel firms to send a reminder letter when we have no evidence to suggest that consumers have not received their initial customer contact letters and when a third did complain in response.

The proposed campaign budget is too small

3.23 Most responses from consumer bodies and CMCs said that the proposed £42.2m budget:

- was not large, spread over two years, and probably not enough to deliver its aims
- implies an actual annual communication budget of well under £20m (given other administrative costs) which looks low in light of:
  - CMCs' historic and continuing spend
  - experience of similar sized campaigns which operated with some success but did not achieve anything close to a universal recognition
- should be substantially increased

3.24 In contrast, responses from industry saw the proposed £42.2m budget as either:

- 'generous' for the stated aims and a campaign of this type, being:
  - more than sufficient to fully inform consumers of the deadline and what they need to do if they feel they have reason to complain
  - comparable to the total annual advertising spend of several well-known financial services firms
  - sufficient to run TV adverts across the whole period, always-on digital media support, heavy bursts of out of home marketing, and some press support
  - sufficient to reach c.95% of the population, with individuals seeing the message 100 times on average

or

- 'excessive', because it would support:
  - a degree of intensity that was disproportionate given the already high levels of public awareness of PPI
  - four £6m bursts of advertising activity, which seems too high, particularly for the two middle bursts

– reaching 96% of adults aged 23 or over, which is much more ambitious than a typical firm marketing campaign would undertake

– high cost broadcast media channels reaching a very broad segment of the population, whereas better targeting of certain publications and channels could more efficiently drive awareness in more specific audience segments

3.25 On practicalities, responses from industry also:

- said we should provide more granular detail about the proposed budget
- expected attribution of the budget to take place only once the specific objectives and targets were finalised
- asked if the FCA headcount 'to run the campaign' included the necessary resources to staff the proposed helpline

Our response

The total campaign costs of £42.2m include £7m VAT.

We undertook a thorough budget setting exercise, drawing on media industry planning tools and benchmarks provided by our contracted media agency. We factored in a range of considerations when setting the media budget. These included the scale and complexity of the PPI deadline communication task, phasing requirements, the sizeable target audience and the existing communication barriers which the campaign would need to overcome. We used this analysis to set the required reach and media budget which, based on our analysis, we believe will effectively meet the campaign objectives.

We would continually monitor campaign activity and optimise media spend and phasing throughout the two years as appropriate.

The budget would also need to cover setting up and staffing the proposed dedicated helpline (which will be outsourced but overseen by FCA staff), the design and delivery of the campaign website, campaign collateral (including producing TV adverts, agency fees, testing and evaluation) and the FCA staff costs to run and manage the campaign.

We will ensure value for money by evaluating the campaign performance on an on-going basis, optimising our advertising in light of this and conducting media audits to review media pricing and quality. We work with a roster of Official Journal of the European Union (OJEU) contracted communications agencies, procured to support campaign development and delivery. All contracts, agency fees and deliverables are robustly reviewed and assessed on an ongoing basis to ensure our campaign investment drives value for money.

Campaign duration and length of deadline

3.26 Some responses from consumer bodies and CMCs said that if there has to be a deadline, then both it and the campaign should last three years or more. This would give consumers time to explore their situation and make more than one complaint if necessary, and ensure all affected consumers have adequate opportunity to complain.

3.27 In contrast, some responses from industry said the campaign and deadline should last only one year, because:

- there is compelling behavioural evidence (provided in a third party report) that this provides the strongest 'nudge' and is more likely to spur consumer action
- most complaints will be received at the start or end of the period so a longer period in the middle won't make a difference
- consumers will become disengaged and fatigued with the advertising if it lasts more than one year
- one year is sufficient time to complete the process of finding out how to complain and doing so
- awareness is already high among consumers and the general issues around PPI have been in the public domain for a long time
- a number of consumers have already been contacted pro-actively by firms
- consumers and CMCs will take advantage of the 8% interest rate on redress if the campaign is over two years, by waiting to complain just before the deadline
- one year allows for more accurate operational planning, and most firms would be able to handle complaint volumes within a one year deadline period
- one year would reduce, albeit not halve, the significant proposed campaign cost

3.28 Other responses from industry, and some responses from consumer bodies and CMCs, agreed with our proposed two year deadline and campaign. They agreed this was the most appropriate balance between the need for urgency and the need to avoid giving people an unreasonably short period to complain or provoking an unmanageable spike of complaints for firms.

Our response

We considered a behavioral economics report provided by one respondent that argued in support of a one year deadline, based on a series of experiments with consumers. In our view, the findings of that report cannot be relied upon, as it used a number of important assumptions and factors that were very different from the choices consumers would face in reality.

We are not pursuing closure of the PPI issue at any cost, but rather an orderly conclusion. From that perspective, we remain of the view that two years is the optimal period in which to deliver the proposed aims of our campaign. In particular, two years:

- strikes a fair balance between giving consumers enough of a 'prompt' against inertia but also enough time to check or complain, including for those who are yet to complain or who are confused (or vulnerable) and need to get the right information before they make a decision

- gives us enough time to amend the campaign along the way, if necessary, and refine and evolve our partnership activity (particularly for reaching vulnerable consumers and those in relevant protected groups)
- gives enough time for consumers to respond to the new *Plevin* issue, and for firms to embed our proposed *Plevin* complaint handling rules and guidance, and for us to supervise firms' handling of these relevant complaints

In our view:

- one year would not provide this balance and these opportunities and would also increase operational and financial pressure on firms, particularly smaller ones
- three years would not sufficiently prompt inert consumers into action, and would unreasonably delay our aim of finality and certainty and the associated benefits to consumers and public confidence

Feedback on other proposed features of the campaign

3.29 Responses from consumer bodies and CMCs also made a variety of comments on other specific proposed features of the campaign.

a. Some said that *face-to-face help* is crucial for some vulnerable consumers, so part of the campaign budget needs to pay for advice sector staff to provide this to them when checking or complaining about PPI, as with Pension Wise.

Our response

Our view is that if a vulnerable consumer knows which firm they want to complain to, then the firm has an existing duty under our complaint handling rules and, in some cases, the Equality Act 2010 to provide appropriate support to that customer. We have met with firms to discuss the services they currently offer for vulnerable consumers, as we expect that higher volumes of vulnerable consumers may contact them as a result of our campaign.

We have also identified a number of good practices that firms and other organisations already carry out to support vulnerable consumers and which we will encourage firms to consider adopting.

As noted, our own helpline staff are trained to identify vulnerable consumers or those with specific communication needs. We anticipate that we would be able to support the vast majority of these consumers ourselves. However, we are also exploring with consumer bodies and other partners whether it would be appropriate to refer certain consumers to them where it is clear that they require additional assistance.

b. Some responses asked whether *professional media advice* had been sought on audience targeting and channels of communications, and said this was vital before the campaign commences.

Our response

As set out at paragraph 3.30 of CP15/39, we have existing OJEU procured contracts with the external suppliers Manning Gottlieb OMD, a media planning and buying agency and M&C Saatchi, an advertising agency managing creative strategy, production and public relations. We have also appointed a number of other independent external agencies with relevant experience to help design, test and evaluate the proposed campaign.

c. Some argued that the FCA online hub would merely replicate information available elsewhere and should *signpost consumers to other sources*. It was also argued that the FCA site would not appear in the most popular search engine responses.

Our response

As noted, our consumer research indicates that there is a need for the campaign to come from a trusted and impartial 'Government-like' brand and we believe the FCA is best placed to lead this campaign. We would aim to become a trusted and impartial source of information on PPI, assisting consumers to make a decision and take action where appropriate.

In our consumer journey planning, we are considering the most appropriate and efficient ways of ensuring that consumers who see or hear our advertising can easily reach our website or helpline. Our advertising campaign would potentially drive high numbers of consumers to the FCA website (or helpline). This will help bring it towards the top of online search pages. We will also invest in pay per click advertising to ensure our website is easy to find during searches.

d. Some consumer bodies said they were keen to *participate in, or set up, helplines and other partnership activity*, in particular to reach vulnerable consumers.

Our response

As noted, FCA helpline staff would be trained to deal with vulnerable consumers and to identify those that require specific additional assistance. We are exploring whether it would be appropriate to refer certain consumers to other organisations where they require further assistance. The FCA website would have web chat functionality to provide further assistance where needed.

e. Some said there was a need for *trusted consumer body involvement in the campaign* and this should include involvement in, or even fronting of, the advertising.

Our response

We have discussed the proposed campaign with a number of high profile consumer organisations. If we proceed with a deadline, we will seek to work closely with these and other relevant organisations to help spread key messages to affected consumers. However, as noted, we believe that the FCA, as a 'Government-like' brand, is best placed to lead the campaign including advertising.

f. Some said that we made unreasonable reference to CMCs contributing to raising awareness of the deadline, when, in their view, *the fee cap proposed by the CMR will force most CMCs out of business*.

Our response

We are not relying on CMC activity to support our campaign and its impact or ensure that it is effective.

Potential improvements in the complaints process

3.30 Many responses from consumer bodies and CMCs said that any campaign needed to be accompanied by firms making improvements in their complaints process, in particular by providing smoother routes for consumers to check if they had PPI and complain.

Our response

In general, firms are now handling PPI complaints in accordance with our requirements. However, we recognise that our communication campaign will place additional pressures on firms' complaint handling as volumes increase in response to the campaign.

It will be important that the process of complaining is made as easy as possible and that consumers have confidence that their complaint will be handled properly during this period. If so, more consumers will feel confident to complain, and more will feel confident enough to do so directly rather than through a CMC or other paid advocate.

Establishing such confidence will be especially crucial in the new area of *Plevin* complaints. Our past experience suggests that firms' implementation and application of new rules and guidance requires careful monitoring.

In order for customers to have, and maintain, this confidence in firms' complaint handling, we would maintain a dedicated PPI supervisory team throughout the period that will take forward a robust and proactive engagement with firms.

In the period before our proposed rules and guidance came into force, this engagement would include:

- working closely 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, including assessing them under our *Plevin* rules and guidance where appropriate
- asking firms to provide us with the commission and profit share rates they took on which PPI products in which periods, to enable us to effectively monitor the fairness of their subsequent handling of *Plevin* complaints
- requesting additional monthly reporting from the firms in our project[14] regarding their handling of PPI complaints where *Plevin* is relevant

After the proposed rules and guidance came into force, this engagement would include:

- monitoring and challenging firms to ensure that they deal fairly and promptly with PPI complaints throughout the period and until all complaints made in time have been appropriately assessed and responded to
- looking particularly closely for any sign that firms are seeking to reduce their redress bill by unfairly offering *Plevin* redress to complainants who ought properly to be paid full redress for a mis-sale (see Chapter 5)
- taking action where firms fail to act fairly in their PPI complaint handling
- continuing to liaise closely with the Financial Ombudsman Service about firms' PPI complaint handling, including for some time after the deadline falls, until all PPI complaints referred to it in time have been dealt with fairly

We will work closely with the CMR in the run up to the deadline to discuss how it might be able to encourage CMCs to give consumers balanced information about the potential costs and risks of taking PPI claims to court after our deadline for complaining has passed.

We have been working with industry with a view to agreeing a series of voluntary commitments designed to improve the customer complaints journey and ensure that the process works efficiently for those who want to check about PPI or complain, such as:

- Providing consumers with the option of submitting their PPI complaints electronically, via an online web form or a third party tool such as the complaints submission tools offered by some consumer groups.

14 See Thematic Report TR14/14 (August 2014) www.fca.org.uk/static/documents/thematic-reviews/tr14-14.pdf and CP15/39 paragraph 2.4.

- Streamlining the complaints form, particularly where it appears online, ensuring that only key sections are mandatory, and making clear that while providing all of the information will help the assessment of the complaint, it is not a barrier to complaining if a consumer does not have all the information.

- Ensuring that previously rejected complainants are quickly directed to a new, short *Plevin* complaint form which does not ask questions that they would be unable to answer (e.g. did you pay high commission?).

- Providing a checking process for enquiries from consumers asking if they had PPI which is as robust as the process that would be used to respond to a formal DSAR.

- Providing appropriate levels of support for those consumers that require it, particularly if they belong to one of the potentially impacted groups identified in our updated EIA.

- Reviewing their operational resilience after the first media 'burst' of our campaign and potential increase in complaint volumes.

Though any such commitments by firms would be voluntary, we would want to undertake subsequent supervisory scrutiny, to ensure that they were being genuinely delivered during the course of the campaign.

The importance of key performance indicators

3.31 Most responses, whether or not they supported the proposed deadline and communications campaign, emphasised that if they went ahead, it would be vital for us to set in advance 'Key Performance Indicators' (KPIs), to measure the success of the campaign. Some responses further suggested that progress against these KPIs should be published regularly.

3.32 However, there were different views about what should be adopted as KPIs.

3.33 Broadly, responses from consumer bodies and CMCs said that the fundamental measurement should be PPI complaint numbers and redress. Some said these should be contextualised by regularly published figures about individual firms covering:

- how many policies were likely to have been mis-sold or sold with high commission rates

- how many consumers have received redress so far, and how many remain who are likely to be due redress and the amount

- any proactive steps taken to contact consumers and how many complained in response

- uphold rates at the firm, and its overturn rate at the Financial Ombudsman Service, over time and by type of PPI

- full details of any failings in the firm's handling of PPI complaints, including full details of reworked complaints and other remedial action required by the FCA

- data on how many complaints are turned down by firms as 'no PPI', but who the Financial Ombudsman Service then finds do have a policy
- mandatory independent audit reports on whether PPI redress has been fairly calculated, with disclosure of any failings and remedial actions

3.34 Some of these responses went further and said that in view of what they see as the uncertainties around the outcomes of our proposed intervention, progress should be constantly reassessed in light of such KPIs throughout the two year campaign. We should then extend or abandon the deadline if we find that consumer outcomes are adverse.

3.35 In contrast, responses from industry said that KPIs should *not* focus on complaint numbers or their increase, since the proper aim of the campaign is to increase awareness of the deadline and PPI issue, not necessarily to increase complaints or redress.

Our response

We agree that it would be important to measure the reach and impact of our campaign, to evaluate it on an ongoing basis and adapt our approach as necessary. Our evaluation framework and KPIs would reflect our proposed campaign objectives, so would monitor and track:

- consumers' awareness and understanding of the deadline date and need to act
- consumers' understanding of how to check if they held or hold PPI, should they wish to do so
- consumers' understanding of PPI and mis-selling and the issue of undisclosed high commission
- consumers' understanding of how to complain, should they wish to do so
- consumers' responses and actions, including visits to our website, downloads of the complaint form, and calls to the helpline

We would also monitor partnership activity, including uptake and distribution of campaign materials.

While we will monitor website and helpline data, the majority of the data will be captured by quantitative consumer research, specifically a monthly online survey[15] and quarterly face-to-face research. The samples will be representative of our target audience and enable sub-set analysis of our three key audience segments. We will use the data to optimise the media plan and refine our messaging.

We will also be using econometric modelling (applying mathematics, statistical methods and computer science to economic data) to isolate the impact of our advertising spend from that of other advertisers. The modelling will incorporate

15 This will be a random location on-line 'omnibus' survey of consumers whom we have not selected.

key metrics from the quantitative consumer research and also complaints and redress volumes.

We will not, however, be setting any targets for complaint numbers, as complaint numbers are not one of the campaign aims or success criteria.

The nature, date and scope of the deadline

3.36 In paragraphs 3.1-3.18 of CP15/39, we set out details of the proposed deadline rule, including, in particular, its proposed:

- *Nature*: That the deadline should:
  - apply to a consumer regardless of whether they know about the existence of the deadline, and regardless of whether, or what, they know, about the PPI issue generally, or their own sale or policy in particular
  - not extend time for any consumer for whom the time limits under our existing rules had already begun to run or passed.[16]
- *Effect*: 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 Financial Ombudsman Service. However, as now, 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, would still need to refer their complaint to the Financial Ombudsman Service within 6 months of receiving that final response (even if the deadline was more than 6 months away).
- *Date*: That the deadline should fall two years after the start date of the rule.
- *Scope*: That the deadline should:
  - apply to new complaints about the sale of a PPI policy, including about undisclosed commission, where the sale took place on or before the start date of the rule
  - not apply where the PPI sale took place after the start date of the rule, or to complaints about matters unrelated to the sale, such as delays in claims handling or administrative errors
  - apply to complaints to the seller about an insurer's rejection of a claim on the policy on the grounds of ineligibility or exclusions and limitations; this is because we consider that such complaints concern matters relating to the sale.

3.37 We also proposed that, as with our existing complaints time limits, the Financial Ombudsman Service should retain the flexibility to deal with complaints submitted after the deadline. This would apply where the firm consents to this, or where in the Financial Ombudsman Service's view the complainant's failure to complain in time 'was as a result of exceptional circumstances'.[17]

16 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 that they had three years from receipt to complain.

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

3.38 We asked:

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

Nature and effect

3.39 Responses from industry agreed with the proposed nature and effect of the deadline.

3.40 In contrast, most responses from CMCs and consumer bodies argued that it was unfair to set a deadline which, contrary to our existing rules, would apply to individuals who remained unaware of having cause to complain and who, for example, had not received an individual warning letter. Specifically, they felt this was unfair because in their view it:

- departs for no good reason from the successful approach to mortgage endowments (where consumers received at least one, and often more than one letter warning of potential detriment, before they ran out of time to complain)
- removes an element of consumer protection that is critical, given the usual imbalance of information between firm and consumer in financial services
- sets a poor precedent for future mis-conduct issues and remedies by rewarding firms' reluctance to make proactive communications and poor record keeping
- goes against the FCA's own previous guidance about constructive knowledge[18]

3.41 These responses therefore argued that if the cost of individual mailing to PPI consumers is excessive or otherwise impractical, then the correct conclusion is not to impose a deadline at all, rather than to impose one and rely on a general communications campaign to support it.

Our response

We explained above that we do not consider that it would be appropriate to require firms to write directly to all identifiable PPI consumers, and do not consider that this would be unfair to consumers, who will receive a sufficient prompt to action before the deadline from our multi-channel communications campaign.

The PPI issue is not analogous to the mortgage endowment issue and its communications. It is true that, as with PPI, not all mortgage endowments were mis-sold. However, unlike with PPI, there was something specific that needed to be conveyed to all mortgage endowment consumers, to inform their decisions and actions about their mortgage. This was whether their endowment policy was on track to reach the target sum and pay off their mortgage or whether it was likely to fall short – as highlighted in a 'red letter'. This also put them on notice that there may be an issue with what they had bought and the conduct of the sale and that they potentially had cause for complaint.

By contrast, there is no similar straightforward message of a potential problem with their individual PPI policy that would be relevant to all PPI consumers or could be readily shared with them. They could only be told whether they in fact had had PPI and, without particular root cause findings relevant to their kind

18 For example: www.fca.org.uk/your-fca/documents/finalised-guidance/fsa-fg1217

of sale, about generic failings generally in PPI selling practices. In our view, this information would not generally be enough to give consumers constructive knowledge of a cause for complaint and trigger the three year period for complaining under our existing rules.

We do not consider our proposed approach to a deadline and campaign sets a precedent or makes it more likely that we would depart in future misconduct issues from our usual rules about constructive knowledge and three year period for complaining. As we noted in Chapter 2, we have proposed the deadline and consumer communication campaign only after careful assessment of the PPI issue and trends in complaints and redress. Our proposed intervention is an approach that we consider is appropriate and beneficial in the specific context of PPI. We do not consider that it would set any precedent for how we might approach other misconduct issues or redress exercises in the future. We would consider those on their own merits at the time, in light of their specific details and our regulatory objectives and priorities.

Date

3.42 We discussed feedback on the proposed two year deadline and length of campaign above.

Scope

3.43 Most responses from industry agreed with the proposed scope of the deadline.

3.44 However, some said that where a consumer has made a claim on a policy but that claim has been rejected by the insurer, they should be allowed a six month extension beyond the deadline in which to complain. This is in case it emerges that the claim was rejected because of mis-advice or poor disclosure about the policy by the seller at the point of sale. Such a grace period was seen as allowing for complaints that are wrongly directed to the insurer to be re-directed to the PPI seller.

3.45 Some responses from consumer bodies and CMCs said the deadline should not apply at all to complaints about claims on PPI policies that were rejected because the claimant was ineligible to claim or due to a policy exclusion or limitation. This reflected views that:

- applying the deadline to complaints about rejected claims would leave the consumer facing significant financial hardship, including potentially losing their homes in the case of mortgage PPI
- the number of such complaints would be limited, so excluding them from the deadline would not undermine the FCA's aims

Our response

In terms of complaints being directed to the correct party, there are complaint-forwarding obligations under our current complaint handling rules. Firms receiving complaints should forward them to the firm they understand is responsible. We are not intending to make any changes to these rules but would remind firms of their obligations under the complaint-forwarding rules.

We do not propose to exclude from the deadline those complaints to sellers that concern an insurer's rejection of a claim on the grounds of ineligibility or exclusion or limitation. This is because, as noted, we consider that such complaints concern matters relating to the sale. Also, we consider that excluding such complaints from scope, even if they are not numerous, would undermine the effectiveness and logic of the deadline and its ability to provide the certainty and related benefits that we identified in our rationale.

3.46 We discuss feedback on our proposal to include PPI complaints concerning undisclosed commission (*Plevin*) in the scope of the proposed deadline in Chapter 5.

Exceptional circumstances

3.47 Some responses from industry expressed concern that our proposed approach to exceptional circumstances created too much uncertainty. They asked us to prescribe in detail *which* circumstances we and the Financial Ombudsman Service were likely to consider exceptional. They noted that we had done this in the compensation scheme for sales of card or identity protection policies through Card Protection Plan (CPP).

3.48 Among responses from consumer bodies and CMCs:

- some agreed that it was important to make provision for consumers in exceptional circumstances, but were concerned that firms may not set aside the deadline appropriately in practice
- some said that all consumers in vulnerable circumstances, including those with mental health problems, learning difficulties, or visual impairment, or those experiencing a life event which makes them vulnerable, or those who have been out of the country, should be treated as exceptions to the deadline

Our response

In the end, whether exceptional circumstances apply in an individual case is a decision for the Financial Ombudsman Service, who provides helpful examples of what it considers to be an exceptional circumstance on its website.

We do not consider that it would be compatible with the principle of 'exceptional circumstances' to extend it to cover whole categories of consumers. Doing so, and removing many consumers from the deadline's scope, would also undermine the beneficial effects of certainty about long-term PPI liabilities, and an orderly conclusion to the PPI issue, which our package of measures is intended to bring. We have also described in this chapter the steps we are taking to ensure that the campaign does work effectively for various identified vulnerable consumers and protected groups.

The Scheme of Arrangement concerning CPP did specify two, and only two, exceptional circumstances which would allow consumers to make their claim under the Scheme after its deadline. These were, broadly, if they had been out of the country for most or all of the period for claiming, or had been seriously ill or dealing with a family bereavement in the period. The Financial Ombudsman Scheme could assess if these and other rules of the Scheme had been correctly applied in a case by the firm, but not depart from those rules or add others.

The specific provisions concerning exceptional circumstances in the CPP scheme reflected its particular nature as a Scheme of Arrangement that must be clear in its rules so that affected consumers can vote on accepting it and a court can approve it. Also, the response required by consumers in that Scheme was very simple, merely having to indicate whether they wished to opt into it.

We do not see a need to make similar specific provisions concerning our proposed deadline for PPI complaints. The Financial Ombudsman Service already applies exceptional circumstances, narrowly and reasonably, in cases where our various existing time limits in DISP are relevant.

3.49 Overall, having carefully considered the feedback on the details of our proposed deadline rule, we do not propose to change its nature, effect, scope or date.

Conclusion

3.50 We have carefully considered all the feedback we received on the details of the proposed deadline and campaign. In light of this and our further creative work and programme of testing, we still consider that the proposed campaign, once fully designed and rolled out (including allocating budget to working with partners to deliver our messages in the most effective way for specific audience groups), would be effective in clarifying and raising awareness of the PPI issue and prompting consumers to consider their position and, if they decide to complain, act before the deadline.

3.51 In particular, we consider that the potential disadvantages for certain protected groups and vulnerable customers set out in the EIA will be eliminated, or, where not eliminated entirely then minimised to a level where we can be confident that it is reasonable and justified to proceed, if we take the mitigating actions that we have identified. This view is supported by GCL. As such, our view is that we are justified in proceeding with our proposals, taking into account the need to achieve the objectives set out in CP 15/39 and the fact that we do not think we could reasonably and proportionately achieve the same objectives using alternative means.

4. The proposed fee rule to pay for the proposed consumer communications campaign

Introduction

4.1 In Chapter 4 of CP15/39 we proposed that the £42.2m cost of the proposed communications campaign should be met through a new fee rule (under Chapter 3 of the FCA Fees manual).

4.2 Specifically, we proposed:

- to allocate the fee to 18 firms that each reported over 100,000 complaints about advising, selling and arranging PPI[19] from 1 August 2009 to 1 August 2015, and which together represent over 90% of all such PPI complaints reported in that period[20]
- to allocate the fee to these firms on a pro-rata basis in line with the total number of such complaints they reported in that period – which amounts to £3.64 per complaint
- that the amounts the 18 firms would pay would be split in two halves across the two years of the proposed consumer communications campaign

4.3 We felt that confining the fee to these firms would be appropriate, as they were responsible for causing most PPI complaints, and would receive most benefit from the certainty and other effects of the proposed deadline that the campaign will publicise.

4.4 We asked:

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

4.5 This chapter summarises the main feedback we received and our responses to it.

Feedback received and our responses

4.6 Most responses from industry broadly agreed that the logic of our proposed fee allocation was preferable to the alternative approaches we had considered (based, for example, on historic sales volumes or redress payments[21]). They also agreed it was appropriate to allocate the costs of the campaign to those firms that had generated most of the PPI complaints, rather than to a

19 Under 17(A) in their Complaints Return (DISP 1 Annex 1R).

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

21 See paragraph 4.6 of CP15/39.

greater number of firms that had received smaller numbers of complaints[22], or to the industry as a whole.

4.7 However, some of these broadly supportive responses from industry also:

- asked us to provide firms with some assurance that they had reported complaints in a mutually consistent way, to ensure the allocation was accurate: for example, by providing a more detailed definition of which reported PPI complaints were relevant to mis-selling and should be counted
- expressed a wish for certainty about their contribution and concern that there was no contingency built into the planned campaign budget, and warned they would not agree with our approach if there was any prospect of additional contributions
- suggested that CMCs should also have to contribute a significant proportion of the cost of the campaign, to reflect their increased revenues from the increased complaints

4.8 Some responses from industry, however, disagreed with our proposed approach, and suggested various alternative ways to allocate the fee:

- firms who had received most PPI complaints, including many speculative ones that were not the result of poor selling practices, had already incurred the most costs and so should not be targeted to pay for the campaign
- the proposed allocation penalises firms who had already prompted complaints through proactive consumer contact letters and who would thus be funding a campaign which their own customers would benefit relatively less from
- a more appropriate and reliable basis for allocation would be firms' PPI complaint overturn rates at the Financial Ombudsman Service
- the allocation should instead be based on firms' total past PPI sales, minus those already complained about
- we should also invoice smaller firms who sold, and potentially mis-sold, PPI but have received few complaints, as doing so would not be disproportionate
- the campaign costs should be spread across all firms that sold PPI

4.9 Most responses from CMCs and consumer bodies agreed that our proposed approach was appropriate, as it focused on the relatively few firms who, in their view, mis-sold the majority of PPI policies and who should therefore pay to alert consumers, and that it would be cost-effective to collect.

4.10 However, some of these responses also:

- said the rule should allow for further sums to be raised in the future if it becomes apparent that more money is needed to meet the campaign's aims, including reaching vulnerable consumers and those with protected characteristics

22 See paragraph 4.11 of CP15/39.

- said we should ensure that the firms do not deduct their fees from their PPI redress provisions and payments
- expressed concern that firms would simply factor the fees into their wider business budgets, increasing prices for customers

Our response

Basis of allocation and consistency of reporting
Firms that have already received large numbers of PPI complaints, including those prompted by their own consumer contact exercises, have not 'already paid their share'. This is because, firstly, proactive mailings, though extensive, have mainly concerned sales made after January 2005, which for most firms are a minority of their historic PPI sales, and secondly, it is still the case, for most firms, that only a minority of their past PPI sales have been complained about. So the campaign and deadline will still be relevant to the majority of these firms' past PPI sales. Equally, given these large proportions of past PPI sales have not yet been complained about, these firms will still gain the most from the certainty and other associated benefits that our proposed deadline would bring. For the same reasons, we do not think it would be appropriate for the fee allocation to be based on 'sales minus complaints'. We do not think our reasoning is undermined by the fact that a minority of complaints are rejected or 'no PPI' cases and firms have incurred costs dealing with these.

We do not agree that allocation would be better based on the firms' overturn experience at the Financial Ombudsman Service. A firm might have very few referrals to the Financial Ombudsman Service but have a high proportion of these overturned. There are also other reasons, which we explained in Annex 5 of CP15/39, why the overturn rates at the Financial Ombudsman Service do not necessarily or straightforwardly relate to the quality of firms' handling of complaints. In any case, it is not clear that there is a link between the overturn rates and the costs or benefits of the campaign to the firms who would then pay the fee (and their current and future customers). By contrast, our proposed approach does link the campaign costs directly to those firms who have caused most expressions of dissatisfaction among their PPI customers and who would gain the most from the certainty and other associated benefits that our proposed deadline would bring.

We cannot assure firms that there has been complete consistency among them in how they have reported PPI complaints. However, we have no grounds to think that any inconsistencies are so significant that they would dramatically and unfairly affect the firms' respective fee allocations. So we do not think it would be a worthwhile use of firms' or our resources to try to assess the quality and consistency of their past reporting or seek to re-calculate the numbers on the basis of any definition other than the long established one in 17(A) of the Complaints Return (DISP 1 Annex 1R).

While we accept that the idea of 'the polluter pays' could be extended to more firms that sold PPI or received complaints, including smaller firms, or to all of them, there is nothing in the feedback on this point that leads us to change our view that it would not be a proportionate use of firms' or our resources to extend the allocation and fee collection in this way.

So, overall, while we accept that there is no perfect method for this fee allocation, the alternatives suggested in feedback are not more appropriate or more practical, including in terms of the data needed to carry them out, than our original proposal and do not have any other clear advantages over it.

Scope for additional fee
In CP 15/39, we explained that we had worked closely with external suppliers and used internal value for money benchmarks to develop a budget proposal for the two year campaign which would successfully deliver our aims.

We have assessed the budget proposal in light of the further preparatory work we have done on the potential campaign and, in particular, the further work we have done on how it would reach vulnerable consumers and those with relevant protected characteristics. As noted in Chapter 3, we remain of the view that the proposed £42.2m budget is necessary but sufficient.

We agree that it is important to give certainty to the fee-paying firms. We cannot use the proposed rule to raise more fees from them and do not think it would be appropriate to revise the rule to allow for this. Nor do we think it would be appropriate or efficient to change the rule to allow us to raise initially more than we think we need as a contingency fund. If in future we felt that more campaign spend was needed, and thus more fees, we think that we should have to consult on a new rule to do this, following all our usual policy disciplines.

The impact of the fee on firms' wider finances
We do not think there is a serious risk that firms will reduce their provisions for PPI redress to pay the fee and reduce the redress paid to complainants. Provisions are not the kind of static, finite redress fund that this concern implies. And if firms were to do this, it would risk non-compliance with their accounting obligations if it left them under-provisioned for the future complaints redress they had previously anticipated. In any case, we do not see that there is an incentive for the firms to do this, given their respective fees would be very small in comparison to their respective PPI provisions.

Similarly, while it is true, in principle, that the fee adds to firms' costs and thus is potentially paid for in the long run by increased prices for customers of the firm, this is true of all the redress and handling costs associated with PPI complaints, and of most other regulatory interventions. In comparison, the fee, and its potential effects on costs and pricing, is not material.

CMC contribution
We do not currently regulate CMCs and so cannot impose any fee rules on them. In any event, CMCs did not sell or mis-sell PPI and so are not in that sense 'polluters'. While the proposed communications campaign may, we believe, prompt more consumers to complain and sooner, some of whom may use and pay CMCs, the campaign will also make clear that most consumers can make complaints directly without using CMCs, and aim to make it easier for them to do so. So, it is not obvious that CMCs will overly benefit from the proposed campaign or ought to contribute to funding it.

Conclusion

4.11 Overall, we consider that our proposed approach and fee rule remains fair, appropriate and cost effective, and we are not proposing any changes to it.

5.
The proposed rules and guidance on PPI complaints and *Plevin*

5.1 This chapter summarises the main feedback we received on our proposals and questions in Chapter 5 of CP15/39, concerning rules and guidance on PPI complaints and *Plevin*, together with our responses, including where we are proposing changes.

Rationale

5.2 In paragraphs 5.1-5.12 of CP15/39, we explained that:

- 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
- the *Plevin* decision was in the public domain and had created uncertainty for firms about how the judgment should be taken into account in PPI complaints, bringing the risk of inconsistent and unfair outcomes for complainants
- we considered that intervening with rules and guidance about how firms should handle relevant PPI complaints in light of *Plevin* would:
  - reduce uncertainty and enable firms to take a fair and consistent approach to handling complaints where *Plevin* is relevant
  - make it easier for us to act if we became concerned that firms were not handling such complaints appropriately
  - provide a clear approach which the Financial 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

5.3 We asked:

> ***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?***

5.4 The majority of responses from industry agreed that we should intervene and with our rationale for doing so. Some of these responses felt our intervention would reduce the flow of relevant cases to the courts and that, as sector regulator, our approach would be given some weight by the courts.

5.5 However, some responses from industry also said that:

- the value of our intervention would largely depend in practice on the Financial Ombudsman Service reaching decisions on individual cases that give outcomes which are broadly in line with our approach
- we should widen our intervention to incorporate rules and guidance for the appropriate involvement of CMCs in making complaints about *Plevin*
- relevant case law continues to evolve in the courts, so our intervention might not deter consumers from continuing to use *Plevin* as a basis for action in the courts
- our intervention should be seen as an exceptional response to the particular circumstances of *Plevin* and the PPI issue, not as the start of regular regulatory responses to new court decisions

5.6 Most responses from CMCs and consumer bodies said that:

- in principle, they agreed we should intervene
- in practice, they felt our key proposals were so wrong that our intervention would be unfair to consumers and not bring certainty because large numbers of consumers would take claims to court instead

Our response

We consider the feedback on our key proposals in the rest of this chapter.

In terms of our aims and rationale, we do not have concerns about consistency between our proposed approach and the approach of the Financial Ombudsman Service to deciding individual cases. Although the proposed rules and guidance are for firms, they will be a relevant consideration for the Financial Ombudsman Service to take into account – with all other relevant considerations and circumstances – and give due weight to when deciding what is fair and reasonable in individual cases. As always, firms will have the opportunity to understand the Financial Ombudsman Service's approach from its individual decisions and, where appropriate, through discussions with the Financial Ombudsman Service explaining its approach as shown by past decisions. These opportunities will help firms' understanding and achieve consistency.

As noted in Chapter 2 above, we do not yet regulate CMCs and so cannot currently intervene to set rules and guidance for them about their involvement in PPI complaints. However, we do engage with the Financial Ombudsman Service, CMR and CMC trade bodies about PPI complaints, CMC conduct and CMCs' experiences with firms, and would continue to do so following any intervention and until we become the CMC regulator.

Consumers will remain free to choose the court route, including if they desire the kind of assessment a judge would undertake. However, having the fair alternative of our proposed rules and guidance may help avoid an increased flow of cases to the courts, with all of the challenges and costs that might involve for consumers and firms. Our intervention would help to ensure that, in the particular context of PPI complaints where *Plevin* is relevant, the framework of our complaint handling rules for firms and the availability of the Financial Ombudsman Service continues to provide its usual simpler, more informal and free-to-the-consumer route to an assessment and potential redress of relevant expressions of dissatisfaction.

We have only proposed our intervention in the particular circumstances of the large ongoing PPI redress issue and the Supreme Court judgment in *Plevin* that seemed directly relevant to it, and do not consider that it sets any precedent. We will continue to consider future issues and case law, in whatever areas they may arise, on a case by case basis in light of our statutory objectives and regulatory priorities.

5.7 Some industry responses raised more fundamental concerns about the nature of our proposed intervention, arguing that we would:

- inappropriately transform the discretionary power that s.140A gives the courts to review the fairness of a credit relationship, based on the specific and individual facts of a case, into generally applicable principles which do not allow the specific circumstances of each customer's case to be examined
- create a retrospective obligation of commission disclosure, with significant liabilities following automatically and inflexibly if that disclosure was not made
- prompt increased volumes of fruitless complaints to firms that did not sell PPI which covered credit agreements within the scope of s.140A-B, or did so only with low commission, and who did not generally mis-sell PPI

5.8 Such fundamental concerns led some responses from industry to argue that we should leave s.140A-B entirely to the courts and intervene now only to carve out complaints relating to s.140A-B from our complaint handling rules and the jurisdiction of the Financial Ombudsman Service.

5.9 Some responses from CMCs and consumer bodies also said that we should not intervene because:

- creating a rigid complaint assessment process would usurp the function of the courts when applying the provisions of s.140A-140B, which are much broader in scope and do not relate to hard and fast regulatory duties
- the consumer could allege (in line with s.140A-B's scope, which goes far wider than commission disclosure) that the relationship was unfair due to a variety of other potential factors concerning the PPI or the credit it covered
- complaints about these matters require a degree of individual forensic analysis that is better suited to the Financial Ombudsman Service or to the courts

Our response

We do not agree with this characterisation of what we are proposing, or the contrasting of our proposals with the purpose and scope of s.140A-B.

On the one hand, we were not proposing a mechanical test or mandatory redress. Our proposed provisions all took the form of either guidance or evidential provisions. Further, the provisions explicitly directed that individual case circumstances ('all relevant matters') should be taken into account, explicitly highlighted the scope for rebuttal of the presumption of an unfair relationship, and included specific examples of circumstances where rebuttal might be appropriate (see below).

Whilst not rigidly confining ourselves to *Plevin*, we are taking it into account when exercising our regulatory judgement about appropriate assessment and, where relevant, redress of relevant PPI complaints. We consider that our proposed purpose, of ensuring fair and consistent complaint handling in this area, would not be served if we provide rules and guidance that depart too far from the approach set out in the *Plevin* judgment and open up obvious gaps with potential claims and decisions in the courts.

To the extent that a PPI complaint raises matters that may be of relevance to s.140A-B but does not involve undisclosed commission, those matters would lie outside the scope of our proposed new rules and guidance on *Plevin*. However, firms would still need to consider them fairly, at Step 1 (assessing mis-selling) if the firm was the seller, and/or within the framework of our existing higher level (non-PPI specific) complaint rules (as we propose for PPI complaints that raise breaches of fiduciary duty – see below).

We do not consider that carving PPI complaints where s.140A is relevant out of our complaint handling rules and the Financial Ombudsman Service jurisdiction would assist orderly and consistent outcomes or be fair to consumers or firms. The Alternative Dispute Resolution (ADR) Directive requires ADR systems to be fair, and this is of course an outcome we would seek to achieve in any event. We do not believe that excluding undisclosed commission or other s.140A issues, and the potentially many PPI complaints where s.140A is relevant, from the Financial Ombudsman Service's jurisdiction and consideration, would be compatible with this Directive.

Our proposals are not creating obligations and liabilities for relevant firms in terms of levels of potential redress in individual cases. After all, s.140A already applies to firms and their credit agreements and the *Plevin* judgment is well known, certainly among CMCs, and is already giving rise to complaints to firms and claims in court. Our approach is designed to provide a common framework within which firms should approach these complaints, and which the Financial Ombudsman Service will take account of (among other things). Our aim is to reduce uncertainty and enable firms to take a fair and consistent approach to handling such complaints. We consider that providing this certainty about which complaints firms must consider in light of *Plevin*, and how, will reduce their relative per complaint administrative cost of handling these, compared to a scenario where we did not intervene in this way. However, we accept that our proposed package of measures as a whole may increase the number of complaints in the period before the deadline, including those where *Plevin* is relevant.

Concerning some firms' fears that they would get caught up in expensive complaint handling to no purpose or benefit to the consumer, we note that, as just discussed, the risk they will receive these complaints is already there.

Moreover, even if a firm's commission was below the presumptive tipping point we propose, it would still need to consider arguments that the non-disclosure of such lower commission created an unfair relationship, for example, because the complainant was in particularly difficult financial circumstances at the time of the sale.

Conclusion

5.10 Overall, therefore, we consider that our rationale for intervening and proposing rules and guidance on PPI complaints and *Plevin* remains sound.

Scope

5.11 In paragraphs 5.13-5.22 of CP15/39, we proposed that our rules and guidance should apply:

- only to PPI complaints where a claim could be made against a lender under s.140A and an order made to remedy any unfair relationship under s.140B, and
- to any PPI complaint meeting this criterion, regardless of:
  - the type of PPI policy, for example, whether it covered a secured or unsecured loan, credit card or other revolving credit, or mortgage
  - the structure of its premium (whether it was single or regular premium)
  - whether the premium was financed by the credit agreement it covered
  - the nature of the PPI sale (whether it was advised or non-advised)
  - the nature and relationships of the respective businesses behind the selling of the PPI, provision of the credit and underwriting of the PPI, for example, whether or not it was sold by a firm that was also the lender

5.12 We asked:

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

Alignment with s.140A-B

5.13 All responses from industry, and most responses from CMCs and consumer bodies, agreed that the scope of our rules and guidance should not go beyond PPI complaints relating to policies that would fall under s.140A-B.

5.14 However, some industry responses:

- asked for our rules and guidance to state that where a complaint involving non-disclosure of commission relates to an agreement that is not in the scope of our rules and guidance, the lender can reject it without further consideration

- expressed concern that the Financial Ombudsman Service might determine cases about commission, or s.140A-B more broadly, in markets other than PPI, and that this would create uncertainty for consumers and lenders

5.15 Some responses from CMCs and consumer bodies argued that the scope of our rules and guidance should be extended, variously, to include:

- regulated mortgage contracts and regulated home purchase plans to which s.140A-B do not apply, because these transactions are likely to be the most important and costly that consumers will undertake and have the highest associated risks in the event of default

- all PPI complaints involving undisclosed commission, including those where a claim could not be made under s.140A-B, because the principle that consumers should be able to claim redress where a firm failed to disclose high commission should apply as widely as possible and it would be unfair to exclude them

5.16 Other responses from CMCs and consumer bodies, however, said they could neither agree nor disagree currently, as the reach of s.140A-B might be extended by ongoing or future court decisions, which in turn might lead to changes in our rules' scope.

Our response

We remain of the view that it would not be appropriate under our consumer protection objective to widen the application of our proposed rules and guidance beyond the scope of s.140A-B. Firms were not required by us to disclose commission to consumers under ICOB/ICOBS and it is clear that in *Plevin* the Supreme Court addressed the question of unfairness under s.140A. So aligning the application with that legislation is most appropriate and proportionate, given our aim of ensuring fair and consistent PPI complaint handling in light of *Plevin*.

Concerning potential future decisions in the courts that might address the scope of s.140A-B, we will consider the issues and case law on a case by case basis in light of our statutory objectives and regulatory priorities.

We have not proposed rules and guidance concerning undisclosed commission, or other matters which may give rise to an unfair relationship, in non-PPI markets, as we are not currently aware of any evidence of potential relevant issues with inconsistent complaints handling in markets other than PPI.

We carefully set out what we proposed to include in, and exclude from, our proposed rules and guidance. If a firm were to receive a complaint about a matter that was not within this proposed scope, it would need to consider the complaint under our existing high level (non-PPI specific) complaint handling rules. This would not mean that the complaint should be automatically rejected and it would not be appropriate for us to state that or make rules to that effect. Similarly, if such a complaint was then referred to the Financial Ombudsman Service, it would need to consider the complaint under its usual fair and reasonable jurisdiction.

Regular premium PPI

5.17 Most responses from CMCs and consumer bodies, and some from industry, agreed with our proposed inclusive approach to PPI types, sales characteristics and business models.

5.18 However, a number of responses from industry argued that Regular Premium PPI (RPPPI) was very different from the Single Premium PPI (SPPPI) policy that featured in *Plevin* and involved much less risk of unfairness and detriment to the consumer. As such, it would be inappropriate and disproportionate to include complaints about RPPPI within the scope of our proposed rules and guidance.

5.19 In arguing this difference between RPPPI and SPPPI, these responses said that in their view:

- RPPPI, particularly on revolving credit, is cheaper than SPPPI on loans in terms of price per £100 of cover.
- RPPPI involves much less of a financial commitment than SPPPI, as the credit sum(s) protected and thus the premium(s) are generally much smaller.
- Many RPPPI policies on credit cards provided good protection benefits and good value for their price.
- It is not credible to suggest that disclosure and accounting of the cashflows from the typical credit card PPI price of 69p–89p per £100 would have been of material interest to consumers at the point of sale or helped them in their purchase decisions – unlike the large upfront increase in the amount borrowed by Mrs *Plevin* which her SPPPI purchase caused.
- Revolving credit is a flexible and open ended product, where the customer receives transparent monthly notifications and decides each month whether to revolve the balance, pay down or increase it, cancel the card without penalty, or move to another card provider. In contrast, the secured loan which Mrs Plevin's PPI covered put her home at risk, was long term, and inflexible, as most of her costs were irrecoverable if she cancelled (due to the initial repayments being allocated to interest).
- There was a high degree of competition in the credit card market and customers were more likely to shop around for a credit card than for secured loans.
- The FSA did not ask firms to stop selling RPPPI in early 2009, when it asked firms to stop selling SPPPI.
- While non-disclosure of commission on SPPPI has been raised in complaints to firms or claims in courts, this has not been the case for credit card PPI and other RPPPI.
- It is anyway not clear how a commission disclosure *could* be made on RPPPI, either in £ or % terms, as it varies during the life of what is an open-ended agreement.

5.20 Some responses from industry argued that it would be especially inappropriate and disproportionate to include running-account and restricted-use credit agreements, and the RPPPI covering these, within the scope of our rules and guidance. In their view, these products:

- have even lower balances and premiums than other RPPPI
- are even less potentially harmful to consumers than other RPPPI
- are even further removed from the nature of the credit agreement and PPI in *Plevin*

5.21 These responses also noted that running-account and restricted-use credit agreements had not been included in the PPI point of sale prohibition imposed by the Competition Commission (CC), because the CC felt that the small premium sums involved would likely mean that consumers would not extend their search for these types of credit and PPI elsewhere anyway.

Our response

We remain of the view that there is no sufficient *relevant* difference between SPPPI and RPPPI (including running-account and restricted-use credit) to indicate that *Plevin's* logic and our proposed rules and guidance should not apply to RPPPI.

While the absolute levels of commission payment for RPPPI may often, though not always, be less than for SPPPI, a RPPPI customer would still have paid commission and so the proportion of commission would still have generally been relevant to them. Moreover, neither the lender nor borrower would have known at the point of sale that the sums borrowed under the rotating or running-account credit, and thus the PPI premiums, would be small, or remain so. That would depend on the borrower's behaviour. Also, low initial borrowing limits granted by lenders were often raised over time when the borrower's repayment history justified this. The approach taken in the *Plevin* judgment was that once commission reaches a certain percentage of the premium then if it is not disclosed it creates a potential unfairness. The judgment does not refer to quantum or an amount in absolute money terms and we think that this approach reads across into regular premium policies.

Even if it may generally have been easier for a consumer to end a RPPPI policy and any related credit relationship than a SPPPI policy and related loan, it is not clear that this is of any real significance, given the Supreme Court's focus on what happened at the point of sale and entry into the relationship.

5.22 Some responses from industry also argued that if we still felt it appropriate to include RPPPI in scope, we should at least use our discretion and regulatory judgement to restrict the impact of this inclusion. Specifically, it was suggested variously that our proposed approach should exclude from consideration:

- those RPPPI policies sold before 6 April 2007 (the start of s.140A), even if the credit agreement remained in scope of s.140A because it was still in force at 6 April 2008
- those RPPPI policies which covered credit agreements that were in scope of s.140A but 'dormant' at 6 April 2007[23]
- those RPPPI premiums and commissions that were paid before 6 April 2007, even if the credit agreement remained in scope of s.140A

5.23 The arguments put forward in favour of these suggested restrictions were that:

23 Where, it was suggested, such dormancy could be defined in terms of the account not being used, or having zero balance, or where the credit facility could only have been utilised (again) if the lender had provided fresh authorisation for drawdown. Some responses further suggested that such dormant accounts could reasonably be regarded as de facto 'completed' at 6 April 2007 and thus as arguably out of scope of s.140A anyway.

- Even if such cases formally fall under the transitional provisions in relation to s.140A, the remedies courts could award under s.140B are only discretionary.
- We should be cautious in exercising this discretion, given that our proposed approach applies across a broad range of PPI cases, with less regard likely to be given to the individual facts of each commission complaint, including the date of sale and length of relationship, than the courts would give.
- Without such restrictions, our approach would redress PPI policies sold years or even decades ago. This would create a real risk that consumers would be over-compensated, with, for example, the simple interest element dwarfing the amount of commission that was originally paid.
- It would be unfair, disproportionate, and pay insufficient regard to our regulatory objectives and the discretion given under s.140B to the courts, to require redress for RPPPI in periods before the unfair relationship regime existed, when we, as the regulator, did not require commission disclosure, particularly given the arguments that RPPPI should be distinguished from the SPPPI in *Plevin*.

Our response

We do not consider that these suggested restrictions concerning RPPPI focused on 6 April 2007 can reasonably be inferred from, or viewed as compatible with, the explicitly retrospective transitional provisions enacted by Parliament in relation to s.140A.

As noted, whilst not rigidly confining ourselves to *Plevin*, we are taking it into account when exercising our regulatory judgement about appropriate assessment and, where relevant, redress of relevant PPI complaints. We consider that our proposed purpose of ensuring fair and consistent complaint handling in this area would not be served if we provide rules and guidance that depart too far from the approach set out in the *Plevin* judgment and open up obvious gaps with potential claims and decisions in the courts. Therefore, we do not consider that it would be inappropriate or disproportionate to reject these suggested restrictions on RPPI and to maintain the scope of our rules and guidance as proposed. Mrs Plevin's purchase, whilst not RPPPI, took place before 2007.

5.24 Some industry responses further suggested that we should limit the impact of our proposed approach to RPPPI by aligning it with the Limitation Act 1980 (to which, they argued, claims based on s.140A-B are subject in court) by introducing a 15 year long-stop. Such provision would mean that a complaint about undisclosed commission on PPI could be rejected without consideration of its merits if the complaint was made more than 15 years after the PPI policy was entered into.

Our response

The FCA has chosen not to mirror the long stop provisions of the Limitation Act 1980 in its existing complaint handling rules and guidance and we do not see a need to treat PPI complaints where s.140A-B are relevant any differently.

We also note that the idea of a long-stop more generally was not supported by the recent Financial Advice Market Review. We have, however, committed to keep the issue of a long-stop for complaints in general under review.

Alignment with the jurisdiction of the Financial Ombudsman Service

5.25 Some industry responses expressed concern that our proposed rules and guidance would apply to any complaint involving a credit agreement that fell within the scope of s.140A-B, regardless of whether the complaint itself fell within the scope of the Financial Ombudsman Service's jurisdiction. This was said to have the effect of bringing into the scope of our complaint handling rules and the Financial Ombudsman Service jurisdiction a large number of firms that have previously been out of scope.

5.26 In particular, these responses argued that this alleged expansion of scope would impact the running-account and restricted-use credit sector, and those firms which had sold PPI before January 2005 but were not in the General Insurance Standards Council or the Financial Ombudsman Service's predecessor schemes and did not become regulated insurance intermediaries after January 2005. This alleged impact, and the additional costs it would imply for these firms, was argued to be unjustified and disproportionate.

Our response

We did not propose changes to the scope of our DISP rules or the jurisdiction of the Financial Ombudsman Service. Nor do we consider that our proposals have any such unintended consequence. The rules and guidance clearly only apply to 'complaints' and we have proposed no changes to the definition of that term. We do not accept that our consultation paper implied, or could be read as suggesting, otherwise. Firms, as now, when they receive complaints will need to consider whether such complaints are 'complaints' for the purposes of DISP. This requires consideration of whether the complaint relates to an activity that falls within the jurisdiction of the Financial Ombudsman Service. Matters which, if complained about now, would be outside the scope of our DISP rules or the jurisdiction of the Financial Ombudsman Service, will remain outside, even if we make our proposed rules and guidance on complaint handling in light of *Plevin*.

Conclusion

5.27 Overall, therefore, we consider that there is no reason to change the scope of our proposed rules and guidance on PPI complaints and *Plevin*.

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

5.28 In paragraphs 5.23–5.38 of CP15/39, we proposed rules and guidance that would introduce a new second step into the existing rules and guidance in DISP App 3 concerning PPI complaints. This would mean that, where the credit agreement covered by the PPI is in the scope of s.140A-B, then:

- A lender would not have to assess a PPI complaint against the proposed new rules and guidance ('Step 2') *if* it sold the PPI and concludes, under the existing rules and guidance ('Step 1'), that the complaint should be upheld because the PPI was mis-sold and paid full redress[24]

- 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';[25] 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 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

5.29 We asked:

> ***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 logic of the two step structure

5.30 Most responses from industry broadly agreed with the logic of the proposed two step structure (although some concerns were expressed about how it might work in practice where the lender and seller were different firms – see below).

5.31 Some responses from consumer bodies also broadly agreed with the logic of our proposed two step structure but said that firms should be required to consider whether there was non-disclosure of commission (ie engage Step 2) regardless of whether this was raised by the consumer in the complaint. This is because it would not be reasonable, or appropriate consumer protection, to expect consumers to realise that they had grounds for complaint about something they were not told about at point of sale.

24 That is, the full return to the customer of their premium plus the historic interest paid on that premium (where relevant), plus simple annual interest on those sums.

25 '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.

Our response

We note that the proposed rules and guidance, together with our existing rules and guidance,[26] would have the effect of generally expecting lenders to consider the issue of undisclosed commission at Step 2 when they assess PPI complaints within the scope of s.140A-B and not fully redressed as mis-sold, even if this issue is not expressly raised by the complainant.

5.32 Some of these responses from consumer bodies also said that:

- the two step structure may incentivise firms that are both seller and lender to 'game' the process by unfairly rejecting a complaint at Step 1 but offering Step 2 redress instead, in the hope the complainant settles for this lesser sum
- complainants may not understand that the redress sums potentially available at Step 2 are much smaller than those at Step 1
- we should closely monitor firms' operation of the two step structure in practice and require them to include in any Step 2 redress offer a clear and fair explanation that:
  - the complainant still has the right to refer a Step 1 rejection to the Financial Ombudsman Service if they are unhappy with the reasons for that rejection
  - any Step 1 redress sum, were the referred case to be upheld by the Financial Ombudsman Service, might well be larger than the Step 2 offer

Our response

As noted in Chapter 3, we will have robust supervisory engagement with firms to ensure that they handle complaints fairly in the period before the proposed deadline falls.

We do not intend to add rules and guidance prescribing what should be said in Step 2 offers. We think this would be too granular an intervention and that we can reasonably rely on the existing rules and guidance which require final responses to complainants, including any offers of redress, to be clear, fair and not misleading.

5.33 Some responses from CMCs and consumer bodies disagreed with our proposed two step approach. They argued that we were acting unreasonably and contrary to the *Plevin* judgment in not accepting that a failure to disclose high commission generally caused a mis-sale, and in separating undisclosed commission from the assessment of mis-selling.

5.34 Conversely, some industry responses disagreed with our proposed view (in paragraph 5.69 of CP15/39) that there could occasionally be circumstances where the fact (identified at Step 2) of a high undisclosed commission payment *would*, when considered in the round alongside Step 1, shift a 'marginal non mis-sale' (assessed at Step 1) to a 'mis-sale'. These responses

26 We expect firms to consider evidence that is uncovered during the assessment of the complaint as if it were part of the complaint and to take into account information they already hold about the sale and consider other issues that may be relevant to the sale which the firm has identified through other means. See the provisions at DISP App 3.2.1G to 3.2.6G.

emphasised that they saw Step 1 and Step 2 as entirely separate and independent tests that could not and should not influence each other. They also noted that, anyway, such 'in the round' consideration across the two steps could not be done where the seller and lender were different firms.

Our response

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 principal question behind our existing rules and guidance for firms, which is: did the conduct of the firm that sold the PPI fall so short, at point of sale, of what we would expect under our Principles and ICOB(S) rules, that it made the sale substantially flawed? We remain of the view that the two step approach reflects this difference appropriately and fairly for complainants and firms. An alternative approach which merged considerations about undisclosed commission into the existing rules and guidance about mis-selling to create a *single test* 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(S) rules (or CONC rules before 1 April 2014), whereas we do consider the various sales failings set out in the existing rules and guidance to be so
- we would, anyway, have to leave scope for a PPI complaint where undisclosed commission may be relevant to be assessed by a lender that did not sell the PPI and could not assess if it was mis-sold under our existing rules

However, we do not agree that what we said in paragraph 5.69 of CP15/39 was inappropriate. Our comment was simply intended as one example of when a firm might decide that it needed to award more redress than under our proposed standard Step 2 approach to redress. We did not seek to create any standard approach to 'marginal mis-sales' and expressly stated that such cases would be few and far between. We also expressly stated that such a scenario was only potentially relevant where the same firm was both seller and lender.

The practical workings of the two step structure

5.35 Some responses from industry, though broadly agreeing with our approach, had concerns about how it would work in practice if the seller and lender were different firms, or if the Financial Ombudsman Service or FSCS was also involved. Specifically, they were concerned that poor communication between the parties might lead to over-lapping remedies at Step 1 and 2 and thus to over-payment of redress to the complainant.

5.36 To mitigate this perceived risk and assist the efficiency of the process, some responses from industry suggested that we should require a lender who received a complaint about a policy it did not sell to forward that complaint to the seller first, who would then perform Step 1. If the seller did not fully redress the complaint as mis-sold, it would forward it back to the lender, who only then would perform Step 2.

5.37 Some responses from CMCs and consumer bodies also suggested this 'Step 1 first' approach, because they felt that it would ensure that the complainant gets the most serious matter – the potential mis-sale – considered first.

5.38 Conversely, however, some industry responses argued that it was Step 2 that should always be done first and that sellers should only have to carry out Step 1 after the lender had assessed and redressed any unfair relationship under s.140A identified at Step 2.

5.39 This 'Step 2 first' approach was also suggested by some consumer bodies, including for firms that were both lender and seller. Their logic was that the undisclosed commission aspect was more straightforward to assess than the potential mis-selling, so the firm could give complainants quicker decisions and potential redress at Step 2, before moving on to Step 1 and, if necessary, paying the additional redress any identified mis-sale would require.

5.40 Some industry responses said there would be difficulties with the two step structure if either the seller or lender is not caught, for the sale involved in the complaint, by our existing complaints rules and jurisdiction. This is because it would not then be subject to our complaint forwarding rules, which we had said in CP15/39 would help the two step structure work effectively.

5.41 More broadly, to help the fairness and efficiency of the proposed two stage structure, some responses from industry proposed that we should also add requirements:

- for firms (particularly sellers), and for the FSCS and the Financial Ombudsman Service, to provide details of redress paid previously when requested to do so by other firms (particularly lenders)
- for consumers to provide details, when complaining, of any previous redress received in relation to the relevant PPI policy

Our response

We remain of the view that the two-step approach is proportionate, in what it requires of firms, and fair, as it limits the risk that a complainant could recover two sums of redress incorporating both the full return of premium (for mis-selling) and some part of that premium (for undisclosed high commission).

We accept that for complaints about the small minority of PPI sales where the seller and lender were different firms, avoiding potential 'double dipping' by consumers, whether inadvertent or otherwise, is likely in practice to need some communication between the firms.

We do not, however, intend to add any rules and guidance that prescribe which step a firm should deal with first, or how and when they should forward it to another firm to carry out the other step. This is because:

- We think this would be too granular an intervention. We believe we can safely rely on the existing high level complaints forwarding rules and on firms' common sense and professionalism to communicate appropriately among themselves to avoid excessive recovery by the complainant.

- The 'Step 2 first' idea rests on the mistaken belief that *Plevin* redress would or should be automatic – which is not what *Plevin* decided and not what we have proposed in our rules and guidance.

- The 'Step 1 first' idea is closer to our own thinking that it will often be preferable for a firm that both sold and lent to carry out Step 1 first, as this is likely to result in the maximum redress at the earliest stage, but it is not something we want to insist on. This is because we feel it should remain open to consumers to complain about *Plevin* first if they wish to, which may be better for them if, for example, the seller of the PPI cannot be identified or is no longer trading or is unresponsive.

We do not think imposing requirements on the Financial Ombudsman Service and FSCS to share information with firms concerning prior redress payments would be appropriate, as their ability to do so is likely to be limited by relevant confidentiality legislation in any event.

We do not regulate consumers and so cannot impose obligations on them to disclose any previous redress received.

It is correct to say that a firm whose PPI or credit sales are not within the scope of DISP will not have any obligation to forward the complaint to another firm. However, we would hope that such a firm would choose to do this to assist the consumer, or would at least let the consumer know if they were not intending to do this.

5.42 Lastly, some industry responses argued that Step 2 should not apply to the lender:

- where the seller was a broker who knew the relevant commissions payable out of the premium (including those to the lender) but did not disclose this to the customer; it should then be this broker who ought to consider the complaint at Step 2 as well as at Step 1

- in relation to any broker sales, as the lender would not have received any commission from these sales and would not have had knowledge of the commission arrangements in place

Our response

We have 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 both their own and the lender's commissions but did not tell the consumer. We do not consider that this circumstance requires any change to the proposed two step approach. Specifically, we do not consider that it would be appropriate to carve lenders out from Step 2 where a broker made the sale featuring in the complaint or where that broker was aware of the commission arrangements but did not disclose them to the consumer.

In our view, the Supreme Court judgment in *Plevin* focuses on the lender and made clear that, for the purposes of unfair relationships under s.140A-B at least, it is the lender who is responsible for the failure to disclose the commission to the consumer (even if it received none itself), not any other party to the transaction (even if that party did receive commission).

However, as we explain below, the presumption of unfairness may be rebutted in circumstances where the lender did not itself know, and could not reasonably be expected to have known, the level of commission.

Conclusion

5.43 Overall, therefore, we consider that there is no reason to change the proposed two step structure in our proposed rules and guidance on PPI complaints and *Plevin*.

5.44 However, for the avoidance of doubt, we do propose an amendment to the draft provisions to expressly state that a firm that was the lender (under the CCA), but which did not sell the PPI policy, should only consider Step 2 and not assess whether the PPI was mis-sold (see DISP App 3.1.1G(3) as amended).

Commission and profit share

5.45 At paragraphs 5.39-5.48 of CP15/39, we explained that under our proposed rules and guidance, firms would 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.

5.46 We proposed, for the purposes of such PPI complaint handling only, 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'.

5.47 This proposed definition was intended to be broad, simple and applicable regardless of the business or accounting arrangements between lender, broker and insurer (including where two or all of these functions were carried out within the same group), and to not allow for 'costs' (including profit margin) to be deducted, whether reasonable or not.

5.48 This proposed definition meant that profit share was not expressly included in our proposed approaches to assessing unfairness or redress.

5.49 We asked:

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

Costs, profit and value

5.50 Most responses from CMCs and consumer bodies agreed, emphasising the importance of making the definition as simple and workable as possible for complaint handling. Some added that the important consideration for a consumer was the price of the product they were purchasing and its potential value for money, so it was right that all sums and costs which made up that price should be taken into account.

5.51 Some responses from industry also agreed, but suggested that our definition should explicitly state that commission should be assessed as a percentage of the total amount paid including insurance premium tax (IPT), not as a percentage of gross written premium, which is generally net of IPT.

5.52 However, other responses from industry argued that firms vary considerably in their business models and therefore their cost structures and allocations. They felt that to avoid arbitrary differences in 'commission' across these different models, we should amend our definition to allow various costs to be deducted. This would make it more like 'actual commission' or 'net margin'. The costs they variously suggested for deduction included:

- payments to the lender for insurance administrative services performed for the insurer
- the lender's own administration costs
- the costs of design, marketing, fulfilment and similar activities
- the cost of 'pricing for risk' to maintain the PPI cover even if the customer fails to pay their premiums for a period
- the interest cost of financing the upfront premium for some types of SPPPI
- the overall cost of distribution
- the 16% figure for reasonable distribution costs and profit margin estimated by the CC in its report on PPI

5.53 One response argued that, unlike the lender in *Plevin*, it had done everything concerning the PPI apart from underwrite it, including designing and administering it, so it was incorrect to see its income as 'commission' at all.

Our response

We remain of the view that there are no compelling reasons in the light of the *Plevin* judgment why such an adjustment downwards of 'commission' in light of 'costs' (whether or not they were reasonably incurred) would be necessary or appropriate. In particular, we do not consider 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 or profit margins.

We do not consider it necessary to amend the proposed definition to refer to IPT explicitly. We consider that, as drafted, it already excludes sums passed by the lender to another party to pay IPT.

However, for the avoidance of doubt, here is a relevant worked example illustrating our proposed definition (which assumes there was no mis-sale):

- PPI single premium of £100 plus £5 IPT - customer pays £105 to distributor.
- Of this £105, the distributor, who is also the lender, retains £50 as commission.
- The balance of £55 (including the £5 IPT) is passed to the insurer. The lender anticipates getting £10 of this £55 back in due course as profit share.

- In response to a subsequent complaint, the firm considers at Step 2 the implications of its not disclosing at the time of sale commission and anticipated profit share of **57%** – this being £60 of £105 (ie what the consumer paid gross of IPT) - *not* 60% (£60 of £100, ie net of IPT).

5.54 In contrast, some responses from CMCs and consumer bodies argued that our approach was too narrow. They felt that the unfair relationship stems not just from what the distributor earns as commission but from the excessive cost the consumer paid for poor value policies full of exclusions and limitations. So the ratio of claims to premiums, on its own or in a suite of other indicators (as we discussed in DP15/4[27]), would be a better measure of value and the fairness of the relationship, and thus a better focus for our proposed rules and guidance than 'commission' only.

Our response

We remain of the view that, as these wider aspects of value for money were not discussed in *Plevin*, it is not necessary or appropriate for us to include them in our proposed approach, given our aim is simply to ensure fair and consistent handling of PPI complaints in light of *Plevin*.

It would, however, remain open to consumers to complain about these and other aspects not covered in our proposed rules and guidance. In that event, firms would still need to consider the complaint fairly. They would need to do this at Step 1 if the firm was the seller, and/or within the framework of our existing higher level (non-PPI specific) complaint rules. Similarly, if such complaint was referred to the Financial Ombudsman Service, it would need to consider the complaint in light of its fair and reasonable jurisdiction in the usual way.

Profit share

5.55 Industry responses agreed that profit share sums should not be included in our proposed approach, because in their view:

- they were not covered in *Plevin*
- they are not guaranteed but typically depend on many factors, such as the variable costs incurred by the insurer and the level of claims received, which cannot be known at the point of sale
- the payments cannot usually be linked to a specific customer because they are based on the annual surplus or deficit from the yearly sales of the product
- they vary over time, and a profit in one year can be followed by a loss the next
- at the time of each PPI sale, firms would not know the profit share they were likely to receive
- they reflect commercial arrangements between the firms involved which do not affect the price paid by the consumer

27 Developing General Insurance Add-ons Market Study – Remedies: Value Measures: https://www.fca.org.uk/your-fca/documents/discussion-papers/dp15-04. See also the subsequent feedback statement 16/01: http://www.fca.org.uk/your-fca/documents/feedback-statements/fs16-01

- profit share arrangements vary widely across the industry, so any attempt to include them in our approach would lead to inconsistent outcomes

5.56 Some industry responses noted the judge's comments in *Brookman v Welcome Financial Services Ltd (Brookman)* about the potential significance of profit share in assessing the fairness of the relationship in that case. HHJ Keyser QC was struck that Welcome's upfront commission was 45% of the premium, but it also had 'profit share' claims on any excess sums remaining from the further 24% paid to the insurer to meet claims and 20% paid to the insurer to meet customer cancellation rebates.

5.57 These industry responses argued that we should not regard *Brookman* as a precedent or change our approach in light of it because, in their view:

- It was a county court judgment and not binding.
- It appeared mainly to concern a particular and unusual type of profit share arrangement that:
  - was more focused on cancellation rebates
  - apparently reflected an advance payment of profit that was more certain than the usual claims based kind, and arguably fell already within our proposed definition of 'commission'
- It did not appear that HHJ Keyser QC took into account profit share when calculating a tipping point or redress, but instead took a more general approach that the profit share, together with other arrangements, made the agreement unfair.

5.58 However, some responses from consumer bodies and CMCs said the FCA *should* include profit share as part of a broader approach to the definition of 'commission'. They considered that this would be fairer and better reflect the economic reality of the situation and also the court's thinking in *Brookman*.

Our response

Judgment in *Brookman* was handed down on 6 November 2015, just before we published CP15/39. It led us to conduct further work on profit share arrangements, including gathering data and other information from a sample of firms, as well as considering the feedback to CP15/39 that we received on this point.

As a result of this work, we propose modifying our proposed rules and guidance to *include* profit share because:

- Although profit share sums were usually not guaranteed, in practice, in many of the years when PPI was sold (including the years it was sold in greatest volume), claims rates were stable in the short to medium term. So it is reasonable to conclude that firms *could* reasonably foresee that they would receive material profit share sums under their agreements or arrangements with insurers.
- Profit share sums were larger, relative to upfront commission, than we had thought. In CP15/39, at paragraph 5.54, we had described the average

commission on PPI for the 12 largest distributors in 2002-2006 as 67% according to the CC's figures, when in fact that figure *included* profit share.[28] We now estimate, based on information we received during the consultation, that, typically, commission accounted for less than three quarters of distributors' revenue from PPI, and profit share over a quarter. That is, many firms on average received over £1 of profit share per £3 of commission.[29]

- We think that disclosure of profit share would generally have been likely to impact the consumer's thinking alongside any commission or, in some cases, alone. As such, including profit share would run with the grain of *Plevin* and be fairer to the consumer.

- Including profit share reduces the likelihood of large arbitrary differences in complaint outcomes at Step 2 between firms that could reasonably foresee receiving the same broad economic benefit from PPI policies but via different proportions of commission and profit share.

Specifically, we propose to modify our proposed rules and guidance to provide for a firm to:

- Consider whether it did not disclose in advance of the sale of the PPI policy not only the commission but also any anticipated profit share (see DISP App 3.3A.2E). We propose to define this as *'a reasonable estimate of the amount that it was reasonably foreseeable at the time of the sale would be payable in the future in respect of the payment protection contract under profit share arrangements'*.

- Presume that a failure to disclose the anticipated profit share plus the commission gave rise to an unfair relationship under s.140A if together these were more than 50% of the total amount paid in respect of the PPI policy (or presume that the failure did not give rise to an unfair relationship if, together, these were 50% or less) (see DISP App 3.3A.4E).

- Include actual profit share when calculating redress under our proposed approach. That is, pay redress equal to: the total commission actually paid in respect of the PPI policy *plus an amount representing the actual value of any payment(s) made in respect of the PPI policy under profit share agreements;* minus 50% of the total amount paid in respect of the PPI policy (see DISP App 3.7A.3E).

We envisage that, when handling a PPI complaint at Step 2, firms may need in broad terms (though there may well be other reasonable approaches) to:

28 See paragraphs 21-25 in 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. The CC noted that one distributor had not included profit share in the income figures it provided, and that this omission represented a potential uplift to the percentage of income as a proportion of GWP and thus to the CC's profitability estimates.

29 This kind of ratio will, however, be affected by the firm or group's arrangements. The CC noted that some distributors are vertically integrated and that in these circumstances the contract between the underwriter and distributor could not be assumed to be on an arm's-length basis. For consistency purposes, one significant vertically-integrated provider gave the CC group income figures for PPI on an aggregate basis rather than distributor income, saying this was more meaningful given its internal commission arrangements.

- Identify, recreate or infer an appropriate remuneration model for that type of PPI policy sold in that particular year: for example, by reference to the relevant agreement or other arrangement with the insurer covering the relevant period, or on the basis of reasonable assumptions about the model based on agreements or arrangements with, or actual sums received from, the insurer (or other parties where relevant) for the same products in other years.

- Apply this remuneration model to the PPI policy and its premium(s) to determine the profit share that was anticipated in respect of it at the time of sale.

We recognise that this proposed inclusion of anticipated profit share when assessing evidence at Step 2 implies choices and challenges for firms. We would be particularly interested in views on:

- Whether the main variable in establishing anticipated profit share would be the expected loss ratio for each type of PPI at the beginning of the relevant year. This will probably be heavily influenced by recent loss experience.

- Whether, when establishing the expected loss ratio, allowance should be made for uncertainty, and if so how much. For example, given a major change in the economy could have affected the subsequent loss ratio, should an element of buffer be included in the expected loss ratio to reflect this uncertainty?

- Whether firms' profit share assumptions may potentially be more difficult and approximate for some types of PPI than others: for example, where the expected loss ratio for products sold in a particular year is affected by the length of the policy and type of premium payment (one-off or monthly).

- What policy duration should be used by firms when assessing their anticipated profit share for a rolling monthly policy with monthly payments.

- How a firm should apply the remuneration model to the policy featuring in the complaint where the agreement or arrangements with the insurer allowed it to offset prior year losses for that product (or from others) from the firm's profit share entitlement.

When calculating redress at Step 2, we envisage that firms may need in broad terms to allocate an appropriate part of the actual profit share from a relevant book of policies (for example, policies of the same type sold in the same year) to the particular policy that is due redress.

The method firms adopt to make this allocation may need to vary depending on the detail of the data the insurers gave them about these profit share arrangements and payments. We understand that for some profit share agreements and arrangements, insurers completed profit share calculations per product per underwriting year on an annual basis. Where details of these calculations were provided, firms are likely to be able to identify all profit shares linked to a specific product group sold in a particular year. This may be a good starting point from which to determine an allocation of actual profit share to a particular policy that is due redress at Step 2. However, where less detailed information was provided by the insurer, we would still expect firms to calculate reasonable proxies for the allocation of profit share to the PPI policy.

We recognise that including actual profit share when assessing redress at Step 2 implies various choices and challenges for firms. We would be particularly interested in views on:

- Whether the profit share payments were accompanied by information from the insurer allocating the payment to specific groups of policies, for example, policies sold in particular years for a particular product type.

- How to allocate profit share payments to individual policies. If a firm can establish the profit share payments for a specific group of policies, for example product A sold in year 1, it would need to establish a method for allocating this amongst those policies, including those due redress. This could be complicated where, for example, a product type is made up of single payment policies with mixed duration terms (e.g. 1 to 5 years) and the profitability of the shorter term policies was higher than the longer term policies.

- How to treat profit share linked to monthly premium policies. As these policies age, they may be allocated to new commercial contracts with different profit share terms. For example, in months 1-12 the policy may be subject to profit share agreement A which will be paid in year 2. For months 13–24 the policy may be subject to profit share agreement B which will be paid in year 3. Firms would need to recognise that the profit share originating from the policy may be included within various different profit share payments and arrangements (but see also 5.103 to 5.104 below).

Though we have focused above on claims based profit share arrangements, we consider that the same considerations apply to other profit share arrangements, for example as in *Brookman*, where the variable factor was the value of rebates paid, rather than claims. Excluding rebate based profit share arrangements would create large arbitrary differences in complaint outcomes between firms that paid rebates themselves out of commission, and those that sent sums to insurers to cover rebates but entered into profit share arrangements about those sums.

If, following this further consultation, we make these amended rules and guidance and include profit share in our approach, we would be open to discussion with firms about their practical proposals for applying our approach to their particular arrangements.

Q19: Do you agree with our proposed modifications of incorporating anticipated profit share sums within our approach to assessing fairness and actual profit share sums within our approach to redress? Do you perceive any particular practical or operational difficulties with this modified approach?[30]

30 We run the numbering of the questions in this further consultation on from those in CP15/39.

Considering evidence at Step 2 – the tipping point and presumption of unfairness

5.59 In paragraphs 5.49 – 5.58 of CP 15/39, we proposed that if a firm did not make a disclosure of commission at the point of sale, and is not aware that anyone else did so at that time, then 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, but
- 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, or
- 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

5.60 However, our proposed rules and guidance also provided that these presumptions could be rebutted (which we discuss in more detail below).

5.61 We asked:

> ***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?***

The level of the tipping point

5.62 Most responses from industry agreed that there should be a single tipping point and that 50% was a reasonable figure for this purpose. Some added that this favoured consumers but enabled a practical approach to be taken to complaint handling.

5.63 However, some responses from industry argued that:

- There were good grounds for a tipping point of 60%, because it is:
  - below the 'two thirds' referred to by Lord Sumption
  - consistent with his view that 71.8% was 'a long way beyond' the tipping point
  - a proportionate figure which is not right at the bottom of the 50% to 80% range which (these responses argued) he had established as the range of commission in question
- There should at least be a higher tipping point, of 60% or more, for:
  - RPPPI, for the kinds of reasons discussed above and because firms took far longer to cover their distribution costs from a RPPPI policy, if they did so at all
  - RPPPI on running-account and restricted-use credit, which, it was argued, have even smaller typical balances and premiums than credit cards but similar distribution costs
- The proposed 50% tipping point did not appear to take into account broker sales, where total overheads are higher than for direct sales, because the broker distribution process may

involve several different parties, each with a role to play and each with overheads that need to be covered.

5.64 Some responses from industry argued that there should be a whole variety of tipping points, or none specified at all, with a greater emphasis put on flexibility instead. They felt this approach would better reflect the fact that:

- Distribution and servicing in the insurance market uses a multitude of models. So one specified 'tipping point' is unlikely to be a fair measure in every scenario. Instead, tipping points need to take account of genuine work transfer costs incurred by administrator/distributors: for example, one firm may perform activities that justify their commission level, another might do very little.
- The actual sum a distributor received from a sale would depend on the size of the insurance premium and using a percentage as a threshold makes no allowance for this: one firm could receive a large excessive sum from a sale that was under 50%, while another firm could get a reasonable sum that was over 50%.
- Some firms did relatively little PPI business but had fixed costs to cover.

Our response

We do not agree that there are good grounds for a higher tipping point, for example of 60%. We consider that Lord Sumption's reference to 'two thirds' was a generalised reference to the 71.8% Mrs Plevin paid, not a suggestion of a 66% tipping point or a remark that would otherwise imply 60% was a reasonable choice. In our view, a 60% tipping point would *not* fit with his view that 71.8% was 'a long way beyond' the tipping point.

The arguments that RPPPI generally, or running-account credit in particular, should have higher tipping points than SPPPI, or that there should be many tipping points or none, merely restate the earlier arguments, which we reject, that our proposed approach should make allowance for differences in distribution costs and lenders' activities. Again, we consider that, viewed from the perspective of the approach set out in *Plevin*, there are no relevant differences between SPPPI and RPPPI, including running-account credit, that warrant different tipping points. We remain of this view even if the actual undisclosed commission was small in money terms.

We also note, as we said in CP15/39, that the proposed 50% tipping point gives significant headroom above the 16% identified by the CC report as reasonable distribution costs and profit for PPI, including RPPPI.

5.65 All responses from CMCs and consumer bodies said the proposed 50% as much too high and unfair to consumers because:

- It did not plausibly reflect Lord Sumption's view that 71.8% was 'a long way beyond' the tipping point.
- We implausibly assumed that most consumers would think 50% was a reasonable level of commission, or that levels of 'only' 30% or 40% would not have had any impact on most

consumers' thinking at point of sale had they been told. Our research in CP15/39 had not shown this.

- We seemed to have started from a position of assessing the actual average in what we acknowledge to have been a deeply uncompetitive market, rather than making a common sense assessment of fairness and reasonableness.
- It would leave many complainants with little or no redress and unfairly allow firms to retain too much of their inflated and undisclosed commission.
- We had ignored the experience of CMCs that courts are 'regularly finding' that 45% commission is unfair.
- It would lead to worse outcomes than consumers could obtain in court. This would cause high volumes of claims to the courts and undermine our stated aim of achieving certainty and consistent complaint handling in light of *Plevin*.
- It stood in conspicuous contrast to the CMR's recent proposal to cap CMC fees for financial services complaints at just 15%.

5.66 Alternatives suggested in responses from CMCs and consumer bodies as fairer and more plausible included, variously, 16%, 20%, 25% and 30%.

5.67 Many of these responses also argued that our proposal of 50% was not only too high but arbitrary and unsupported by any arguments or facts. These responses suggested a number of matters which they felt we ought to have taken into account before setting a tipping point:

- research to establish how much a typical consumer would typically think is reasonable for a commission payment and the level above which they would typically question the value for money of the product and whether they wanted to buy it at all
- analysis of how many policies were sold, by which firms, at what level of commission, and thus the impact of choosing 50% or a different tipping point
- the nature of the service provided to the customer, the cost of the product, and the total amount (in cash terms) that they paid in commission
- the purpose of the commission itself and whether it reflected reasonable costs and profit margins incurred by the firm(s) involved
- the variance of distribution costs, including whether there were significant numbers of firms whose costs were *justifiably* higher than the 16% (in the CC Report) and close to 50%
- the fact that lenders that sold PPI themselves also earned interest on the premium and commission, further exacerbating the true cost of the 'commission' element to the consumer

Our response

We remain of the view that basing our proposed approach around a single tipping point of 50% is fair and appropriate and not remote from the approach the courts would take. Our proposed approach already allows for flexibility around the tipping point, including allowing that in some circumstances undisclosed commission of less than 50% may have created an unfair relationship in particular cases.

Adopting a 50% tipping point is not the same as saying that most or all consumers would think 50% was a reasonable level. Rather, undisclosed commission of 50% is the level at which we think it can be reasonably presumed (albeit rebuttably) that an unfair relationship was created.

There is an important conceptual distinction between commission being so high that it makes the whole relationship between lender and debtor unfair if not disclosed, and being too high economically in relation to efficiently incurred costs in a competitive market. We are concerned with the former, as this was the focus in *Plevin*, not the latter. We are not trying to regulate prices retrospectively or to redress economic detriment caused by high prices in an uncompetitive market.

We consider that the level of the tipping point in the context of our proposed approach is a matter of regulatory judgement. We note that Lord Sumption indicated in *Plevin* that the question of where the tipping point falls is a matter of 'forensic judgement'; in other words, is a matter for a judge's evaluation. We do not think that further information on consumer behaviour and preferences, or on firms' costs, is necessary for seeking to justify the proposed 50% tipping point or identifying potential alternatives.

We are aware of some findings in the county courts of unfair relationships in cases where commission was 45%. We note that, firstly, this figure is not far from our proposed 50%, and secondly, that there were other considerations in those cases, including facts indicating mis-selling had taken place, which would be considered under Step 1 in our approach. So we do not see cause in these cases to change our proposed 50%.

Conclusion

5.68 Overall, therefore, we consider that there is no reason to change the proposed 50% tipping point in our proposed rules and guidance on PPI complaints and *Plevin*.

5.69 However, we do propose to amend the tipping point presumptions slightly by changing '50% or more' to 'more than 50%' (see DISP App 3.3A.4E(1)) and 'less than 50%' to '50% or less' (see DISP App 3.3A.4E(2)). This removes the possibility of an unfair relationship being presumed because commission was exactly 50%, but no redress being due (as our proposed approach to redress at Step 2 is based on commission minus 50%), which could confuse a complainant and be hard for a firm to explain.

Considering evidence at Step 2 – factors that may rebut the presumption

5.70 At paragraphs 5.60 – 5.61 of CP15/39, we explained that the proposed rules and guidance included examples of factors which, respectively, could support the rebuttal of the presumption of an unfair relationship if commission was, or had the potential to be, 50% or more, or the rebuttal of the presumption that there was no unfair relationship if commission was less than 50%.

5.71 We asked:

> ***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?***

General logic of rebuttal

5.72 Some industry responses broadly agreed with our proposed approach, but also expressed concerns that:

- firms might take differing approaches to applying the examples and rebutting the presumptions
- CMCs might 'game' the examples by framing complaints to appeal to them: for example, by suggesting that the non-disclosure of commission of 45% was critical to a complainant's decision making

5.73 These responses therefore suggested that:

- we needed to define more narrowly any such rebuttal circumstances and give detailed guidance on when they could apply and what firms should consider when assessing this
- we should make clear in our rules that complainants citing these circumstances would need to provide credible evidence of them

5.74 Other responses from industry went further, arguing that to ensure certainty and consistency it would be better not to allow any rebuttals of the presumptions at all.

5.75 Most responses from CMCs and consumer bodies:

- Agreed it was appropriate that firms should find a relationship unfair in certain circumstances even if the commission was below 50%. However, some felt the examples were limited and should also cover other circumstances that were more typical of PPI consumers.
- Expressed concern that firms may exploit the other rebuttal circumstances as 'loopholes' to unfairly reject complaints where commission was above 50%.These responses argued that we needed to define the rebuttal circumstances more narrowly and monitor closely how firms applied them.

Our response

We remain of the view that it is appropriate and important to preserve flexibility around the proposed tipping point to reflect the nature of s.140A. The nature of an assessment of whether a relationship is unfair is broad, and we need to reflect this, while providing for certainty and consistency in complaint handling. We do this by providing presumptions that an unfair relationship arises or does not arise in certain circumstances but that these can be rebutted in some circumstances. We also remain of the view that it is helpful to firms and consumers to provide specific examples of such circumstances.

Generally, we do not agree that we should add detailed prescription to such examples, as this would work against their intended purpose of providing appropriate flexibility. However, we consider below the arguments for amending the individual examples.

Where disclosure would have made no difference whatsoever to the customer

5.76 Among responses from industry:

- Some expressed concern that there could be significant variability in firms' views of when disclosure would have made no difference whatsoever to the customer's judgement concerning value, so clearer guidance was needed.
- Some suggested that one scenario where this rebuttal should apply was where the product cost less than £9 per £100 of cover, a reference price the FSA had introduced in Policy Statement 10/12 (August 2010).
- Some suggested that this rebuttal should apply where the nature of the credit product and balances meant premiums were small and thus the commission element above 50% was very small ('de minimis') in real terms.

5.77 Responses from CMCs and consumer bodies expressed concern that the cases and circumstances in which it is likely to have been true are so limited, and the risk of firms misapplying it so high, that we should remove the example.

Our response

We do not consider that this example is likely to lead to inconsistency between firms, or misapplication by them, as our proposed rules and guidance already state our view that this rebuttal circumstance is only likely to be relevant in limited circumstances.

However, we would assess firms' application of this example, and of our overall rules and guidance, as part of our ongoing monitoring of firms' PPI complaint handling.

The suggestion that a policy price of less than £9 per £100 should rebut the presumption of unfairness rests on the argument that the FSA thought that a customer would still have bought PPI at this price, regardless of certain failings in the sales process, and that, by analogy, he would not have been dissuaded from buying by knowing that the commission was more than 50% of this price. We do not agree with this reasoning:

- The suggestion focuses on an objective threshold for 'value for money', whereas Lord Sumption's focus was on disclosure and the consumer being able to assess value for themselves, whatever judgement they might reach.
- The FSA did not assess £9 as 'fair value' in PS10/12, but simply recognised it as a reasonable comparator for the specific purpose of calculating redress in certain single premium PPI mis-sales.

- As far as PS10/12 implied a view that the complainant would have bought PPI anyway, it was that they would have bought a different non-single premium type of PPI where there were only specific failures to consider. This is a very different set of circumstances, and gives no guide to the question of whether the non-disclosure of commission would have made no difference whatsoever to their judgement about the PPI's value.

In line with our comments above concerning costs and RPPPI, we do not agree that a small absolute sum of commission should allow the conclusion that disclosure would have made no difference whatsoever to the consumer's judgement of value. We consider that the principle in *Plevin*, of undisclosed commission impacting a typical consumer's thinking and, beyond a tipping point in percentage terms, being likely to create an unfair relationship under s.140A, remains applicable where the absolute sum of commission is small. (But see below, for discussion of de minimis considerations in the context of assessing redress.)

Where consumer had a 'relevant role in the financial services industry'

5.78 Some responses from industry felt that this example was vague and would cause uncertainty about what roles were relevant and inconsistent outcomes.

5.79 Some responses from consumer bodies and CMCs were concerned that this example could capture many people who worked in retail banking, whether or not it was their job to know about PPI commission.

Our response

We propose to amend this example to clarify that it should only potentially apply where the role in the financial services industry was one which gave the complainant an awareness of the level of commission and anticipated profit share.

Where the insurer provided the PPI to an intermediary rather than the CCA lender and the CCA lender was not party to the commission agreement

5.80 We mainly proposed this example in response to the case of *Axton v GE Money Mortgages Ltd ('Axton')*.[31] In *Axton*, the broker and the third party insurer had an agreement that the insurer provided PPI policies to the broker. The lender was not a party to this agreement. The premium was not added to the amount of the loan. The amount of the agreed loan remained the same and the lender merely responded to the broker's request on the customer's behalf to pay the premium out of the sum to be loaned. No commission was paid by or to the lender for the PPI policies. In *Axton*, the court found that the very limited involvement by the lender was not sufficient to give rise to an unfair relationship.

5.81 Some responses from industry suggested that although our drafting in CP15/39 reflected the specific fact pattern of the *Axton* case, it would be more appropriate to reflect the broader principle expressed in *Axton* and focus on what the lender knew, or did not know, and thus would be able to disclose.

31 Judgment was handed down by the High Court on 22 May 2015.

5.82 Some responses from consumer bodies and CMCs did not agree with this example, saying that, regardless, they would have expected the lender to ensure its supply chain relationships operated in a fair way that served the consumer's interest.

Our response

We do not agree with the consumer body and CMC criticism of this example because we do think it is appropriate to focus on what the lender knew or did not know and thus would be able to disclose as set out in *Axton*.

We now propose some amended drafting of this example to reflect more clearly the broader principle expressed in *Axton* concerning what the lender did not know and could not reasonably have been expected to know and what they would be able to disclose (see DISP App 3.3A.5G(1) as amended).

A consumer's 'track record' in asking about commission on other products

5.83 Responses from industry argued that:

- it is difficult to see why a customer with a track record of showing a close interest in commission should have been offered the same product, but with a lower commission rate, than a less sophisticated customer who did not demonstrate this close interest
- it is difficult to see why a customer who genuinely had such a track record of close interest had not asked about commission at the time of the PPI sale
- at the least, we should make clear that generic assertions of such track record would not be enough and that credible evidence of it would be needed

5.84 Responses from CMCs and consumer bodies did not comment on this example.

Our response

We propose to remove this example from our proposed rules and guidance (see DISP App 3.3A.6G as amended).

A consumer in particularly difficult financial circumstances at point of sale

5.85 Responses from industry argued that:

- This example is too wide and ill defined, introducing unwelcome uncertainty that CMCs may seek to exploit in shaping their complaints.
- A customer's financial circumstances should have been considered by a firm at Step 1, so, having concluded there was no mis-sale of PPI, it is unclear why these circumstances should have additional bearing at Step 2.
- It is difficult to see why a customer who could afford the PPI, but was less financially secure than another customer, ought to have been offered the same product with a lower commission. Nor is it clear why this would have helped their financial hardship, as the overall premium would have stayed the same.

- The example should at least be amended to exclude instances of financial difficulty covered by the PPI policy.

- We should simply provide firms with flexibility at Step 2 to look at the circumstances of each case and assess, on the facts, whether there are particular features that mean redress should be paid.

5.86 However, responses from CMCs and consumer bodies said that:

- We should remove the word 'particularly'. It is vague and sets the bar for rebuttal too high, excluding the significant proportion of PPI consumers who were in financial difficulty and for whom undisclosed commission of less than 50% may still have created an unfair relationship.

- We should make clear that firms should ask whether the complainant was in difficult financial circumstances at the time of sale.

Our response

We do not agree with the industry criticisms of this example, as these mainly misrepresent our position. We are not saying that the consumer in particularly difficult financial circumstances ought to have been offered PPI at a lower commission rate. Rather, we are saying that although such a consumer may have needed PPI and may not have been mis-sold, their circumstances of particular financial difficulty meant that not being told the level of commission by the lender may have created an unfair relationship, even though it was less than 50%. This is because a consumer in particularly difficult financial circumstances is more likely to be sensitive to issues of value and to therefore question whether they should purchase a policy even where the commission amount is less than 50%.

On the other hand, we do not think that this circumstance would have been a common one. So we do not agree that we should remove the modifier 'particularly'. The word makes clear our view that this example would not apply to the vast majority of PPI customers who, by definition, would have been in debt and thus arguably in some financial difficulty.

We also do not agree that we need to prescribe that the lender should enquire at Step 2 about the complainant's financial circumstances at the time of sale. This would be too granular an intervention. In any case the lender may have knowledge of this from its credit assessment at the time of the loan and subsequent payment history.

Other suggested circumstances of rebuttal

5.87 Some responses also suggested the following additional circumstances of rebuttal:

- instances where the consumer themselves pushed for the PPI to be provided

- on the individual facts of a case, even where these do not fit with the FCA's examples and presumptions – consistent with s.140A

- other factors including those which Lord Sumption referred to in the *Plevin* judgment, and a number of others, such as:
  - the borrower's sophistication or vulnerability
  - their previous borrowing and refinancing of loans
  - the length of the PPI agreement and the loan term and whether there was a mismatch
  - whether there were other options available in the market

Our response

We do not consider that we need to add these suggestions to our rules and guidance.

Our proposed rules and guidance make clear that firms can and should look at all relevant matters when assessing fairness.

The main elements of redress at Step 2

5.88 At paragraphs 5.63-5.76 of CP15/39, we proposed that a firm should remedy the unfairness if it concluded that an unfair relationship under s.140A had been created due to undisclosed high commission. The proposed key elements of redress were:

1. the difference between the commission the customer paid (eg 70% of the premium) and 50% (ie 20% of the 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

5.89 However, we also proposed that firms should also consider whether the situation in a particular case requires a different form or level of redress in order to remedy the unfairness found.

5.90 We asked:

> ***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?***

The difference between the commission the customer paid and 50%

5.91 Most responses from industry agreed with our proposed approach to redress.

5.92 Among responses from CMCs and consumer bodies:

- Some said that they *would* agree with the logic of our proposed approach to redress *if* the tipping point was much lower than the 50% we had proposed.
- Some said they disagreed with the proposed logic and that fair redress should instead be the return of all the undisclosed commission, as Mrs Plevin received.
- Some said that fair redress should instead be the return of the full premium. This is because it would generally be more reasonable to assume that the consumer, had they been told the high commission level, would more often than not have decided that the policy was not value for money and not bought it.

5.93 Some responses from CMCs and consumer bodies also expressed broader concerns that:

- we were trying to mitigate the financial impact of *Plevin* and giving a clear signal to firms to minimise redress
- the calculations in our proposed approach would be complex and, given firms' poor track record in this area, give rise to scepticism and probable challenge from complainants
- our approach would lead to less redress than in *Plevin* or other relevant recent court cases, and so force consumers into the expensive and complex process of going to court to get proper redress

Our response

We remain of the view that our proposed approach to redress, centred on the return of that portion of undisclosed commission that exceeded the tipping point, is fair and appropriate. *Brookman* and *Plevin* show that the courts might take a variety of approaches to redress on individual cases. We consider our proposed approach to redress to be a reasonable starting presumption for a regulatory response.

Although it was the remedy in *Plevin* ordered by the Manchester county court, we do not agree that our approach to redress should be the return of all the commission that was not disclosed. This is because we do not think this would fit well, or be consistent, with the central importance Lord Sumption gave to the notion of a tipping point. Also, the consumer, who as would have been established at Step 1 was not mis-sold, had a need for the protection offered by the policy and enjoyed the benefit of that protection before complaining. So it is fair and reasonable for the lender to keep some of the commission from the policy's distribution (i.e. the portion under the tipping point).

Nor do we agree that our approach to redress should be the return of all the premium(s) paid by the consumer. Adopting this approach would dissolve any meaningful distinction between a mis-sale and an unfair relationship under s.140A, and thus between our existing Step 1 and proposed Step 2. In our view, it would (even more than the return of all commission) give excessive redress to the consumer who had enjoyed the benefit of that protection before complaining. We consider it is fair and reasonable for the consumer to have still paid for the underwriting of the policy and for some of the commission from the policy's distribution (ie the portion under the tipping point).

We believe our proposed approach to redress to be fair and appropriate in light of *Plevin*, and have not adopted it to limit the financial impact on firms. Nor do we consider that our proposed approach gives firms this impression. If, in the future, we found that firms were not complying and paying too little redress, we would take robust action.

We do not consider that our proposed approach implies excessive complexity or operational challenges for firms. However, we recognise that, just as for redress under Step 1, there would probably be some period of bedding-in of the approach and some unforeseen issues arising out of particular case scenarios that would need to be sensibly discussed and resolved along the way.

While we also recognise that some complainants and CMCs may be sceptical about firms' accuracy in assessing redress, we consider that this can soon be overcome if firms are diligent and compliant in their approach and redress calculations and explain their redress offers clearly and fairly to complainants.

5.94 Some responses from industry disagreed with the logic of our proposed approach to redress. They argued that redress should instead be the return of the portion of the premium that was in excess of £9 per £100 of cover or that we should follow the approach that HHJ Keyser QC made use of when awarding redress in *Brookman*.

Our response

HHJ Keyser QC used his discretion to formulate a broad remedy that he considered appropriate in the particular circumstances of *Brookman*. (He commented that his remedy resulted in much the same redress as our proposed approach would have done, although he did not elaborate on this.)

We do not feel this approach is one that is readily replicable or suitable for the kind of framework approach we are proposing, which is intended to provide a workable process for firms and bring consistency to their handling of relevant complaints and consumers' outcomes.

Additionally, we do not think that it would be appropriate to base our approach to redress on the difference between the premiums paid and £9 per £100. This is because:

- That price was put forward by the FSA for the different and specific purpose of calculating redress in certain SPPPI mis-sales where there were failures to consider or disclose the non pro rata nature of the refund for early cancellation only. This is a very different set of circumstances from, and has no obvious linkage to, the tipping point concept or consideration of how to redress fairly someone for whom the non-disclosure of commission had created an unfair relationship under s.140A.
- A complainant could have paid undisclosed commission of over 50% but not receive any redress if the overall price was less than £9 per £100. This is not coherent in the context of our approach and does not conform with the approach taken in *Plevin*, which is that non-disclosure of commission over the tipping point is key.

Redress where commission less than 50% caused the unfair relationship

5.95 Some responses from industry were concerned at our suggestion (at paragraph 5.64 of CP15/39) that where factors indicate that an unfair relationship was created despite the non-disclosed commission being less than 50% – for example 40% – then the firm should pay redress based on the difference between that figure and the commission the complainant paid. These responses said this approach would not be operationally feasible and would lead to inconsistency between firms. They said it would be more appropriate for the rules simply to require payment of 'an appropriate amount of redress taking into account all the circumstances of the case'.

5.96 Some responses from CMCs and consumer bodies expressed concern that this approach left too much discretion to firms to choose the percentage to use.

Our response

We believe our proposed approach to redress in such cases is an obvious and natural extension of the logic of our proposed approach in cases where the undisclosed commission was over 50%.

We do not see, and firms did not explain, why this approach would be operationally unfeasible. Nor do we agree that the approach would give firms too much discretion or lead to inconsistency. Any scope for discretion is caused not by this proposed approach to redress, but by our allowance, discussed above, that the presumptions can be rebutted – flexibility which we continue to consider appropriate.

However, we accept that the proposed approach is not necessarily the only way to provide fair redress and agree that the over-arching obligation on the firm is to pay redress that remedies the unfairness found in the circumstances.

As noted, if we make these rules and guidance, we will monitor firms' complaint handling in light of them. We will act robustly if we find unfair approaches, including unfair assessment of redress in complaints where the usual presumptions have been rebutted.

Historic interest

5.97 All responses from consumer bodies and CMCs, and most responses from industry, agreed that in order to award fair redress, it was necessary to assess and include the past interest that the consumer had paid within each individual monthly payment on (notionally) the 'commission above 50%'.

5.98 However, some industry responses said that such historic interest should not be included in redress at Step 2. The main arguments behind this view were that:

- It was inconsistent to propose including historic interest (and thus account reconstruction), as for mis-selling redress, but to say that 'the logic of our approach at Step 2 is not to put the customer back in the position they would have been in if had they been told of the high commission.'[32]

32 See paragraph 5.80 of CP15/39.

- Our approach implied a calculation as if the consumer had bought a product that was cheaper by the portion of commission over the tipping point. However, no such product existed and a lower commission would not have made the policy cheaper.

- A better approach would be not to include historic interest and simply return the amounts of each commission charge over 50% (plus simple interest).This would fairly return any undisclosed surplus commission, and better recognise the uncertainties and limited options the consumer would have faced if had they been told the commission.

Our response

We do not agree that our approach to redress at Step 2 generally, or to historic interest specifically, implies any assumption that the customer would have bought an alternative PPI policy that was cheaper by the amount of the excess commission over the tipping point. Therefore, we do not need to take into account whether alternative cheaper PPI policies existed or were available to the consumer. Rather, as stated above, our proposed approach simply seeks to redress the customer for that element of undisclosed excess commission which created the unfair relationship under s.140A.

It is in that specific sense, of our approach not second guessing what the consumer would have done had they been told of the commission, that we meant that our approach was different from the 'but for' logic at Step 1. We did not mean that our overall approach to redress had no element of restoring the consumer's financial position to what it would have been without the undisclosed excess commission. We see no inconsistency between our description of the Step 2 approach and the proposed return of the additional historic interest the consumer paid due to the element of undisclosed excess commission that created the unfair relationship under s.140A. For the same reasons, we remain of the view that not returning that additional historic interest would leave the complainant inadequately redressed for the unfair relationship under s.140A created by the undisclosed excess commission.

8% annual simple interest

5.99 Most responses from industry agreed that to provide fair redress for the 'out of pocket' expense to the customer from the undisclosed excess commission and historic interest on it, firms should add annual simple interest since the dates of the relevant monthly payments by the consumer.

5.100 However, some responses from industry argued that the rate of simple annual interest should be lower than 8% because:

- for the time period since s.140A came into force (April 2007), 8% is far above base and market rates and thus un-commercial and punitive

- 8% has fallen out of favour with the Courts in relevant recent cases, consistent with this lower rate environment

- it is unfair to require firms to pay such high interest for periods where the law was silent on the obligation to disclose commission, or periods where the law said non-disclosure of commission did not give rise to an unfair relationship (for example, following the Court of Appeal decision in *Harrison v Black Horse*)

- something less than 8% would better reflect the unusual nature of the undisclosed PPI commission issue
- although DISP App 3 provides for 8% interest, the Financial Ombudsman Service is not required to apply this. Section 229 FSMA allows it to add interest to an award at its discretion, and the exercise of that discretion should, as with all other aspects of its determination, reflect what is fair and reasonable in the circumstances of the case

Our response

We remain of the view that 8% is generally an appropriate rate of simple interest to apply within the proposed approach to redress at Step 2. It has been the rate used for a number of years for PPI redress at Step 1 (for mis-sales) and we see no relevant difference between mis-sale and undisclosed commission redress, where in both cases the issue is the consumer not having had the use of the redress money, that would justify a lower simple interest rate.

We are aware that some recent court cases have applied various lower rates. However, this does not persuade us to change our approach, as:

- Our established choice of 8% is an exercise of our regulatory judgement, in light of what seems to us generally fair and reasonable, rather than a rigid reflection of practice in the courts.
- Most of the parties involved in the relevant court cases, and their financial circumstances, did not seem to us to closely resemble typical PPI consumers. They were generally reasonably affluent and involved in business enterprises or investments, and so provide little obvious reason for us to change our approach to PPI complainants.
- It is generally reasonable to assume that PPI consumers, even if they had some savings during the period they held PPI, were day to day debtors who would probably have had to make up the sums of money removed from them by mis-sold PPI or undisclosed commission through increased loans and credit card use. We do not think it is reasonable to assume that those PPI sums, had they been left with these consumers, would generally have been placed in savings or investments.
- While it is right to say that base rates and savings rates have remained low since 2008, average interest rates on unsecured personal loans have mostly remained above 8%, and on credit cards above 15%. It is these rates at which day to day debtors would have been likely to have made up the sums of money removed from them by mis-sold PPI or undisclosed commission.
- We do not agree, as stated earlier, that April 2007 should be a significant watershed in our approach. Earlier commission sums may therefore need to be included in redress, including from periods when base rates and lending rates were much higher than now. Thus the 8% covers a wide period of time and range of base rates and lending rates.

However, firms do have the option of including a lower rate of simple interest in PPI redress (at Step 1 or Step 2) if they can justify this as fair and appropriate in the particular circumstances of the complaint and the complainant's financial circumstances.

De minimis considerations in assessing redress at Step 2

5.101 Concerning our overall proposed approach to redress at Step 2, some responses from industry argued that there should be a de *minimis* threshold below which redress should not have to be paid – for example, because the excess undisclosed commission was so small it could not reasonably be considered 'unfair'.

Our response

As we set out earlier, we do not agree that the presumption of unfairness should be set aside when the premiums which the high undisclosed commission was part of were low in absolute terms. Nor do we agree that redress that is low in absolute terms need not be paid.

However, we accept that it may be reasonable for a firm, in order to avoid disproportionate processing and administrative costs, to take a pragmatic and simplified approach to calculating redress where it is clearly reasonable to assume the amount of redress is likely to be small, as long as this simplified approach does not disadvantage the complainant.

So, for example, some firms have argued that balances on many running-account and restricted-use credit agreements are small, but that line by line assessment and reconstruction of these accounts is complex.[33] In such circumstances, we consider that a firm may reasonably be able to:

- assess in an approximate way that, in light of the average balance on the account, the redress due would be modest (for example, in the tens of pounds or less), and
- offer a sum in this region, which makes sure there is no risk that the complainant is paid too little redress, but which is not underpinned by line by line assessment of the account history or calculation of the precise redress sum that, strictly, would be due

Conclusion

5.102 Overall, therefore, we consider that there is no reason to change the proposed key elements of redress at Step 2 in our proposed rules and guidance on PPI complaints and *Plevin*.

Fairness and redress where commission and profit share rates vary over time

5.103 Some responses from industry asked for more clarity about:

33 For example, because running-accounts, unlike credit cards, often have different repayment schedules for each item purchased on them.

- how the tipping point and presumptions should work where the commission might vary after the point of sale

- how firms should assess redress for PPI policies where the commission level has varied during the life of the policy

5.104 This scenario of varying commission was felt to be particularly likely with RPPPI, where policies could last for many years, commission was earned and paid monthly, and commercial arrangements with insurers could change every few years.

Our response

Having considered these points, we are amending our proposed rules and guidance to make clear the following:

- A firm should presume that failure to disclose gave rise to an unfair relationship if the anticipated profit share plus the commission reasonably foreseeable at the time of the sale was more than 50% of the total amount paid in respect of the PPI policy (see DISP App 3.3A.4E(1)(b)).

  We consider that 'reasonably foreseeable' in this context would be likely to:

  – Include the situation where the firms involved in the transaction were party to arrangements or an agreement where commission rates or anticipated profit share *would* rise during the life of the relevant policy and thereby, alone or together, exceed 50%.

  – Exclude the situation where commission rates together with profit share *might* rise over 50% due to the renegotiation of arrangements or existing contracts with the insurer, or the negotiation and entering into of new ones with that insurer or another. In this scenario, the likelihood of such changes may have been foreseeable but the level of commission and profit share that might result from the changes was not.

- Where a firm concludes that the anticipated profit share plus the commission reasonably foreseeable at the time of the sale was more than 50% of the total amount paid in respect of the PPI policy (and that this was not disclosed and that this non-disclosure gave rise to an unfair relationship), the firm should then apply our proposed approach to redress only to those periods of the policy's life where *the actual level of commission paid, in combination with the actual value of any payment(s) made under profit share arrangements, was more than 50% of the total amount paid* (see DISP App 3.7A.5E).

  We appreciate that, even for regular premium PPI with monthly payments, these relevant 'periods' are likely to be longer term and governed by the arrangements or contractual agreements (often annual) in place during those longer periods.

- Where a firm concludes that the anticipated profit share plus the commission that was reasonably foreseeable at the time of the sale was 50% or less (and that the non-disclosure of this level of commission and profit share did not give rise to an unfair relationship at the point of sale), then the firm does not need to calculate or pay redress if it turned out subsequently that in fact there were periods where the actual level of commission and profit share was more than 50% (see DISP App 3.3A.4E(2)(b)).

We are also amending the description of the disclosures we are concerned with at Step 2 (DISP App 3.3A.2E) to reflect the proposed inclusion of profit share arrangements in our approach and these amendments concerning commission and profit share rates that vary over time.

Q20: Do you agree with our proposed clarifications that firms should presume that the failure to disclose gave rise to an unfair relationship where the anticipated profit share plus the commission reasonably foreseeable at the time of the sale were more than 50%, but then calculate redress on the basis only of those periods where the actual level of commission and profit share together was more than 50%?

Other elements of the proposed approach to redress at step 2

5.105 As well as the key elements of redress at Step 2, at paragraphs 5.77-5.81 of CP15/39 we explained that our proposed rules and guidance provide for four main differences concerning other elements of redress at Step 2, compared to our established approach at Step 1:

- *Previous successful claims on the policy:* Unlike our existing approach to redress in DISP App 3, which allows the firm to deduct the value of a previously successful claim, we proposed not to allow for redress at Step 2 to be reduced in this way.

- *Rebates:* We proposed that where the complainant had 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, where we do allow rebate deduction.

- *Interaction with alternative redress procedure:* We proposed that if a firm decided at Step 1 that a customer is due alternative redress (under existing DISP App 3.7.9E), then it should also (if it is the lender) consider the complaint under Step 2 and, if it concludes redress would be due at Step 2, pay the complainant the higher of the Step 1 or Step 2 redress.

- *Live regular premium policies:* We proposed that for a live RPPPI policy, the firm should, as well as offering and paying any redress, tell the complainant the level of commission on the PPI that they are paying, and offer them an informed choice of whether to continue the PPI policy on that basis or cancel it without penalty.

5.106 We also explained that other aspects of our established approach to redress at Step 1 were carried across to our proposed rules and guidance at Step 2:

- *Loan restructuring* (DISP App 3 3.7.4E)

- *Cumulative financial loss in a chain of refinanced loans and single premium policies* (DISP App 3 3.9.3G)

- *Consequential loss* (DISP App 3 3.9.2G).

5.107 We asked:

> ***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?***

Redress and previous claims on the policy

5.108 Some responses from industry disagreed with our proposed approach. They said we should provide at Step 2, as we do at Step 1, that if a customer had previously had a successful claim on the policy then this amount should be deducted from any calculation of redress due.

Our response

We do not agree. Deducting the value of a previous claim makes sense in the context of redress at Step 1, which is based on an assumption that the consumer, but for the significant sales failings, would not have bought the PPI policy. In that assumed scenario, they would not have had a policy to make a successful claim on.

In contrast, and as noted above, the logic of our approach to redress at Step 2 does not take a view on what the consumer would have done had they been told of the commission, but merely seeks to redress them for the unfair relationship created by the non-disclosure of the commission over the tipping point. On this scenario, they would still have had the policy and been able to claim on it. So there is no reason to deduct previous claims from the redress due at Step 2.

Rebates and redress

5.109 Many responses from industry criticised our proposed treatment of rebates. They argued that it allowed some double-recovery for customers whose complaints are upheld at Step 2 but who had already been rebated all or part of their premium, and therefore of the commission, when they cancelled their policy.

Our response

We now propose to *allow* previously rebated commission and profit share sums above the tipping point to be reflected in, and thus reduce, redress at Step 2 (see DISP 3.7A.6E).

The effects of this proposed change can be seen in the following simplified worked example (which assumes there was no mis-sale and leaves out the historic interest and 8% elements which would need to be included in redress to a consumer):

- The consumer paid £1,000 single premium for a PPI policy. Commission was 55% and anticipated profit share 20%. Non-disclosure of this 75% at the time of sale created an unfair relationship.

- Following a complaint, the firm calculates redress due at Step 2 as 70% (reflecting 55% commission plus actual profit share sums up to the point of cancellation of 15%) minus 50% (the tipping point) = 20%; and 20% x £1000 premium = £200.

- The consumer had previously cancelled the PPI early and got £600 rebate.

Under our approach in CP15/39, the consumer would receive £200 redress in addition to the £600 rebate they previously received.

Under the proposed change, we would instead say that:

- of the £600 rebate, £420 (i.e. 70%) represented commission and actual profit share, of which £120 (20%) represented commission and actual profit share over the 50% tipping point

- so the firm handling the complaint at Step 2 now needs to pay only a further £80 as redress (£200 minus £120)

Q21: Do you agree with our proposed modification of allowing rebates to be reflected when calculating redress at Step 2?

Interaction with alternative redress or other partial redress at Step 1

5.110 Responses from industry supported our proposal that firms should pay the higher of alternative redress at Step 1 or *Plevin* redress at Step 2. But some also asked:

- if this contradicted our proposed guidance (at DISP App 3.1.1(G)(3)) that a lender should look at Step 2 only if no or partial redress has been provided under Step 1

- whether and how forms of partial redress at Step 1 other than alternative redress should be treated at Step 2

5.111 Some responses from CMCs and consumer bodies agreed with our approach, but others argued variously that:

- if a firm has decided that alternative redress (based on the £9 per £100 price) is due at Step 1, and that redress is due at Step 2, then the complainant should receive both the alternative redress and an amount reflecting undisclosed excess commission within the £9 per £100 price

- alternative redress is already difficult to explain to complainants and so comparing it with the calculation of Step 2 redress will be even more complex and inevitably lead to consumer confusion

Our response

We do not agree that it is overly difficult to explain clearly to the complainant the sums of redress they would be due under Step 1 alternative redress and Step 2 respectively and the higher of these.

We do not agree with the suggested hybrid approach of adding to alternative redress at Step 1 a sum of Step 2 redress that is based on the undisclosed excess commission of the assumed RPPPI alternative used in the alternative redress calculation. The alternative approach to redressing mis-selling assumes, in certain limited circumstances, that a customer who bought a single premium PPI policy would, if their sale had been properly conducted, instead have bought a regular premium policy. However, clearly there was no actual sale to the customer of that regular premium policy, and so there can have been no commission or non-disclosure of commission either.

However, we do now propose to amend our rules and guidance to clarify that:

- where a firm considers a complaint under both steps, and assesses under Step 1 that partial redress is due (for example, because alternative redress is appropriate, or because it intends to deduct the value of a previously paid claim on the policy), then it should pay the higher of that partial Step 1 redress or the redress it assesses as due at Step 2 (see DISP App 3.7A.10E as amended)
- where a firm that is a lender has previously paid partial redress at Step 1 (or is aware that another firm has previously done so), it should assess what redress might be due at Step 2 and, if this sum is higher than the partial redress the consumer received previously, pay them the difference (see DISP App 3.7A.12E)
- where a firm is assessing redress at Step 1 and is aware that another firm has previously paid redress at Step 2, the firm may deduct this from the redress due under Step 1 (see DISP App 3.7.16E)

Redress and live regular premium policies

5.112 Most responses from industry agreed with our proposed approach to live RPPPI policies but some asked for further clarity on:

- whether the commission of the live policy had to be disclosed only for complaints upheld at Step 2, or for any complaint considered at Step 2
- whether the disclosure should be of 'commission' as defined in our proposed rules and guidance
- whether the disclosure should be of the 'commission' at the original point of sale and/or as assessed in the complaint, or of the commission as it would now be going forward if the consumer chose to maintain the policy
- how the information can be provided in a way that is consistent across firms and easy for customers to understand and compare

5.113 Most responses from CMCs and consumer bodies agreed with our proposed approach but some also asked if we expected firms to tell any consumer who asked what their commission is or was, even if they had not complained.

5.114 Some responses from industry said we should further specify that if disclosure of the commission is made and the consumer chooses to continue the PPI policy, then:

- there will be no scope for them to subsequently allege an unfair relationship due to that level of commission, or
- if they do not bring a complaint about non-disclosure of commission within 30 days, there will be a presumption that their relationship was not unfair for as long as the commission rate remains at or below the level disclosed

5.115 Other responses from industry disagreed with our proposed approach, as:

- they would not wish the details of commercial arrangements with partners to be disclosed because these are only one aspect of a wider set of commercially sensitive terms, and it would work against the FCA's competition mandate
- a lender is unlikely to have a right to unilaterally cancel a customer's policy

Our response

To help the complainant decide whether to retain their live RPPPI policy, the firm should disclose the current level of commission and anticipated profit share – i.e. not the commission and anticipated profit share at the time of sale (see DISP App 3.7A.8E).

We do not think we need to specify how firms should make such disclosure. This would be too granular an intervention and we can reasonably rely in this context on Principle 7 (firms' obligations to provide consumers with information that is clear, fair and not misleading). Consistency in disclosure should anyway be helped by our proposed definitions of commission and anticipated profit share.

Our proposal expressly provides only for such disclosure for a live RPPPI policy where the firm has upheld and is redressing a complaint at Step 2.

However, where a firm has *rejected* a complaint at Step 2, we would expect the firm to explain clearly to the complainant the reasons for this rejection. We presume that such reasons would often be that the commission and anticipated profit share was disclosed at point of sale, or that it was not disclosed but was less than 50%, or that it was more than 50% but other factors meant the presumption of unfairness could be rebutted. So in practice, we anticipate that most complainants with live policies who were rejected at Step 2 would at least be told whether the commission they had been paying and the profit share anticipated at the point of sale were together under or over 50%.

Our rules and guidance in ICOBS do not currently require firms to disclose commission or profit share arrangements on request to retail customers of general insurance.[34] Our proposals here do not change that position. Clearly, however, a refusal by a firm to disclose this on request may be more likely to provoke a complaint about undisclosed commission and profit share.

On the other hand, as set out above, we consider that firms that were both lender and seller will generally need to engage Step 2 if the complaint is not upheld at Step 1, even if commission or profit share is not referred to in the

34 Since April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for commission disclosure by credit brokers.

complaint. So the fact that a consumer does not know the commission or profit share, or has asked what it is but not been told, should not stop the fairness of the relationship being considered by the firm at Step 2.

If a consumer with a live policy is told of the current level of commission and anticipated profit share, then we agree that this disclosure is likely to mean that the relationship is not (or is no longer) unfair under s.140A, at least for as long as these remain at or below the level disclosed. We consider these effects of the disclosure to be self-evident in the context of *Plevin* and do not, therefore, see a need to set them out in additional rules or guidance.

We do not consider that such disclosure requires or risks revealing commercially sensitive arrangements between the lender and other parties or is anti-competitive. Our proposal does not specify that commission and profit share should be separately disclosed.

We are not proposing that lenders unilaterally cancel a customer's RPPPI policy. Instead, we propose that the lender's disclosure should put relevant complainants in the position to make an informed choice about whether to request such cancellation. Such a request can then be progressed by the lender with the insurer in their usual way, though the lender should ensure that no penalty is imposed or passed on to the consumer.

Loan restructuring, cumulative financial loss in a chain of loans, consequential loss

5.116 We did not receive specific feedback concerning these aspects.

Our response

We understand that redress calculations and restructuring, particularly in chains of loans, can be complicated. We also note the broader point made in some responses about the importance of consistency and alignment with the Financial Ombudsman Service over redress calculations.

Accordingly, if we proceed to make final rules and guidance, then to assist firms and complainants and help achieve this consistency, we would provide relevant worked examples of redress calculations in different SPPPI and RPPPI scenarios. We would expect the Financial Ombudsman Service to give due weight to such examples, if and when they are finalised, when it is deciding fair redress in relevant cases.

Previously rejected complaints

5.117 At paragraphs 5.87-5.89 of CP15/39, we:

- proposed not to require (or otherwise expect) firms to proactively re-open or review previously rejected PPI complaints against our proposed new rules and guidance, even if the previous complaint had expressly raised non-disclosure of commission

- said that we did not think a consumer could re-submit a complaint that is the same, or covers the same subject matter, as a previously submitted complaint
- said that in our view, where a consumer had previously made a complaint about a PPI sale that did not expressly raise undisclosed commission as an issue, and this complaint was rejected, then, in light of *Plevin*, they remain free to raise this additional issue about the policy with the lender (if the underlying credit agreement is within s.140A-B) who would then have to assess that complaint at Step 2

5.118 We asked:

> ***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?***

5.119 Most responses from industry agreed with our proposed approach, though some had concerns about the potential involvement of CMCs (see below).

5.120 Some responses from industry, however, disagreed that consumers should be able to raise the issue of undisclosed commission on a PPI policy that they had previously and unsuccessfully complained was mis-sold. These responses argued that the previously rejected complaint about the PPI policy and its sale was handled appropriately at the time and that the subsequent new case law in *Plevin* should not be applied retrospectively to the same policy and sale by allowing the consumer to raise the issue now.

5.121 Some responses from industry asked us to clarify:

- whether we consider that a previous complainant who now raises with a firm the additional issue of undisclosed commission about the same policy:
  - was obliged to do so within 6 months of receiving the firm's final response or else fall out of time to have the firm or the Financial Ombudsman Service consider it, or
  - instead, was making a *new* complaint, for the purposes of complaint handling obligations, reporting and the right to go to the Financial Ombudsman Service (potentially for the second time), such that it was irrelevant whether 6 months had passed
- what we expect where a further complaint from a previously rejected customer does not expressly raise the issue of undisclosed commission
- whether it makes any difference to our view if the consumer who raises with the firm the additional issue of undisclosed commission about the same policy is doing so more than 3 years after their original complaint, or more than 3 years after receiving a customer contact letter from a firm explaining potential weaknesses in selling practices that may have impacted their sale

Our response

Whether individual complaints are covered by our complaint handling rules or fall within the jurisdiction of the Financial Ombudsman Service would need to be decided on a case by case basis, including by the Financial Ombudsman Service in respect of the cases referred to it.

However, our view, broadly, is that:

- *Plevin* has highlighted a ground for complaint that is quite different from the grounds focused on mis-selling that have featured in most PPI complaints.

- In addition, whilst our existing rules and guidance setting out how firms should handle complaints relating to the sale of PPI require firms to establish the true substance of the complaint and take a broad interpretation of the issues raised, they do not specifically require lenders to consider as a matter of course whether the non-disclosure of commission or profit share caused the consumer detriment. So far as we are aware, lenders have not routinely considered that issue when assessing complaints, unless it was raised by the consumer.

- Therefore, a consumer who has not previously complained expressly about undisclosed commission or profit share, and not previously had their full premium returned to redress a mis-sale, can make what we regard as a new complaint to a lender and, regardless of whether it expressly raises undisclosed commission and profit share or not[35], have that new complaint assessed by the lender at Step 2 and, if dissatisfied with the firm's response, refer that Step 2 complaint to the Financial Ombudsman Service - and this remains the case regardless of whether:

  – (for the purposes of DISP 2.8.2R(1)) the new complaint is made more than 6 months after the firm's final response to the first complaint

  – the Financial Ombudsman Service considered and rejected (or did not award full return of premium as redress in respect of) a previous complaint, *unless* the consumer expressly complained about undisclosed commission or the Financial Ombudsman Service considered that issue as part of its investigation into the sale.

Where appropriate, we would expect a firm, in its response at Step 2, to make clear that:

- it had previously considered general issues around the sale (at Step 1)

- its new final response deals with the issue of undisclosed commission only (at Step 2)

- the consumer can refer the new final response (only) to the Financial Ombudsman Service, if dissatisfied with it

35 In our response under para 5.31 above, we note that the proposed rules and guidance, together with our existing rules and guidance, would have the effect of generally expecting lenders to consider the issue of undisclosed commission or profit share at Step 2 when they assess PPI complaints within the scope of s.140A-B and not fully redressed as mis-sold, even if this issue is not expressly raised by the complainant.

We do not consider that any of this amounts to inappropriately applying the subsequent new case law in *Plevin* retrospectively. This is because, in our view, in most previous PPI complaints the issue of undisclosed commission or profit share was neither known to, nor raised by, the complainant, nor considered by the firm. The issue was accordingly not considered in light of the previous case law.

However, where a previous complaint did expressly raise the issue of undisclosed commission or profit share, or the firm can show that it did expressly consider the issue (or, as noted above, the Financial Ombudsman Service considered the issue), then we accept that the issue of undisclosed commission or profit share is likely to have been considered in light of the case law at the time and/or that the consumer is likely to have known (or ought to have known) about that issue. As such, a subsequent complaint need not be considered at Step 2 but instead could probably be fairly rejected as not disclosing new issues for investigation and/or as being out of time.

Consistent with these views, we consider that for the purposes of the three year limb of our existing time limit rules (at DISP 2.8.2R(2)):

- only a knowledge or broad understanding that specifically relates to the level of commission they paid should ordinarily be regarded as making a consumer aware that they have cause for complaint about undisclosed commission and as starting the three year period for them to have a complaint concerning this considered

- a consumer who knew (or ought reasonably to have known) only that they had cause for complaint about their sale generally (for example because they had a claim on the policy rejected on the grounds of ineligibility or exclusion or had received a customer contact letter explaining that they may have been mis-sold) would not ordinarily have been aware of having cause for complaint about undisclosed commission

We have proposed a new piece of PPI-specific guidance to this effect about the application of DISP 2.8.2(2)R (see new DISP 2.8.8G). Although this rule applies directly only to the Financial Ombudsman Service, as usual we would expect firms to have regard to it when making judgements about whether individual complaints have been made in time and need to have their merits considered under DISP 1.8.1R.

For the avoidance of doubt, it follows that where a firm (that is both seller and lender) receives a complaint from a consumer who, for example, received a typical industry customer contact letter more than 3 years before, the firm will ordinarily be able not to consider the merits of the complaint at Step 1, but will ordinarily remain obliged to consider the merits at Step 2 (whether or not the complaint expressly raises undisclosed commission, as discussed previously).

5.122 Most responses from CMCs and consumer bodies disagreed with our proposed approach on the grounds that it did not go far enough to protect consumers. These responses suggested, variously, that:

- Previously rejected mis-selling complaints should be proactively reopened and reassessed by firms under Step 2, because not to require this puts too much onus on the consumer to make a new complaint and will leave detriment from undisclosed commission unaddressed.
- Some previous complaints about commission that were rejected should be re-opened or considered in new complaints, if they were rejected by firms after November 2014 (the *Plevin* judgment) or, alternatively, after October 2012 (when Mrs Plevin lodged her appeal with the Court of Appeal following the initial hearing at Manchester County Court on 5 October 2012).
- All previous complaints about commission that were rejected should be re-opened or considered in new complaints. To exclude any would be:
  - unfair, as it treats them more harshly than those who complain about commission after the FCA's intervention
  - perverse, as it would exclude precisely those consumers who were engaged enough to have raised commission before the FCA's proposed intervention
  - incorrect in law and in principle, because *Plevin* was declaratory on the law on unfair consumer relationships (on the issue of non-disclosure of commissions) as it has stood since s.140A came into force, so most or all previously rejected 'non-disclosure' complaints were decided incorrectly
- Previous complaints about commission that were rejected should be proactively reopened by firms and reimbursed automatically where the firm knows from its own records that the tipping point was exceeded.

Our response

Our view remains that, by taking an approach which considers whether the issue of undisclosed commission or profit share was expressly dealt with or not at the time of the original complaint, our proposal strikes the right balance between being fair to consumers and avoiding putting retrospective obligations on firms.

We do not think that this approach is affected by, or should be changed in light of, the various stages in the judicial process that ultimately led to *Plevin*. If a complainant raised a complaint about undisclosed commission or profit share in light of the *Plevin* litigation, and that complaint was rejected by the firm in question, then it would have been open to the complainant to refer the complaint to the Financial Ombudsman Service. And we do not consider that the fact (which we accept) that *Plevin* was declaratory of the law on unfair relationships in this context as it has stood since s.140A came into force means that previously rejected complaints about commission or profit share were wrongly decided, or, in the context of our existing complaint handling requirements, need to be reassessed.

We also do not consider that our approach places too much onus on consumers who had previously complained unsuccessfully about mis-selling to understand the new issue of undisclosed commission and complain about this. Given they have complained previously, they are likely to be reasonably confident and engaged consumers. Also, our campaign will specifically aim to provide information that is relevant to consumers in this position and encourage them to re-engage with the PPI issue. We have also asked firms to commit to various voluntary commitments, including ensuring that previously rejected complainants are quickly directed to a new short *Plevin* complaint form which does not ask questions that they would be unable to answer (such as 'did you pay high commission?'). And as noted earlier, we would anyway expect firms who are both the PPI seller and lender to assess new complaints at Step 2 even where these do not expressly raise the issue of undisclosed commission or profit share.

Previously rejected complaints and CMCs

5.123 Some responses from industry expressed concern that CMCs may:

- re-use existing customers' letters of consent to make Step 2 only complaints, which will drive increased complaint volumes and costs for firms
- re-submit previously rejected complaints, including those rejected on the grounds that no PPI had been sold.

5.124 These responses therefore said that:

- CMCs who have previously made a complaint on a customer's behalf about a PPI sale, should seek fresh authority to make any new complaint about commission, especially where an earlier letter of authority is over six months old
- such fresh letters of authority should have to follow the Principles For Letters Of Authority For PPI Complaints[36]
- clarification was needed about whether CMCs could seek fees if they had not obtained a fresh letter of authority
- CMCs should be required to undertake appropriate due diligence to establish whether their customers have a policy and complaint that is within the scope of our proposed rules and guidance before bringing the complaint
- we should work closely with the CMR before any final rules and guidance to ensure that CMCs' practices in these areas are closely monitored

Our response

In CP15/39 (para 5.89) we said that where a customer previously made a complaint about a PPI sale using a CMC or other paid advocate, then in our view, and that of the CMR, 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 seek a fee from any redress resulting from that new complaint.

36 This was agreed between various BBA and Professional Financial Claims Association (PFCA) members in December 2015, and records best practice for letters of authority, aimed at delivering the best outcomes for both customers and firms.

As noted in Chapter 2, we do not yet regulate CMCs and so cannot currently intervene to set rules and guidance for them concerning their involvement in PPI complaints. However, we do discuss relevant matters with the Financial Ombudsman Service, the CMR and CMC trade bodies, and would continue to do so following any intervention.

Undisclosed commission – the lack of proactive measures and the deadline

5.125 In paragraphs 5.82-5.86 of CP15/39 we explained that we proposed:

- not to require (or otherwise expect) firms to proactively review, or contact consumers about, past PPI sales that involved undisclosed commission
- to include complaints relating to *Plevin* and undisclosed commission within the scope of our proposed deadline on making PPI complaints

5.126 Responses from industry supported these proposals:

- seeing them as a logical continuation of our established complaints-led approach to PPI redress more generally
- agreeing that the issue of undisclosed commission following *Plevin* was not a situation in which a s.404 scheme would be appropriate or proportionate
- considering that consumers potentially impacted by undisclosed commission would be sufficiently prompted to complain by our proposed wider consumer communications campaign
- agreeing that complaints relating to undisclosed commission should be subject to the deadline, in order to achieve our wider aim of bringing certainty and an orderly conclusion to the PPI issue

5.127 In contrast, most responses from CMCs and consumer bodies argued that we should require firms to proactively contact consumers and tell them what commission they paid and their right to complain about this and seek redress. These responses said this was necessary because:

- it is unreasonable to rely on a complaint-driven approach to undisclosed commission when, by definition, most consumers will not know the commission they paid
- a complaints-led approach will increase administrative costs for firms, provide a windfall to CMCs and take fees from complainants' redress
- not requiring proactive action due to the limits of application of Principle 6 to credit agreements is to let firms off the hook on a technicality, to consumers' detriment
- we had not said what proportion of *Plevin*-impacted sales could be dealt with under Principle 6 or through a s.404 scheme, nor assessed these options

5.128 Some responses from CMCs and consumer bodies argued specifically that we should establish a s.404 review concerning undisclosed PPI commission as:

- there has been significant consumer detriment
- it is not relevant that we did not require commission disclosure, as the relevant criterion for s.404 is whether there has been any kind of failure by a firm that gives rise to a remedy at law – which *Plevin* clearly says there was
- the issue of undisclosed commission above a tipping point is tailor made for a s.404 scheme, as the relevant considerations are similar across cases and straightforward to assess

5.129 All responses from CMCs and consumer bodies, including those few that supported the idea of the PPI deadline generally, disagreed with our proposed inclusion of complaints about undisclosed commission within the deadline's scope because:

- the issue was a new one, raised only at the end of 2014 by the Supreme Court
- the issue was complex and would take consumers some time to grasp
- the judgment implies significant consumer detriment and potential redress, yet we were unfairly proposing to call time on this process before it had even started
- we had given no good reason why complaints about this new matter should be cut-off so soon or why the normal 3 years from awareness of a problem should not apply to them
- our weak analysis of the effect of the proposed communications campaign and deadline for PPI complaints in general made it hard to see how we could be so confident that these interventions would be fair and beneficial for PPI consumers affected by undisclosed commission
- some complainants would inevitably fall out of time while being passed between or, worse, not being passed between, lender and seller at steps 1 and 2
- *Plevin* claims will continue to be made to the courts after the deadline, so there would not be certainty or orderly closure anyway

Our response

We remain of the view that our proposals are fair and proportionate. 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. 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.

We are not dis-applying Principle 6 and root cause analysis guidance: we simply explained in CP15/39 that it would 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. However, even for those credit agreements where Principle 6 and this guidance does apply, we remain of the view that the consumers who may have been affected by undisclosed high commission will be adequately prompted to act before the proposed deadline by our wider consumer communications campaign and partnership activity (and from other consumer body advertising and messaging). So in practice, firms are unlikely to need to take any further action about those credit agreements that do fall under the root cause guidance.

We do not consider that our complaints-led approach places too much onus on consumers to complain about something (commission and profit share) that they don't know they weren't told about. As set out in chapter 3, our campaign will provide information to consumers about the *Plevin* issue and encourage them to engage with it and consider their own position. And again, we would expect relevant firms to assess new complaints at Step 2 even where these do not expressly raise the issue of undisclosed commission or profit share, or provide few details about it, or show little understanding of it.

We remain of the view that excluding the potentially numerous complaints involving undisclosed commission from the scope of the proposed deadline would materially adversely affect the successful delivery of our aims. In particular, such exclusion would undermine the certainty and orderly conclusion which we continue to believe the proposed deadline and campaign would bring.

PPI complaints and other court decisions

5.130 In paragraphs 5.90-5.93 of CP15/39, we noted that the courts have considered, and will continue to consider, issues similar to those raised in *Plevin* in other cases. One such case was that of *McWilliam v Norton Finance*.[37] We proposed that:

- Our proposed rules and guidance on PPI complaints and *Plevin* should not reflect *McWilliam* at this stage.
- We should carve out PPI complaints raising issues similar to those in *McWilliam* from our existing rules and guidance for other types of PPI complaints (DISP App 3). That leaves them to be dealt with under our high level complaint handling rule in DISP 1.4.1R, giving firms flexibility to consider any *McWilliam*-type complaints about PPI on a case-by-case basis.
- *McWilliam*-type complaints about PPI should be included in the scope of our proposed deadline.

5.131 We asked:

> ***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?***

5.132 Most responses from industry agreed with our proposed approach, on the grounds, variously, that:

37 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.

- the volume of such complaints to firms, and their uphold rates, do not justify separate rules and guidance dealing with them

- the *McWilliam* decision is primarily concerned with issues of fiduciary duties (albeit the facts involved the sale of PPI) and so can be differentiated from the key points which our proposed rules and guidance in CP15/39 seek to address

- it would be dangerous to make generic rules based on individual cases, especially those of questionable value as precedent based on their individual facts, quality of argument and quality of reasoning; *McWilliam* was not fully argued and contested and has not set a clear precedent and decision in the same way as *Plevin*

5.133 However, some responses from industry felt that our proposed approach did not go far enough:

- our stated intention to keep the case law under review and revisit the question in the future if necessary creates unhelpful uncertainty

- we should also exclude from DISP App 3 other known court cases involving s.140A and PPI, to bring certainty and help the PPI issue to an orderly close

- we should exclude fiduciary duty complaints about PPI from DISP entirely, as they require detailed analysis of the parties' relationship, roles and expectations that is best undertaken by the courts

5.134 Some responses from CMCs and consumer bodies agreed with our proposed approach to *McWilliam*. Others, however, argued that *McWilliam*-type PPI complaints:

- Should be included in DISP App 3 because:

  – This would provide more clarity for firms and potential complainants.

  – The courts' key reason for deciding in favour of the consumers in both *Plevin* and *McWilliam* was the lack of transparency caused by non-disclosure of commissions in the sale of PPI. While the legal remedies may be different in the two cases, the rationale in *McWilliam* is too similar to that in *Plevin* to justify our proposing to deal with it so differently.

  – *McWilliam*-type complaints should benefit from the same scrutiny we propose for *Plevin* complaints at Step 2.

  – The remit of the Financial Ombudsman Service is not restricted to mirroring available legal remedies and has the broader remit of considering what is fair and reasonable.

- Should *not* be included within the scope of our proposed deadline because:

  – The *McWilliam* case is very recent, other issues raised in the case are yet to be decided, there will be satellite litigation, and the scope of the issues are complex and uncertain. So it is unreasonable to impose a two year deadline on these kinds of PPI complaints, and we provide no justification for proposing to do so.

  – It would be inconsistent to apply a deadline to a type of PPI complaint which lacks any specific agreed set of rules and guidance for its assessment. If they are not to be included within the scope of DISP App 3, they should not be caught by the deadline.

Our response

We have carefully considered these points but do not consider that we need to change our proposed approach in light of them.

Given 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 App 3 rules and guidance for PPI complaints, we remain of the view that they are best treated outside of DISP App 3.

We are not saying, and do not consider that it would be appropriate to say, that *McWilliam*-type complaints about PPI do not need to be handled and assessed fairly under DISP. We are merely saying that we do not consider that the issues and case law are currently clear or stable enough to warrant or enable us to make specific rules and guidance about how to handle complaints about those issues.

We will continue to monitor further litigation in the wake of *McWilliam*, just as we monitor any litigation of potential significance to financial services. We do not agree that this stance creates uncertainty or of itself raises the prospect of further future change in our proposed rules and guidance.

Complaints raising *McWilliam*-type issues could, in principle, be made about many PPI sales. Consequently, excluding such complaints from the scope of the proposed deadline would materially undermine the certainty and orderly conclusion which we believe the proposed deadline and communications campaign would bring. The proposed communications campaign would prompt consumers to consider their position, and they would have a significant period of time before the deadline in which to complain about mis-selling, undisclosed commission, or *McWilliam*-type issues. And after the deadline, they would remain able to raise these issues in claims in court.

6.
Next steps

Further consultation on our proposed package of measures as amended

6.1 In this publication we have:

- considered in detail the feedback we received in response to CP15/39
- set out our views of this feedback in response
- highlighted aspects of the package of measures that we now propose to amend

6.2 In addition to our specific consultation questions in Chapter 5 above, we also invite further comments on the whole package of measures, as amended. In particular, we ask:

> **Q22: Do you consider that, taken as a whole, our proposed package of measures – the proposed deadline rule, proposed consumer communication campaign, proposed fee rule, and proposed rules and guidance (as amended) concerning PPI complaint handling and *Plevin* - is a justified, appropriate and proportionate response to past PPI mis-selling and present trends in PPI complaints handling?**

6.3 Please provide feedback by **11 October 2016**.

6.4 We will then consider the comments we receive (alongside previous comments where respondents indicate that they maintain them), complete our deliberations and decide whether or not to proceed with our proposals.

Commencement of our proposals

6.5 In CP15/39, we proposed that if we went ahead:

- 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

6.6 Some responses from industry said there should be no delay between the rules being made, their coming into force, and the launch of the communications campaign, including an immediately and fully operational website and helpline. These responses felt that a delay would leave space for alternative messaging from CMCs, and push too far into the future the deadline date and the certainty it would bring.

6.7 Other responses from industry, however, said that there should be an adequate lead time between the rules being made and their coming into force, so that no operational problems arise in the early part of the deadline period and erode the time consumers have to act. They suggested, for example, that this would allow the FCA time to consider technology and other solutions to support the campaign.

Our response

We have carefully considered these responses, and also other considerations.

If we decide, following this further consultation, to proceed with our proposals, we now propose that:

- The rules and guidance concerning the deadline, the fee, and PPI complaints handling and *Plevin* would be made on the same date, by the end of December 2016.

- The *Plevin* rules and guidance and the fee rule would come into force around 3 months later, by the end of March 2017. This is to allow firms time to prepare for and implement them. The first half of the fee would be collected from relevant firms around a month after that, in April 2017.

- The deadline rule would come into force around 6 months after it was made, by the end of June 2017, with the consumer communications campaign starting at the same time. This timing is to allow us to ensure that significant expenditure necessary for campaign production and advance media booking takes place only after the deadline rule is made. We consider that it would not be responsible or a good use of our resources to spend significant sums on this, out of our general fee revenue, before we had made a decision about whether or not to proceed with a deadline and our other measures.

- The deadline would fall two years after the deadline rule came into force, by the end of June 2019.

We accept that a deadline in June 2019 is further off than we had envisaged in CP15/39 and than some stakeholders at least would prefer. However, we consider that our proposed timings, in particular the 6 month lead time to the start of the deadline period and communications campaign, would strike an appropriate balance between progressing the proposed measures and ensuring that we, firms and other stakeholders, including our partners, have time to prepare for and implement our respective actions in support of the campaign.

However, this proposed timetable is subject to a number of variables. For example:

- whether we can decide by the end of December 2016 about whether to make rules and guidance will depend on the extent and nature of the feedback we receive in response to this further consultation
- some stakeholders have previously publicly declared that if we make rules and guidance along the lines proposed in CP15/39, then they are likely to challenge these in court

Given the significance of our proposals and their potential timings, we will issue prompt updates if we become aware that we are likely to depart from the proposed dates set out above.

Looking further ahead

6.8 During our further consultation, and until any final rules and guidance on PPI complaints and *Plevin* come into force, it will remain 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 our proposed rules and guidance on *Plevin*. If these rules and guidance then come into force, we would expect firms to provide fair, swift final responses to those complaints they had put on hold.

6.9 In the periods before and after our proposed package of measures came into force, we would take forward the robust proactive supervisory engagement with firms described in Chapter 3.

Annex 1
Further consultation questions

Concerning our proposed rules and guidance on PPI complaints and *Plevin*:

Q19: Do you agree with our proposed modifications of incorporating anticipated profit share sums within our approach to assessing fairness and actual profit share sums within our approach to redress? Do you perceive any particular practical or operational difficulties with this modified approach?

Q20: Do you agree with our proposed clarifications that firms should presume that the failure to disclose gave rise to an unfair relationship where the anticipated profit share plus the commission reasonably foreseeable at the time of the sale were more than 50%, but then calculate redress on the basis only of those periods where the actual level of commission and profit share together was more than 50%?

Q21: Do you agree with our proposed modification of allowing rebates to be reflected when calculating redress at Step 2?

Concerning our proposed package of measures as a whole:

Q22: Do you consider that, taken as a whole, our proposed package of measures – the proposed deadline rule, proposed consumer communication campaign, proposed fee rule, and proposed rules and guidance (as amended) concerning PPI complaint handling and *Plevin* - is a justified, appropriate and proportionate response to past PPI mis-selling and present trends in PPI complaints handling?

Concerning our updated EIA:

Q23: Do you have any comments on our assessment of the impacts of the proposals on protected groups or vulnerable consumers? Do you have any comments on the proposed mitigations we are taking forward?

Annex 2
List of non-confidential respondents

Adam Samuel

Alliance of Claims Companies Ltd

Allixium Ltd

Andrew Palmer

Association of British Credit Unions Ltd

Assurant Group Ltd

Black Lion Law LLP

British Credit Trust Holdings Ltd

Building Societies Association

Coventry Building Society

Credo Claims Ltd

CT Capital Ltd

David Brotherston

FCA Practitioner Panel

Flairford Securities Ltd, trading as Brunel Franklin

Gladstone Brookes Ltd

Graham Richardson-Smith

Green Light Legal Solutions Ltd

Jonathan Egan

Legal Ombudsman

Manchester Outsourcing Ltd

Maple Claims Ltd

McGinness Associates Ltd

Michael Turnbull

Miller Gardner Ltd

Money Advice Trust

Money Management Team Ltd

MoneySavingExpert.com Ltd

National Association of Citizens Advice Bureaux, operating as Citizens Advice

National Franchised Dealers Association

Neil Jeffares

Oracle Legal Ltd

Professional Finance Claims Association

Quickly Finance Ltd, trading as Fast Track Reclaim

Synergy Financial Solutions Ltd

The Consumer Council

The Finance and Leasing Association

The Financial Services Consumer Panel

The Information Commissioner's Office

The Money Charity (registered Charity 1106941)

Tony Beaven

We Fight Any Claim Ltd

West Bromwich Building Society

Which? Ltd

Annex 3
Equality Impact Assessment (EIA)

Introduction

1. We are required under s.149 of the Equality Act 2010 (The Act) to have due regard in the exercise of our functions to the need to:

- eliminate discrimination, harassment, victimisation and other conduct prohibited by 'the Act'
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and those who do not

2. The relevant protected characteristics which we are required to consider are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation
- marriage or civil partnership status[38]

38 In relation to the elimination of discrimination, harassment, victimisation and other prohibited conduct, but not the advancement of equality of opportunity, or fostering of good relations.

3. We also consider that our consumer protection objective requires us to consider the position of vulnerable consumers.[39] In CP15/39 we set out our initial EIA. Our main initial conclusions about our proposed deadline and consumer communications campaign were that the proposals could present a greater risk of adverse impacts to some vulnerable consumers (in particular, those who have limited fluency in reading, writing or speaking English) and some protected groups, including those who are much older and those who have serious physical or mental health conditions. However, we could mitigate these potential adverse impacts by ensuring that the proposed consumer communications campaign is as inclusive as possible so that messages get through to and engage vulnerable consumers and those in such protected groups. We proposed a programme of appropriate partnership activity, in addition to traditional marketing channels, to help us achieve this.

4. Our main initial conclusions about our proposed rules and guidance about *Plevin* were broadly similar. We recognised that undisclosed commission issues 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 limited fluency in English, or who have particular protected characteristics such as learning disabilities. We also noted 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. This is the case even if the issue is not explicitly raised on the face of the complaint.

We asked:

> ***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?***

Feedback received

5. Most responses from industry agreed that:

- we had identified key protected groups and vulnerable consumers and given a reasonable assessment of the impact of our proposals on them
- there could be a risk of adverse outcomes for some if these characteristics and vulnerabilities are not taken into account in designing communications
- using a wide range of methods to raise awareness of the deadline would give the best possible chance that vulnerable customers will be made aware of it

39 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 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 objectives. 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 people's 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).

6. Some of these responses from industry also suggested, variously, that:

- the campaign's detailed design would be crucial in mitigating adverse impacts
- we were welcome to explore and share firms' own approaches to dealing with more vulnerable or less engaged customers
- those who were older at the time they bought PPI should be included as a group of vulnerable consumers
- we should consider digital exclusion when creating the communications campaign and partnership programmes, as older and disabled people form a large proportion of those who are 'digitally excluded'
- we should add rules and guidance that guide firms to treat fairly any vulnerable or disadvantaged customers, taking into account their specific circumstances
- we should consider how vulnerable customers can be protected from inappropriate targeted approaches from certain CMCs
- vulnerable consumers' understanding of 'undisclosed commission' was important and would need to be given further consideration once we had set out our initial proposals for how the issue will be addressed in the communications campaign

7. Some responses from consumer bodies and CMCs, however, made various criticisms of our assessment, saying that:

- we should carry out a fuller EIA, based on more thorough research focused on protected groups and vulnerable consumers
- several groups with protected characteristics are on lower-than-average incomes and so more likely to have taken out credit and been mis-sold PPI
- we underestimated the impact on older people and those with long term health conditions, who were most often mis-sold PPI they could not benefit from
- consumer vulnerability, or being disadvantaged by a deadline due to a protected characteristic, should be regarded as an exceptional circumstance that allows a complaint to be assessed after the deadline has passed
- we should give deeper consideration to consumers who are particularly vulnerable due to financial unsophistication and/or complex debts and who may be impacted in more fundamental ways that cannot be mitigated through a broad communications campaign
- we risk harming vulnerable consumers if our campaign puts them off using CMCs but they lack the confidence to complain directly or cannot do so effectively, so they should be given the option of using a regulated CMC

Updated EIA

8. Following the feedback to CP15/39, and having carefully considered it, we have:

- Commissioned equality and diversity consultants, GCL, to provide a report on the potential impact of the proposals set out in CP15/39 on protected groups and vulnerable consumers (published alongside this publication).
  - GCL undertook an extensive review of the evidence on protected groups and vulnerable consumers. This assessed financial confidence, propensity to complain about financial products and PPI in particular, and any specific barriers to engagement or complaining that should be considered in the context of the proposed consumer communication campaign and the PPI complaints process.
- Taken advice from GCL, communication consultants Multicultural Marketing Consultancy (advising specifically on black and minority ethnic audiences) and BDS Communications (advising specifically on disabled audiences) in relation to testing the advertising concepts.
- Completed testing of the advertising concepts with specific protected groups and vulnerable consumers. The approach included direct in-depth individual interviews, focus groups and speaking to advocates who represent and support those protected groups.
- Received feedback and recommendations directly from protected groups and vulnerable consumers, their advocates and our consultants on how the proposed campaign should be adjusted to best reach and engage those audiences.
- Carefully considered the GCL report and its findings and the extent to which we are able to implement the recommendations in the report when deciding whether to take our PPI proposals forward.

9. As a result of this further work, we have updated our EIA as set out below.

Analysis

10. We considered the three areas to which it is necessary to have due regard under section 149 in relation to each protected group. We also considered the position of a broader category of vulnerable consumers. While we did not find any evidence of harassment, victimisation or anything relevant to the fostering of good relations, we did identify that our proposals have the potential to result in less favourable outcomes for some protected groups and vulnerable consumers.

11. We identified that there are particular reasons why belonging to certain protected or vulnerable groups makes some consumers less able to understand or less willing to act upon our proposed communications campaign. This means there is a greater chance of such consumers not having considered whether they would like to complain about their PPI policy (concerning mis-selling and/or based on Plevin) before the deadline expires.

12. The particular groups our research shows may be disadvantaged by our proposals are:

- older people (particularly those aged over 65 and even more so for those over 75)
- women
- black and minority ethnic (BAME) groups (particularly those with English as their second language)

- disabled consumers, with mental health problems, learning disabilities, cognitive and/or sensory impairments; and
- vulnerable consumers on low incomes with low financial confidence

13. Given the evidence on age and cognitive impairment, we also identified a need to ensure that the proposed campaign engages people who care for older or disabled people. We consider how best to target carers below.

14. As a result of this analysis, and where we identified there could be an adverse impact, we have developed mitigations and actions that we will take forward when designing the communications campaign. We have already undertaken some of these. We set out the analysis, proposed actions and conclusions in terms of our proposals for each of these groups below. Further, we consider below whether any amendments to our proposals could be made which would put protected groups and vulnerable customers in a better position.

Age

15. We have not identified an adverse impact for younger and middle aged groups due to their high internet usage and higher propensity to complain. Therefore, we do not consider them further in this EIA.

16. We have identified evidence that those aged 65 or over could be adversely impacted by the proposals. This is because of lower financial capability, knowledge and confidence and lower levels of usage of the internet, particularly as a significant amount of information about PPI is internet-based. The issues become more significant for those aged over 75 as financial skills and proficiency can often decrease which can make complaining even more difficult. We also identified cold calling as an issue. Any increase in cold calling as a result of the proposed deadline could have a more significant impact on older people, who are more likely to have land lines and be at home during the day. There are 11.6 million people aged 65 or over in the UK and 5.5 million people aged 75 or over so the proposals could have a significant impact on this group.

17. Our view is that the large scale communications campaign and deadline we propose would be likely to have both positive and negative impacts on the over 65 and over 75 age groups. The campaign will raise awareness of the issue of PPI through a trusted source, making it more likely that consumers will consider whether to make a complaint before the deadline. Many consumers over the age of 65 may not have considered, for example, whether they were sold PPI before, so we view this as a considerable positive impact which, without a deadline and campaign, would likely not have occurred.

18. However, unless we can be confident that the campaign will be effective, we recognise that consumers in these age groups are at risk of being disadvantaged by the imposition of a deadline, as well as possibly suffering an increase in cold calls. There are a number of steps that we will take to ensure that consumers in these age groups are reached by the campaign equally as well as younger consumers so that any disadvantage they might otherwise suffer as a result of our PPI proposals is eliminated, or at least minimised to a level where we can be confident that it is reasonable and justified to proceed.

19. We have already taken the following steps in preparation for the potential campaign:

- Following our consideration of the evidence on internet usage we have decided that the Freephone helpline number should appear on all of the above the line advertising, i.e. TV adverts, posters etc. This will ensure that older audiences who are less likely to use the internet have a clear route of contacting us to obtain further information about PPI.

- We tested our four advertising concepts with groups aged over 65 and over 75 to get their feedback and to give us confidence that the advertising concept we select will resonate well with these audiences. This included testing directly through group and individual depth interviews and with advocates who support consumers in these age groups.
- We have had initial discussions with our independent channel planning and media buying agency about how best to target audiences over the age of 65 and 75.
- We contacted the Information Commissioner's Office (ICO) to explain our concern that our proposals could lead to an increase in cold calling during the proposed two year period before the deadline falls. The ICO has confirmed that it is willing to work with the FCA and Claims Management Regulator and will consider:
  - issuing targeted communications at various points during the proposed PPI communications campaign to remind consumers of their rights
  - reminding companies of their duties under the Privacy and Electronic Communications Regulations
  - working with partners in order to ensure that consumers most likely to be impacted are aware of their rights and how to exercise them
- We have approached a number of organisations that support older people to get an expression of interest that they would be willing to partner with us during the proposed campaign.

20. There are a number of further mitigations we will implement if the proposals proceed. These include:

- Reviewing the proposed channel plan which will be created by our media buying agency to ensure there is appropriate targeting of older audiences.
- Seeking to secure editorial coverage, for example a discussion, report or phone-in about PPI and which is not paid for advertising, with non-commercial radio stations. This would increase awareness of the deadline as the evidence demonstrated this is a key channel for those aged over 55.
- Exploring with potential partner organisations that support older people the ways in which they could support the proposed campaign. This mitigation reflects specific evidence we considered about the need to adapt communications appropriately.
- Considering as part of our partnership strategy whether there are other organisations such as charities, local authorities, national sports organisations, national and regional health bodies and/or those involved in social care that we might want to carry the proposed campaign messages.
- Testing PPI website content either directly with older people and/or with partners supporting older people to ensure that it is easy to understand for consumers in these age brackets who do use the internet.

- Monitoring these groups via quantitative research and through feedback from partners against the campaign objectives, for example, awareness and understanding, to identify any issues and make changes where necessary.

Women

21. The evidence we have identified shows that men are slightly more likely to have held PPI, but are also more likely to have complained already. Women in the UK appear less likely than men to complain due to slightly lower financial knowledge and familiarity. This disparity is larger than for other countries for which we have evidence. In mid-2015, the UK population consisted of 33 million (50.7%) women and 32 million (49.3%) men so this is a potentially large audience.

22. While our view is that the large scale proposed communications campaign will be effective at reaching women we will also implement further actions in order to either eliminate any disadvantages, or minimise them to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

23. We have already:

- Tested the advertising concepts with women-only groups, drawing out particular feedback from women in different age groups, i.e. those over 65 and 75 as identified above. We have taken account of this feedback and we plan to specifically re-test the preferred concept with women, as part of our second phase of testing.

- Held initial discussions with our independent channel planning and media buying agency about how best to target women.

24. There are a number of further actions we will implement if the proposals proceed. These include:

- reviewing the proposed channel plan created by our media buying agency to ensure there is appropriate targeting of women

- ensuring agencies consider where advertising is placed and that targeting for the overall campaign is in proportion to female representation within the general population

- monitoring this group via quantitative research and through feedback from partners against the campaign objectives, for example awareness and understanding, to identify any issues and make changes where necessary.

Race

25. The evidence generally showed that many members of Black and Minority Ethnic (BAME) groups have lower levels of financial knowledge which could impact their decision-making on PPI. However, overall on PPI, rates of complaining to the Financial Ombudsman Service appear consistent with the overall proportion of BAME people in the population as a whole, which indicates that there may be little impact on decision making in relation to PPI. However, language barriers for some, in particular for those with limited fluency in English, appear to lead to lower levels of awareness and interaction with financial institutions.

26. While our view is that the proposed campaign is likely to have a generally positive impact in raising awareness about PPI, we have taken and propose to take a number of specific steps with BAME consumers in mind. These will ensure any disadvantages are either eliminated, or minimised to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

Steps already taken:

- We instructed a communications expert, Mulitcultural Marketing Consultancy, with experience of reaching and engaging diverse BAME audiences to advise on the planning and production of the proposed campaign. In particular they highlighted the factors that can hinder effective communication such as differences in culture, religion or language. They also gave us valuable advice on potential partnership organisations.

- In deciding which BAME audiences to focus on for testing the advertising concepts we were informed by the views of our consultant. As a result we took into account audience sizes, English proficiency, receptiveness to mainstream communications and evidence of financial awareness. We undertook testing directly and with advocate groups with these audiences and took into account language and cultural issues.

- We tested the creative concepts with a range of BAME audiences to ensure that the final concept would be effective and to enable us to take account of any feedback received

- We have had initial discussions with our independent channel planning and media buying agency about how best to target particular BAME audiences.

27. There are a number of further actions we will implement if the proposals proceed. These include:

- reviewing the proposed channel plan created by our media buying agency to ensure there is appropriate targeting of BAME audiences

- seeking to secure editorial coverage, for example a discussion, report or phone-in about PPI and which is not paid for advertising, with key broadcast channels

- working with our communications expert to identify potential partner organisations and working with such partners to explore ways they could support the proposed campaign, including the provision of specific feedback about adapting communications. This would include taking account of specific feedback about language barriers

- monitoring these groups via quantitative research and through feedback from partners against the campaign objectives, for example, awareness and understanding, to identify any issues and make changes where necessary

Disability

28. While many disabled people effectively manage their day to day affairs, evidence also showed that many disabled people appear to have lower levels of financial confidence, lower awareness of financial matters, less engagement with financial issues and a lower propensity to complain. Specifically we identified that:

- there is clear evidence that there is lower financial confidence amongst many people with mental health issues

- the process of complaining could be more difficult for those with a visual impairment due to inaccessible formats, lower internet usage levels and the potential need to review historic information when considering making a PPI complaint

- the particular service offered via our helpline may not be helpful for people with hearing-impairments

- cognitive issues which impact on memory were likely to have an impact on financial capability and complaining about PPI and that a high percentage of this group may be supported by a friend, relative or carer

29. Our view is that, provided we put appropriate mitigations in place, our proposed large scale campaign will be likely to have a positive impact on disabled consumers as a whole. Many of these consumers may not previously have considered, for example, whether they had PPI or whether they may have paid high undisclosed commission on a PPI policy. The majority of disabled consumers use mainstream channels and the internet and so will be reached and impacted by our advertising and campaign in any event. However, there are specific mitigations that we propose to put in place to ensure any disadvantages are either eliminated, or minimised to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

30. Given the evidence identified, we have already taken a number of steps:

- Instructed a communications expert, BDS Communications Limited, with experience of reaching and engaging these audiences to advise on planning and producing the proposed campaign.

- Tested the creative concepts both directly with consumers and with a range of advocates that support the groups identified above. These included cognitive impairments, learning disabilities and sensory impairments. This is to ensure that the final concept will be effective for these audiences and to enable us to take account of any feedback received when refining the preferred concept.

- Obtained feedback from advocates about adapted communications which we will take forward when designing and testing the campaign materials.

- Obtained expressions of interest from a number of organisations that support disabled people and who would be willing to work with us to support the proposed campaign.

31. Having reviewed the mitigations recommended by GCL in this area we will also take the following steps if the proposals proceed:

- Re-test[40] the preferred advertising concept with those with cognitive impairments to address any specific issues with its execution

- Ensure all our communication is inclusive in terms of language, formats and imagery and that they meet appropriate accessibility standards

- Our website is already tested by an independent agency with users who have a range of visual, hearing and cognitive impairments (including learning disabilities). The FCA website is developed and tested in order to meet Web Content Accessibility Guidelines (WCAG[41]) AA standards of accessibility. The accessibility of the FCA website is evaluated independently on an annual basis to WCAG standards (industry best practice standards). The PPI specific website content will be tested to the same standards and with a range of users ahead of

40 We have shared the specification for the re-test with our consultants who support the approach being taken.

41 Web Content Accessibility Guidelines (WCAG) is developed through the W3C process in cooperation with individuals and organisations around the world, with a goal of proving a single shared standard for web content accessibility that meets the needs of individuals, organisations, and governments internationally. The WCAG documents explain how to make web content more accessible to disabled people.

campaign launch. While we complete an annual review of our website we will arrange a specific test for this content to take account of the issues identified in this EIA.

- Explore publishing a reasonable adjustments statement and process on our website
- Provide specific training on accessibility to our helpline staff who give information about PPI. This includes not speaking too quickly, being prepared to repeat or rephrase, giving the caller time to explain fully, not assuming the caller can see and read and how to receive a call via the text relay service.
- Explore with potential partner organisations who support disabled people how they could support the proposed campaign and take on board any specific feedback about adapted communications or alternative formats.
- Monitor disabled people via quantitative research and through feedback from partners against the campaign objectives, for example awareness and understanding, in order to identify any issues and make changes where necessary.

32. There are some suggested mitigations that we have concluded may need to be taken forward in a slightly different way to the way recommended by GCL. We set out below how we will address these recommendations:

a. to consider utilising the Browse Aloud facility

- The use of Browse Aloud was considered by our Equality and Diversity Committee, who accepted the recommendation to allow users to use their preferred screen reader or tools embedded in their device's operating system, rather than impose a solution that they have to download and install.
- This means users are able to use a program they are comfortable with already, and the site will be accessible to multiple devices, browsers and operating systems. By aligning to AA standards, the website is accessible for screen reader software.
- Our approach is consistent with the approach of the RNIB and GOV.uk. GCL has confirmed that they do not believe users are likely to be at a disadvantage using other systems as opposed to Browse Aloud.
- In terms of translation services, we currently have the facility to translate on request and will consider whether to translate key PPI pages based on demand and feedback from partners.

b. online communications should continue to follow the WCAG AA standards with a longer term aspiration to reach AAA.

- When re-designing the FCA website recently, our Equality and Diversity Committee considered whether we could aim for AAA standard. A decision was taken that it would not be reasonably practicable to fully achieve AAA standard at this time for various reasons, including for example that it would reduce the capability of the website by removing some interactive technologies that mainstream users find useful. We are aiming to meet some of the criteria for AAA but we will review the position annually.

c. actively investigate the feasibility of having an accessibility tab at the top of every web page, which also provides information for those less competent with the internet and those with English as a second language.

- We already have accessibility information on our main FCA website, however we anticipate that the advertising campaign will direct consumers to a specific PPI hub with its own website address (url). We will seek to include accessibility tabs on the PPI hub and will test the impact on users as part of our testing of the PPI website pages. We will also take account of feedback from partner organisations.

d. provide information about accessible methods for contacting us about PPI on the main contacts page.

- As above, we anticipate there will be a PPI hub which will have its own website address and the campaign advertising will signpost consumers there as a first port of call. We intend to publicise PPI on our main website to coincide with campaign 'bursts', for example in the news feed.

e. ensuring all our campaign communications are available in the full range of accessible formats specified in government guidance.

- We already provide consumers with a full range of accessible formats on demand, and will aim to do so with the PPI campaign materials (so far as is reasonably practicable once the materials have been finalised). We will keep this under review, take account of advice from partners and make changes if we consider it necessary.

f. consider providing specific materials for people with hearing impairments such as a British Sign Language interpreted video and subtitled information in relation to PPI

- We already provide specific materials for people with hearing impairments, such as captions. We will consider whether further alternatives are reasonably practicable as the campaign materials are developed, and get the input of our partners who support people with hearing impairments.

- Although in a few cases it is not reasonably practicable to adopt every aspect of the specific recommendations set out in the GCL report, our view, which is supported by GCL, is that the package of mitigations we intend to introduce as set out above is likely to achieve equivalent outcomes and so will nevertheless eliminate any disadvantage or alternatively minimise it to a level where we can be confident that it is reasonable and justified to proceed with the PPI proposals.

Other groups considered

33. Other groups we considered were:

- lesbian, gay, bisexual and transgender (LGBT) consumers
- pregnant consumers / recent mothers
- consumers who hold a particular religion or belief
- marital status

34. In relation to pregnancy and maternity, religion and belief and marital status, we have not identified any specific and robust evidence or information about poor financial confidence or propensity to complain. Therefore, we do not propose to put in place specific actions for these groups in the proposed communications campaign strategy. Our view is that the mainstream communications will be effective at reaching and engaging people with these characteristics.

35. For LGBT consumers we only identified limited evidence. However, this highlighted that an LGBT customer considering making a complaint may be more confident in doing so if certain improvements are made to the customer experience. For transsexual consumers we identified that a PPI deadline may create disadvantages because of the process of identification in the course of the PPI complaints process, connected to changing name.

36. As a result we intend to:

- explore with Stonewall whether any other specific training for helpline and/or front-line staff should be provided
- get more information about the PPI complaints process and transsexual people to identify any specific logistical issues or barriers about verification of identity that they may face

Low incomes and low financial confidence

37. Our evidence identified that low income could be more likely to make someone vulnerable and impact their likelihood of complaining as a result of lower financial confidence. As such, our view is that there could be a potential adverse impact on this group. To address this we have tested the creative advertising concept with this group and we have obtained expressions of interest from a number of advocate organisations to support the proposed campaign. This includes, in particular, supporting those consumers who might be experiencing financial difficulty. Our tracking research is also being designed to ensure we can specifically track this group against the campaign objectives in order to identify issues and make changes if necessary.

Carers

38. None of the responses to CP15/39 specifically highlighted carers. However, given the evidence on age and disability we believe it will be important to reach and engage with this audience. We will need to ensure that the proposed campaign is clear and understandable and presents the importance of making a decision rather than pressuring them to complain.

39. The evidence we obtained confirmed that carers consume media in the same way as mainstream audiences but are more likely to experience pressure on their time. Therefore, our view is that the proposed mainstream campaign will be effective at reaching this audience. However, we have taken steps to ensure this audience is engaged, for example, we have tested the advertising campaign with a relevant advocate organisation and obtained expressions of interest from relevant organisations to support the proposed campaign.

40. We will continue to explore in more detail the ways in which partners could support the campaign. We also intend to consider ways in which we can reach this audience such as specific publications or networks, and whether we can create specific tools to provide information quickly to this audience.

Alternative options

41. As part of the process of developing this EIA, we considered whether any amendments to our proposals could be made which would put members of protected groups and vulnerable consumers in a better position, whilst still advancing our operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. We considered:

- whether members of protected groups and/or vulnerable consumers should be exempt from the proposed deadline

  Our view is that to exempt these groups from the deadline altogether is not a practical alternative for several reasons, including:

  - membership of certain protected groups and vulnerability are not static so it would be difficult for firms to know whether people fall or fell into such groups for some or all of the time since the deadline expired
  - the Financial Ombudsman Service already allows complaints to be considered outside of applicable time limits where there are 'exceptional circumstances'[42]
  - the potential negative impacts of the campaign identified in our EIA (e.g. increase in cold-calling) may be exacerbated for vulnerable or protected groups for a longer period if they were not subject to the deadline
  - it is unlikely that we would achieve our aim of bringing 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

- whether the deadline should be extended to longer than two years (either generally or for vulnerable consumers and those in protected groups)

42. We considered whether we could run a communications campaign without any deadline in CP15/39.[43] We maintain that without the focus of a deadline, the campaign will be unlikely to prompt as many consumers, including those in protected groups or vulnerable consumers, to consider whether to make a complaint. We also considered a three year deadline in CP15/39.[44] We maintain that two years is the optimal period in which to deliver our objectives and have not identified any evidence that suggests that our proposed mitigations cannot be implemented within a two year timeframe. Two years will give us sufficient time to assess and monitor the impact of the campaign, including the impact it is having on protected and vulnerable groups. In our view, our advertising campaign alerting consumers to the deadline would lose impetus and impact if the deadline were further away, which would risk undermining a key objective of tackling consumer inertia.

- whether firms should be compelled to write letters to certain groups

43. We considered this option generally in CP15/39.[45] We maintain that there are problems faced by firms in implementing such a proposal for all consumers and, based on the data gaps firms have told us of, it is unlikely that they would have sufficient information about which of their PPI sales were to members of protected or vulnerable groups to enable a targeted letter campaign. In our view this exercise would risk inconsistent and potentially unfair outcomes. We take the

42 We also considered, in response to feedback received, whether consumer vulnerability, or being a member of a protected group, should be specified as an exceptional circumstance. However, we considered that this would be too broad and as such it was unlikely that we would achieve our aim of bringing 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.

43 Paragraph 3.36.

44 Paragraphs 3.12 and 3.13.

45 Paragraph 3.38 onwards.

view that implementing mitigations such as working with partners will be much more effective in ensuring protected and vulnerable groups are not disadvantaged.

EIA overall conclusion

44. We have considered carefully:

- the feedback to the CP proposals which highlighted a number of protected groups and vulnerable consumers that might be impacted as a result of the proposals in CP15/39
- the evidence and recommendations provided to us by our consultants
- the advertising testing feedback and recommendations from the protected groups, vulnerable consumers and their advocates
- the mitigations that we are intending to put in place
- GCL's views of whether the mitigations we propose to implement are enough to eliminate any disadvantages, or alternatively to minimise those disadvantages to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals

45. We have also considered whether two years remains the appropriate length of time within which to implement all of the mitigations, and whether there are any alternative proposals which would put protected and/or vulnerable groups in a better position.

46. Our conclusion is that with a two year deadline, provided we take the mitigating actions that we have identified, the potential disadvantages identified in relation to each protected or vulnerable group will be eliminated; or where they are not eliminated entirely they will be minimised to a level where we can be confident that it is reasonable and justified to proceed. This view is supported by GCL. As such our view is that we are justified in proceeding with the proposals, taking into account the need to achieve the objectives set out in CP15/39 and the fact that we do not think we could reasonably and proportionately achieve the same objectives using alternative means.

Q23: Do you have any comments on our assessment of the impacts of the proposals on protected groups or vulnerable consumers? Do you have any comments on the proposed mitigations we are taking forward?

Annex 4
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. In CP15/39 (Annex 2), we set out our assessment of the costs and benefits of our proposed package of interventions as a whole. We explained that:

- for various reasons, the costs and benefits of our proposed package cannot be reasonably estimated (s.138I(8)(a) FSMA) or are not reasonably practicable to estimate (s.138I(8)(b) FSMA)
- but the dynamics we discussed provided us with a reasonable basis for expecting that it would deliver a net benefit for consumers and other potential benefits (as set out in the table below)
- given the uncertainties involved, this overall conclusion was not guaranteed

Summary table of costs and benefits of our proposed package in CP15/39

	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

2. We asked:

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

3. In this Annex, we discuss the main feedback we received and our responses. We also discuss the impacts on our cost benefit analysis (CBA) of the changes to our proposals concerning *Plevin* discussed in Chapter 5 above.

Feedback on the CBA and our responses

4. Generally, respondents' views of our CBA broadly reflected their views of our rationale for intervening and whether this was sound (see Chapter 2).

5. Among responses from industry:

- Most agreed with our CBA, saying variously that:
  - we had appropriately considered the material aspects of costs and benefits and conducted a fair and balanced analysis
  - our intervention may result in a higher volume of complaints but if this is an acceleration of those that would have been raised anyway then it is welcome
  - redress and operational costs are likely to increase but will be proportionate to the longer term benefits and certainty that closure of the PPI issue will bring
- Some added that our CBA should also reflect:
  - the costs to firms of recruiting and training additional staff to resolve higher complaint volumes
  - the costs to some firms of running their own complementary consumer communications alongside our campaign
  - the consumer benefits in time and money from ending unsolicited CMC calls
- Some also warned that firms' costs would be driven up if the final rules and guidance, in particular concerning *Plevin*, left open areas of uncertainty or discretion for firms and the Financial Ombudsman Service.

Our response

The cost to firms of recruiting and training additional complaint handling staff was considered in the CBA and is already reflected in the table above as increased administrative costs of complaint handling.

We note that some firms have committed to running their own voluntary consumer communications alongside our proposed campaign, and that we are also looking to agree voluntary commitments to provide a smooth and efficient process for consumers who want to check about PPI or complain.

These voluntary actions would incur costs for these firms but would also bring benefits to consumers to the extent they stimulate a greater volume of complaints ahead of the proposed deadline. We have added our recognition of these potential costs to our revised table below. We do not believe that this affects our overall judgement on the CBA.

Our proposed interventions do not prevent CMCs from contacting consumers. While such cold calling may reduce following a deadline on complaining, it could increase in the period before the deadline (as our EIA has identified). Therefore, we do not include any consumer benefits from this in our assessment. We note, however, that our proposed communications campaign, alongside firms' voluntary communications, may lead to a greater proportion of consumers complaining directly to firms rather than through CMCs.

When drafting rules and guidance, we aim to strike an appropriate balance between clarity and an appropriate degree of prescription on the one hand, and appropriate flexibility on the other.

6. Some responses from industry had expressed concerns about our proposed intervention and said our CBA had significant gaps, including no costing of:

- the large, unplanned-for impact of increased PPI complaint volumes on firms' costs, resources and processes
- the severe operational and cash-flow strain this may place on smaller firms in particular and the short term instability it will cause their funders and investors
- the potential collapse of some small and medium sized firms, who may not survive long enough to gain the benefits of longer term certainty
- the proposed rules and guidance on PPI complaints and *Plevin*
- the impact on firms who did not sell PPI but who are targeted by CMCs with 'no PPI' and other spurious complaints and who will get even more of these now

Our response

As we explained in CP15/39, for various reasons, the costs and benefits of our proposed package could not be reasonably estimated or were not reasonably practicable to estimate. So it is true that we have not estimated the costs of the specific elements suggested by these responses.

However, the impacts on firms' administrative costs in the period before the proposed deadline from our proposed *Plevin* rules and guidance and the potentially increased complaint volumes (including potential increases in 'no PPI' complaints) are reflected in our table above as increased administrative costs of complaint handling.

Our CBA already included the recognition that in the short run there would be increased uncertainty, including for small and medium sized firms, but that this would be offset by longer term certainty. We have not added any potential costs that might arise in the scenario of a firm's insolvency. We think this scenario is too speculative. We say in Chapter 2 above that if firms find themselves in difficulty when dealing with large volumes of PPI complaints, they can discuss with us potential methods within the regulatory framework to manage these pressures and avoid detriment to consumers or disproportionate consequences for firms or the FSCS.

7. Some responses from consumer bodies who broadly supported our proposed intervention nonetheless expressed concern that our CBA did not include the potential costs to those consumers who:

- respond to increased CMC advertising and engage their services, but end up owing the CMC money because their redress is used by their lender to pay down their arrears
- get caught by fraudsters posing as CMCs during the communications campaign

8. Conversely, some responses from CMCs who did not support our proposed intervention expressed concern that we had not factored in likely losses to those consumers whom our campaign persuades *not* to use a CMC. These responses felt that many consumers, particularly those with common but complex circumstances (such as a chain of linked finance agreements and PPI policies), will struggle to progress their complaint effectively and thus get less redress than if they had used a CMC, including in some cases none at all.

Our response

Part of the rationale for our proposed package was that an FCA-led communications campaign may empower consumers and encourage more of them to complain directly to the firms concerned, rather than using CMCs and other paid advocates, and therefore benefit in full from the redress paid out. As we set out in Chapter 3 above, we would be providing information to consumers about the PPI issue and how they can assess their own position and, where appropriate, how they can make their complaint. We would also be putting in place a robust supervisory strategy to ensure that firms handle complaints fairly, whether from CMCs or consumers themselves.

We do not think that getting caught by fraudsters is likely to be a common scenario, as the proposed communications campaign will direct consumers to the FCA's website or helpline. These sources of information would explain to consumers how to check if a CMC is authorised by the CMR.

Generally, consumers who use a CMC to complain on a 'no win, no fee' basis will be better off than if they had not complained at all. That said, we recognise that some consumers might end up indebted to the CMC if a lender uses the redress it owes to the consumer to pay down their arrears. However, we think that this is unlikely to be a common scenario. If it is a concern for an individual complainant who may be in financial difficulty, they should raise it promptly with their lender when it makes its redress offer, and ask it to use only the redress that would remain after the CMC fee to pay down arrears.

9. Most responses from consumer bodies and CMCs did not support our proposed intervention and made a number of broad criticisms of our CBA:

- It was not detailed or helpful, with a surprising lack of any quantification, and little consideration of a number of wider socio-economic costs and benefits.
- It involves too many assumptions to believe that the deadline will work and achieve the benefits attributed to consumers or to the wider market.
- It admits that the costs and benefits cannot reasonably be estimated and that the overall conclusion cannot be guaranteed. With this level of uncertainty it would be unreasonable and anti-consumer to proceed.
- It overstates the benefit of reducing the shocks to firms' cost of capital by gaining certainty over their PPI liabilities. This is likely to be very small, given the level of shocks from PPI in relation to all other potential shocks.
- It understates the negative impact on overall welfare of the fact that those firms that have treated consumers unfairly will gain most from our intervention, at the expense of those who tried to comply with the rules.

Our response

As we noted in Chapter 2, we were careful in CP15/39 to give a balanced judgement and not go beyond what the evidence would support. For example, we were cautious in saying that 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 sold PPI or post-PPI debt protection products, or stimulating innovation and the supply of these and corporate restructuring in the retail banking sector (the main likely distributor of protection products).

Overall, we appreciate that there is some frustration that we cannot provide more certainty or quantitative detail about the potential costs and benefits associated with the proposed intervention. However, we remain of the view that the dynamics we identified and set out in the CBA in CP15/39 provide us with a reasonable basis for expecting that it will deliver a net benefit for consumers and other benefits, albeit we recognise, given the uncertainties involved, that our overall conclusion is not guaranteed.

As we said in Chapter 2, given that by the proposed deadline firms would have been handling significant numbers of PPI complaints for a decade, and paid many billions of pounds of redress, we do not see that it can reasonably be said that we are rewarding firms for poor conduct, or incentivising them to behave poorly in the future. If we find firms being slow to address any future misconduct issues or redress, or otherwise being obstructive of what we consider to be fair outcomes, we will take action.

10. Some responses from consumer bodies and CMCs further argued that we had not analysed the relative costs and benefits compared to alternative interventions we might make, in particular:

- the significant additional administrative costs (for example from additional correspondence with consumers and Financial Ombudsman Service fees) that will be incurred by firms under the non-targeted complaints-led approach to *Plevin*, compared to those that would be incurred through the use of a targeted s.404 scheme or the application of the root cause analysis rules
- the significant additional time costs to consumers of our complaints-led approach (in completing complaints, dealing with CMCs etc.), as if their time is costless (unlike the approach in other sectors' CBAs, such as transport)

Our response

As is our normal practice, we have not conducted or set out similar cost benefit analysis for alternative approaches that we did not propose. The CBA was conducted against the counterfactual of the status quo, which we consider the relevant counterfactual in this situation. We are not required to assess a proposed intervention against other possible interventions or counterfactual scenarios.

However, we did carefully consider alternative potential approaches before putting forward our proposals in CP15/39, and discussed a number of them there, including establishing a s.404 scheme or requiring firms to write to all PPI consumers. We have discussed feedback on these alternative approaches in Chapter 3 above. We remain of the view that our proposed approach of adding a deadline, communications campaign, and rules and guidance on *Plevin*, to our existing mainly complaints-led approach to PPI redress, is a reasonable and proportionate intervention that can reasonably be expected to deliver a net benefit for consumers and other potential benefits.

We do not regard consumers' or complainants' time as costless. We assessed the proposed package against the relevant counterfactual, the status quo, in which consumers also incur time costs of complaining.

11. Some responses from consumer bodies and CMCs said that in view of the uncertainties, the CBA should be constantly reassessed throughout the two years before the deadline, which should then be extended or abandoned if it is found that the costs are outweighing the benefits.

Our response

We are required to provide an assessment of costs and benefits when we consult on rules. We are not required to reassess those costs and benefits subsequently.

However, as we set out in Chapter 3, we agree that it would be important to measure the impact of our proposed communications campaign and deadline, and evaluate and adapt our approach as necessary. Our evaluation framework would use a wide range of KPIs that reflect our campaign objectives, which we would monitor and track.

The proposed changes and clarifications of the proposed rules and guidance concerning PPI complaints and *Plevin*

12. In CP15/39, we set out our analysis of the costs and benefits that would arise from our package of proposals as a whole, including the proposed rules and guidance on *Plevin*. Here, we consider the impact on that analysis of the changes and clarifications concerning *Plevin* proposed in Chapter 5 above.

Including profit share

13. The proposed change of now including profit share in our approach would lead, relative to our original proposals concerning *Plevin*, to more complaints meeting the criteria for redress at Step 2, and to more redress being paid for most of those complaints that would anyway have been redressed at Step 2.

14. Accordingly, we estimate that, relative to our original proposals on *Plevin*, this modified approach would lead to a significant proportionate increase in the redress that would be paid at Step 2.

15. However, we estimate that this increase would lead to a much lower proportionate increase in the total redress for PPI complaints as a whole (under Step 1 and Step 2). This is because:

- most PPI complaints (around three quarters) are currently decided and redressed at Step 1 anyway and we think this will largely continue in the future if we put in place our package
- redress at Step 2 (even as modified in our proposals in this further consultation) would be paid in only a sub-set of that minority of all PPI complaints where the complaint was both rejected at Step 1 (only around one quarter currently) and concerns a credit agreement that falls in the scope of s.140A (which a large proportion do not)

16. We also note that the analysis of costs and benefits presented in CP15/39 was conducted on the understanding that commission levels paid were on average around 67%. However, as noted in Chapter 5, that figure in fact already reflected profit share arrangements. So, modifying our proposals to now include profit share means that 67% remains the basis for expected redress at Step 2, as we had assumed in our original consultation (although what happens in practice for individual complaints will of course be affected by the particular commission and profit arrangements that firms had in place for the policies complained about, which could be more or less than this average).

17. The proposed change is likely to result in additional processing for firms when handling complaints at Step 2 (such as modelling the anticipated profit share when assessing fairness and, where necessary, the actual profit share when assessing redress), and thus some increase in administrative costs for firms, relative to our original proposal in CP15/39.

Rebates

18. The proposed change of now allowing rebates previously paid to a consumer when they cancelled their PPI policy to be reflected in redress calculated at Step 2 is likely to lead to somewhat less redress in a small proportion of complaints at Step 2, compared to our original proposal. However, we do not think this modification would significantly reduce PPI redress overall, as this reduction would potentially occur in only a sub-set of that very small minority of SPPPI complaints which are rejected at Stage 1 and which concern a credit agreement that falls within s.140A (which many do not) and where the PPI was cancelled early.

19. This proposed change concerning rebates is likely to result in additional processing for firms when handling the small number of relevant complaints at Step 2 (such as modelling the actual commission and actual profit share received in respect of the policy up to the point of its cancellation), and thus some increase in administrative costs for firms, relative to our original proposal in CP15/39.

Where commission or profit share rates vary

20. We consider that, relative to how firms may have understood our original proposal in CP15/39, our proposed clarifications here concerning disclosure and redress where commission and/or profit share rates vary during the life of the policy may result in additional processing for firms when handling relevant complaints at Step 2 (such as, at the evidential stage, modelling and assessing the reasonably foreseeable variations in commission and anticipated profit share and, at the redress stage, modelling the periods when actual commission and actual profit share were together over 50% and calculating redress on the basis of those periods) and thus some increase in administrative costs for firms.

Other small amendments and clarifications

21. We do not consider that the other small amendments and clarifications to the proposed rules and guidance are likely to result in additional processing or administrative costs for firms when handling relevant complaints at Step 2.

Conclusion on the proposed rules and guidance on *Plevin*, as amended

22. We do not consider that the proposed changes to the proposed rules and guidance on *Plevin* would change the conclusion of the CBA in CP15/39.

Overall conclusion on CBA

23. In light of the foregoing discussion, we have made some changes to our original table of costs and benefits, as set out in the revised version below. Overall, however, our assessment remains that:

- for various reasons, the costs and benefits of our proposed package of interventions cannot be reasonably estimated (s.138I(8)(a) FSMA) or are not reasonably practicable to estimate (s.138I(8)(b) FSMA)
- but the dynamics we have discussed provide us with a reasonable basis for expecting that it will deliver a net benefit for consumers and other potential benefits, as set out in the revised table below
- given the uncertainties involved, this overall conclusion is not guaranteed

Summary table of costs and benefits of our proposed package as amended

	Firms	Consumers	Wider economy
Costs	Increased redress payments	Lost redress after deadline	
	Increased administrative costs of complaint handling		
	Increased Ombudsman service fees		
	Communications campaign fee		
	Costs of running own voluntary consumer communications or process improvements		
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

Annex 5
Compatibility statement

Introduction

1. In CP15/39 (Annex 4), we set out in detail our reasons for concluding that our proposed package of interventions:

- was consistent with our strategic objective
- advanced one or more of our operational objectives
- had regard to the regulatory principles in section 3B FSMA
- was 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) FSMA)
- would not have an impact on mutual societies which is significantly different from the impact on other authorised persons
- was compatible with our duties under the Legislative and Regulatory Reform Act 2006

2. We asked:

> ***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?***

3. In this Annex, we discuss the main feedback we received and our responses. We also discuss the impact of the changes to our proposals concerning *Plevin* discussed in Chapter 5 above.

Feedback on the compatibility statement and our responses

4. Most responses from industry either broadly accepted our compatibility statement or said that they had no comments on it.

5. Some responses from industry, however, said our statement was inadequate in a number of respects:

a. We could not reasonably assert that *our proposals were compatible with our objectives*, or that we were *exercising our functions in a way which recognises differences in the nature of businesses*, as we had:

- said we could not predict what will happen or meaningfully estimate the costs or consequences for firms
- acknowledged that 4000 firms sold PPI but gathered evidence from just 8
- said our proposals would mainly affect large multi-product firms
- not assessed or even acknowledged the particular operational and cash-flow impact on small and medium-sized firms, including their viability
- not assessed the specific effects on the running-account credit sector, where firms have large historic back books that could be significantly impacted by our proposed *Plevin* rules and guidance, including some who would be brought under our complaint handling obligations for the first time

Our response

As we said in Annex 4 above, we appreciate that there is some frustration that we cannot provide more certainty or quantitative detail about the potential cost and benefits associated with our proposed package of interventions. However, we remain of the view that the dynamics we have identified and set out in our CBA provide us with a reasonable basis for expecting that it will deliver a net benefit for consumers and other benefits, including some that advance our integrity objective. We recognise, however, that given the uncertainties involved, our overall conclusion is not guaranteed.

We gathered information from 8 firms who together receive the great majority of PPI complaints. We remain of the view that this was a reasonable and efficient way in which to carry out our aim of assessing the PPI landscape, including the broad trends in PPI complaints and their handling, and whether we should intervene further. It is true that we did not seek similar information from smaller firms. However, our focus was not on individual firms, and we did not assess the potential impact of our proposals on the 8 firms individually either.

Since CP15/39, we asked relevant trade bodies to invite their memberships to provide us with similar information to that which we requested of the 8 firms, or any other information they would like to provide about the potential impact of our proposals on them. This invitation remains open.

We did say in CP15/39 that our proposals would help bring an orderly conclusion to the PPI issue, reduce uncertainty and rebuild public trust in the financial sector, *particularly given the firms mainly concerned are multi-product firms at the heart of most retail financial markets.* We remain of the view that this is a reasonable view to take.

This view did not mean, however, that we had ignored the impact on smaller and medium-sized firms or assumed it would be the same as for larger firms. We do consider that these other firms would also benefit from our proposals and the prospect they offer of an orderly conclusion and reduced uncertainty about long-term PPI liabilities. However, we accept that the proposals may also create some operational and financial pressures for some smaller and medium-sized firms. We flagged in Chapter 3 above that we would engage with firms to ensure they were planning and resourcing to deal with the volume of PPI complaints they might receive in the period before any deadline. We also said in Chapter 2 that if firms find themselves in difficulty, they can discuss with us potential methods within the regulatory framework to manage these pressures. For example, as noted, our existing rules on complaint handling already provide firms with flexibility around the usual time limits for handling complaints if there is a good reason for delay. We stand ready to work closely with firms that need to use this flexibility, including by providing individual guidance if appropriate.

Concerning the running-account credit sector specifically, our proposals are not creating obligations and liabilities for these firms in terms of levels of potential redress in individual cases. After all, s.140A already applies to them and their credit agreements and the *Plevin* judgment is well known, certainly among CMCs, and is already giving rise to complaints to firms and claims in court. Our aim is to reduce uncertainty and enable firms to take a fair and consistent approach to handling such complaints. We consider that providing this certainty about how to consider PPI complaints in light of *Plevin* will reduce their relative per complaint administrative cost of handling. However, we accept that our proposed package of measures as a whole may increase the number of complaints to them in the period before the deadline, including those where *Plevin* is relevant.

As we explained in Chapter 5 above, we have not proposed changes to the scope of our DISP rules or the jurisdiction of the Financial Ombudsman Service and do not consider our proposals have any such unintended consequence. The proposed rules and guidance only apply to 'complaints' and we have proposed no changes to the definition of that term. Firms, as now, when they receive complaints will need to consider whether such complaints are 'complaints' for the purposes of DISP. This requires consideration of whether the complaint relates to an activity that falls within the jurisdiction of the Financial Ombudsman Service. Matters which, if complained about now, would be outside the scope of our DISP rules or the jurisdiction of the Financial Ombudsman Service, will remain outside, even if we make our proposed rules and guidance on complaint handling in light of *Plevin*.

b. We could not reasonably say that our proposed *burdens and restrictions were proportionate to the expected benefits, or likely to help sustainable growth in the economy of the UK in the medium or long term,* as we had:

- admitted that neither the costs nor benefits could be estimated
- assumed complaints simply transfer value from firms to consumers and are therefore proportionate – whereas £3.5bn of "benefits" had flowed to CMCs
- unnecessarily extended the approach of *Plevin* to products the judgment had not covered, such as regular premium PPI, including on running-account credit
- not limited the impact of our proposed rules and guidance on *Plevin* on very old PPI agreements, allowing redress that would be disproportionate to any real detriment to the consumer

- disregarded the disproportionate costs of handling small value complaints, particularly in the running-account credit sector
- failed to recognise that the proposals will not bring the benefits of certainty and closure to firms, as they will not limit the individuals' rights to go to court
- failed to give reasons why our *Plevin* proposals in particular would help growth

Our response

As we set out in our CBA in CP15/39 and in Annex 4 above, we consider that the dynamics we have identified provide us with a reasonable basis for expecting that our proposed package would deliver a net benefit for consumers and other benefits, and a mix of costs and benefits to firms. We saw nothing in these dynamics to suggest that the costs would be disproportionate to the benefits. However, we acknowledge that for firms, the costs may accrue sooner than the benefits, and that this could cause some smaller or medium-sized firms some strain. Again, however, if firms find themselves in difficulty, they can discuss with us potential methods within the regulatory framework to manage these pressures and avoid detriment to consumers or disproportionate consequences for firms or the FSCS.

We accept that a significant sum of PPI redress has been, and continues to be, passed from firms, via complainants, to CMCs as fees. However, we do not consider that this undermines our view of redress for mis-selling, or, as proposed, for undisclosed commission, as a justified transfer from firms to consumers and as a benefit to the latter. However, we have set out in Chapter 3 how our proposed communications campaign will inform consumers about how to make PPI complaints directly to firms themselves if they wish to complain.

We do not consider that we have unnecessarily or disproportionately extended the approach of *Plevin* to products that did not feature in the judgment or to remote time periods. As we explain in Chapter 5 above, we consider that:

- there is no sufficient *relevant* difference between SPPPI and RPPPI, including running-account and restricted-use credit, to indicate that *Plevin*'s logic and our proposed rules and guidance should not apply to RPPPI
- suggested restrictions concerning sales made, or premiums paid, before 6 April 2007 (or earlier dates) cannot reasonably be inferred from, or viewed as compatible with, the explicitly retrospective transitional provisions enacted by Parliament in relation to s.140A
- our proposed purpose of ensuring fair and consistent complaint handling would not be served if we provided rules and guidance that depart too far from the approach set out in the *Plevin* judgment and open up obvious gaps with potential claims and decisions in the courts

However, as we also discussed in Chapter 5, we accept that it may be reasonable for a firm, in order to avoid disproportionate processing and administrative costs, for example where balances on a running credit account are small, to take a pragmatic and simplified approach to calculating redress where it is clearly reasonable to assume the amount of redress is likely to be small, as long as this simplified approach does not disadvantage the complainant.

Consumers will remain free to choose the court route to have their claim about mis-selling or undisclosed commission heard, including after our proposed deadline for complaining has fallen. However, having the fair and informal alternative of our proposed rules and guidance concerning *Plevin* may help avoid an increased flow of cases to the courts, with all of the challenges and costs that might involve for consumers and firms.

As noted above, we acknowledge that for firms, the costs of our intervention may accrue sooner than the benefits. However, we do not think that this undermines our view that the orderly conclusion and reduced uncertainty our proposed intervention concerning *Plevin* would bring is compatible with, and may assist, sustainable medium or long term growth in the UK economy.

c. We could not reasonably say that our proposals *respect the responsibility of senior management,* or would *use our resources in the most efficient and economic way,* as we had not acknowledged:

- that our proposals would place the senior management of small and medium firms with limited resources in a very difficult position, because they will be unable to plan for consequences which the FCA says it cannot predict itself
- the additional monitoring and supervisory resource that we would need to devote to firms' handling of *Plevin* complaints

Our response

We do not consider that the fact that the costs and benefits of our proposed package of interventions cannot be reasonably estimated, or are not reasonably practicable to estimate, undermines the principle of our respecting senior management responsibility. To have made such an estimate, we would have had to estimate in advance the future balance of costs and benefits over many years in aggregate across all relevant firms and consumers. By contrast, senior management would only have to assess, plan for, and manage complaint volumes for their own firm, and from period to period, and will have opportunity to respond along the way to emerging trends. Again, as noted above, if firms find themselves in difficulty, their senior management can approach us to discuss potential methods within the regulatory framework to manage these pressures.

As flagged in Chapter 3 above, if we make rules and guidance, we will maintain a dedicated PPI supervisory team throughout the period that will take forward a robust and proactive engagement with firms. If issues arise, including in particular sectors, we will assess and potentially respond to these in a risk-based way. We consider that such supervisory engagement would be a reasonable, effective and efficient use of our resources.

6. In light of their various concerns, these responses concluded that we needed to make significant changes to our proposals, in order to protect small and medium firms in particular from the short to medium term uncertainty they implied, otherwise our compatibility statement would remain invalid.

Our response

We have responded to the various concerns above. We do not see the need for changes to our proposals of the kind requested, or for changes to our compatibility statement in CP15/39.

7. Most responses from consumer bodies and CMCs said that they had no comments on our compatibility statement.

8. Some, however, did not offer detailed comments on the statement, but said that they did not agree with it, as they did not feel our package of proposals was compatible with our consumer protection objective.

Our response

As discussed at length in Chapters 2, 3 and 5 above, we remain of the view that our proposed package of interventions 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.

Issues relating to mutual societies

9. Some responses from mutual societies said that our proposals would increase their costs, but that these costs would be proportionate to the size of individual firms and not detrimentally impact mutual societies in comparison with other firms.

10. Other responses from mutual societies, however, said our proposals *would* raise particular issues for at least some mutual societies, because in their view:

- Many mutuals had a relatively ‘good story to tell’ about PPI, as they had:
  - mainly sold mortgage PPI (MPPI), which the FSA had previously expressed less concern about, and which in their view is not covered by s.140A
  - low uphold rates, including at the Financial Ombudsman Service, which in their view indicated that they did not generally mis-sell PPI
  - a good track record of proactively offering redress where concerns about sales practices had been identified
  - not acted irresponsibly with regard to commission, with their rates generally being under 50%

- Many mutuals had been afflicted, nonetheless, by high volumes of spurious complaints.
- Our proposals would therefore impact mutuals disproportionately by:
  - prompting further increases in spurious complaints to them
  - raising their customers' expectations of full return of premium, rather than the potential redress of part of the commission, despite the lack of systemic mis-selling
  - creating additional operational costs that will directly impact members, as mutuals have less ability to generate funds in the market

Our response

In Chapter 3 above, we explained that we do not think that our proposed communications campaign would prompt significant numbers of speculative or spurious complaints. This is because we will clearly explain on the website and via the helpline the issues with PPI selling and reasons why consumers may want to complain, so that they can make an informed decision about their own circumstances and whether to complain or not. Through these channels we will also make it clear that those who have already received full redress will not receive further redress if they complain again, because they would not be owed it.

We will continue to monitor the types of complaints being received by firms and the outcomes throughout the period. If there are increases in, for example 'no PPI' cases, we would discuss the reasons behind this with firms and consider the messaging in our campaign. If individual firms, including mutual societies, suffer from particularly high proportions of 'no PPI' complaints, we would work closely with the CMR, Financial Ombudsman Service and relevant CMCs to try to reduce these cases, which are fruitless for the CMCs and complainants.

We do not agree that past sales of MPPI are generally not covered by s.140A or our proposed rules and guidance on *Plevin*. Only credit agreements entered into by a firm carrying on a regulated activity are covered by the relevant exclusion in the Consumer Credit Act 1974.

As we explained in Chapter 5 above:

- The risk that firms will receive complaints is already there, as the *Plevin* judgment is already well publicised, particularly among CMCs.
- Even if a firm's commission when distributing PPI was below the tipping point we propose, it would still need to consider arguments that the non-disclosure of such lower commission created an unfair relationship, for example, because the complainant was in particularly difficult financial circumstances at the time of the sale.

We note, however, that it would be open to firms, including mutuals, to set out publicly their commission rates for relevant PPI products in relevant periods, and thereby potentially reduce the number of unsuccessful complaints to them about undisclosed commission.

Overall, therefore, we do not consider that our proposals would have a significantly different or adverse impact on mutuals, or that any changes to our package of proposals or compatibility statement in this regard are needed.

The proposed changes to the proposed rules and guidance concerning PPI complaints and *Plevin*

11. We have carefully considered, from the perspective of our compatibility responsibilities, the proposed changes and clarifications of the rules and guidance concerning PPI complaints and *Plevin* that we discuss in Chapter 5 above.

12. We do not consider that those proposed changes and clarifications imply the need for any change to our previous assessment (at paragraphs 24 to 34 of Annex 4 in CP15/39) of the compatibility of our proposed rules and guidance on *Plevin* with all relevant requirements.

Conclusion

13. Having carefully considered all the feedback received, we believe that our compatibility statement in CP15/39 remains appropriate and does not need to be changed. However, we will continue to consider the compatibility of our proposals with all relevant requirements, including in light of further feedback received in response to this further consultation. These ongoing considerations will inform our final decision about whether to proceed with our proposed package of interventions.

Appendix 1
Revised draft Handbook text (legal instrument)

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 as follows:

Annex	Date comes into force
Annex A	[Making date + c. 3 months]
Annex B	[Making date + c. 3 months]
Parts 1 and 3 of Annex C	[Making date + c. 3 months]
Part 2 of Annex C	[Making date + c. 6 months] (referred to in this draft instrument as [YY])

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.

anticipated profit share	a reasonable estimate of the amount that it was reasonably foreseeable at the time of the sale would be payable in the future in respect of the *payment protection contract* under profit share arrangements.
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*.

Amend the following definitions as shown.

commission	(1) (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*. (2) (in *DISP* Appendix 3) the part 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*.
credit agreement	(1) (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.

(2) (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; and

(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.

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
…		
[(zz)] Any *firm* that meets the test in *FEES* 3 Annex 10C 1R(1) (PPI Campaign Fees)	The amount set out in *FEES* 3 Annex 10C 1 R(2)	Within 30 *days* of the date of the invoice.
…		

…

After FEES 3 Annex 10B (Designated Credit Reference Agencies Fee), insert the following new Annex. The text is not underlined.

3 Annex 10C 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 and including 1 August 2015.

(2) The PPI campaign fee is calculated by multiplying 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 and including 1 August 2015 by £3.64.

(2) G (1) A *firm's* PPI campaign fee will be a proportion of the total amount of costs the *FCA* has estimated it will incur in running the consumer communications campaign highlighting the introduction of the two-year PPI complaints deadline.

(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 10C 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 10C 1R(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 and including 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 10C 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, unless otherwise stated.

Part 1

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

…

Payment protection insurance complaints

2.8.8 G If a *complaint* relates to the sale of a *payment protection contract*, knowledge by the complainant that there was a problem with the sale of the *payment protection contract* generally (for example where there has been a rejection of a claim on the grounds of ineligibility or exclusion, or the complainant has received a customer contact letter explaining that they may have been mis-sold) would not in itself ordinarily be sufficient to establish for the purposes of the three-year time period in *DISP* 2.8.2R (2) that the complainant had become aware (or ought reasonably to have become aware) that he had cause for complaint in respect of a failure to make the disclosure set out at *DISP* App 3.3A.2E (relating to failure to disclose commission).

…

Part 2

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

…

2.8.9 R In addition to *DISP* 2.8.2R, the *Ombudsman* cannot consider a *complaint* if the complainant refers it to the *Financial Ombudsman Service*:

(1) after [XX] where the *complaint*:

(a) relates to the sale of a *payment protection contract* that took place on or before [YY]; 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 [XX] and has a written acknowledgement or some other record of the *complaint* having been received;

unless:

(3) in the view of the *Ombudsman*, the failure to comply with the time limit in *DISP* 2.8.9R was as a result of exceptional circumstances; or

(4) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limit in *DISP* 2.8.9R has expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the *Act*).

…

Part 3

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* and which has received such a *complaint* should consider whether there was a failure to make the disclosure set out at *DISP* App 3.3A.2E 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). In this appendix, failure to make the disclosure at *DISP* App 3.3A.2E is referred to as "failure to disclose commission".

(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* which is not a *CCA lender* should only consider step 1. A *CCA*

lender which also sold the *payment protection contract* 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. A *CCA lender* which did not sell the *payment protection contract* should only consider step 2.

(4) 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.

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.

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.

Step 2

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 failure to disclose commission gave 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 a failure to disclose commission.

…

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 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 disclose 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.

…

After DISP App 3.3 (The approach to considering evidence at step 1), insert the following new DISP App 3.3A. All the text is new and is not underlined.

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 *anticipated profit share* plus the *commission* known at the time of the sale; or

(2) the *anticipated profit share* plus the *commission* reasonably foreseeable at the time of the sale or the likely range in which they would fall or how they would be calculated;

the *firm* should consider whether it can 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 judgement 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 failure to disclose commission gave rise to an unfair relationship under section 140A of the *CCA* if:

(a) (the *anticipated profit share*) + (the *commission* known at the time of the sale); or

(b) (the *anticipated profit share*) + (the *commission* reasonably foreseeable at the time of the sale);

was more than 50% of the total amount paid in respect of the *payment protection contract*.

(2) The *firm* should presume that failure to disclose commission did not give rise to an unfair relationship under section 140A of the *CCA* if:

(a) (the *anticipated profit share*) + (the *commission* known at the time of the sale); or

(b) (the *anticipated profit share*) + (the *commission* reasonably foreseeable at the time of the sale);

was 50% or less of the total amount paid in respect of the *payment* *protection contract*.

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) the *CCA lender* did not know and could not reasonably be expected to know the level of *commission* and *anticipated profit share*; or

(2) the complainant could reasonably be expected to be aware of the level of *commission* and *anticipated profit share* (e.g. because they worked in a role in the financial services industry which gave them such awareness); or

(3) disclosure would have made no difference whatsoever to the complainant's judgement about the value of the *payment protection contract*. This factor 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 is unlikely to be rebutted due to this factor.

App 3.3A.6 G The presumption in *DISP* App 3.3A.4E(2) is also rebuttable. An example of a factor which may contribute to its rebuttal includes that the complainant was in particularly difficult financial circumstances at the time of the sale.

App 3.3A.7 G Where the *firm* has no record of the level of *commission* or profit share arrangements applicable to a particular *payment protection contract* sale, it should make reasonable assumptions about it based on, for example, *commission* levels or profit share arrangements in respect of which records are held and general commercial trends in the industry during the period in question.

Amend the following as shown.

App 3.4 Root cause analysis

<u>App 3.4.-1</u> <u>G</u> <u>This section applies to both step 1 and step 2.</u>

…

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 <u>or to a failure to disclose commission</u> 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.

…

Interaction with step 2

App 3.7.16 E Where the *firm* is aware that another *firm* has previously paid redress at step 2, the *firm* may deduct this from the redress due under step 1.

…

After DISP App 3.7 (Approach to redress at step 1), insert the following new DISP App 3.7A. All the text is new and is not underlined.

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:

(1) the *commission* actually paid in respect of the *payment protection contract*; plus

(2) an amount representing the actual value of any payment(s) made in respect of the *payment protection contract* under profit share arrangements; minus

(3) 50% of the total amount paid in respect of the *payment protection*

contract.

The *firm* should also pay 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* plus *anticipated profit share* would not have given rise to unfairness in that case and use that amount at *DISP* App 3.7A.3E(3).

App 3.7A.5 E In cases falling within *DISP* App 3.3A.4E(1)(b) or *DISP* 3.3A.4E(2)(b), the calculations in *DISP* App 3.7A.3E and *DISP* 3.7A.4E should only be applied to those periods in the life of the *payment protection contract* where the actual level of *commission* plus the actual value of any payment(s) made in respect of the *payment protection contract* under profit share arrangements was more than 50% (or such other amount as used under *DISP* App 3.7A.4E) of the total amount paid in respect of the *payment protection contract*.

App 3.7A.6 E If the complainant has received any rebate, the *firm* may calculate the amount of the rebate that represents *commission* and profit share sums paid up to the point of cancellation that were more than 50% (or such other amount as used under *DISP* App 3.7A.4E) of the total amount paid in respect of the payment protection contract and deduct this from the amount of redress otherwise payable to the complainant.

App 3.7A.7 E Additionally, where a single premium was added to a loan:

(1) for live *policies*, 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:

(a) removing a sum equal to that payable under *DISP* App 3.7A.3E or *DISP* 3.7A.4E (before historic or simple interest); and

(b) ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the *commission* plus *anticipated profit share* was 50% (or such other amount as used under *DISP* App 3.7A.4E) of the total amount paid in respect of the *payment protection contract*; 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 that payable under *DISP* App 3.7A.3E or *DISP* 3.7A.4E (before historic or simple interest) had not been added (plus simple interest) minus any applicable cancellation value.

App 3.7A.8	E	Additionally, for a regular premium *payment protection contract*, where the *policy* is live the *firm* should disclose the current level of *commission* and *anticipated profit share* and give the complainant the choice of continuing with the *policy* without change or cancelling the *policy* without penalty.
App 3.7A.9	E	Where a claim was previously paid on the *policy*, the *firm* should not deduct this from the redress paid.
App 3.7A.10	E	Where the *firm* has determined that partial redress is due under step 1 (for example, because alternative redress should be paid under *DISP* App 3.7.9E or because the *firm* intends to deduct the value of a paid claim from the redress), it should pay the higher of that amount or the amount that is due under step 2.
App 3.7A.11	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.7E depending on which is most favourable to the complainant.
App 3.7A.12	E	Where the *firm* has previously paid partial redress under step 1 (or is aware that another *firm* has previously paid partial redress at step 1), the *firm* may deduct this from the redress due under step 2.

Amend the following as shown.

App 3.8 Other appropriate redress <u>at steps 1 and 2</u>

<u>Step 1</u>

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.

<u>Step 2</u>

<u>App 3.8.3</u>	<u>E</u>	<u>The remedy in *DISP* App 3.7A is not exhaustive.</u>
<u>App 3.8.4</u>	<u>E</u>	<u>*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.</u>

App 3.9 Other matters concerning redress <u>at steps 1 and 2</u>

…

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 commission, that were reasonably foreseeable as a consequence of the *firm's* breach or failing or from its failure to disclose 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 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.10E and *DISP* App 3.7A.11E, 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, *DISP* 3.6.-1E to 3.6.3E, *DISP* 3.7.-1E to 3.7.16E and *DISP* 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, *DISP* 3.3A.2E, *DISP* 3.3A.4E, *DISP* 3.7A.1E to 3.7A.12E and *DISP* 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 3.7.16E and 3.8.1E to 3.8.2E) as if they were *guidance*.

…

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