FINANCIAL CONDUCT AUTHORITY

Regular premium PPI complaints and recurring non-disclosure of commission – Feedback on CP18/18, final guidance, and consultation on proposed mailing requirements

Consultation Paper
CP18/33**

November 2018

This relates to

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

How to respond

We are asking for comments on this Consultation Paper (CP18/33) by 7 December 2018. You can send them to us using the form on our website at: https://www.fca.org.uk/cp18-33-response-form

Or in writing to:
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1 Summary

Introduction

1.1 In July 2018, we consulted on guidance about how firms should handle complaints about regular premium payment protection insurance (PPI) in light of recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share ('RND').

1.2 In this further consultation paper, we:

i. Summarise and respond to feedback on our proposed guidance.

ii. Publish that guidance, unchanged, as final guidance.

iii. Publish additional final guidance. This explains that it may often be reasonable for firms handling complaints involving RND to draw from our existing rules and guidance on handling PPI complaints in light of *Plevin*.[1]

iv. Consult on new rules that would require:

a. Lenders to write to specific regular premium PPI *Plevin* complainants whose complaints they previously rejected on the grounds that they did not involve an unfair credit relationship or were out of jurisdiction.[2] These letters should tell these consumers that they can make a new complaint in light of RND, and remind them of our 29 August 2019 deadline for complaining.

b. Sellers (including brokers) to write to specific regular and single premium PPI mis-selling complainants whom they previously rejected as out of jurisdiction.[3] These complainants were not caught by our previous *Plevin* mailing rule[4] and so were not written to. These letters should tell these consumers that they can make a

1 The Supreme Court judgment handed down in November 2014: *Plevin v Paragon Personal Finance Limited* [2014] UKSC 61. The judgment related to non-disclosure of high commission at the point of sale of a PPI policy. The Court ruled that the lender's failure to disclose to Mrs *Plevin* the large commissions payable out of her single premium made its relationship with her unfair under section 140A of the Consumer Credit Act. This was despite there being no regulatory obligation to disclose. The judgment created uncertainty as to how firms should handle some PPI complaints. So, in March 2017 we used our regulatory judgement to create a framework of new rules and guidance (in Appendix 3 of DISP) that we considered would reduce uncertainty and enable firms to take a fair and consistent approach to handling PPI complaints in light of *Plevin*, thereby ensuring the best outcomes for consumers at the earliest stage in the complaints process. See https://www.fca.org.uk/publication/policy/ps17-03.pdf This followed two consultations, in CP15/39 (November 2015) www.fca.org.uk/publication/consultation/cp15-39.pdf and CP16/20 (August 2016) www.fca.org.uk/publication/consultation/cp16-20.pdf

2 That is, outside of the jurisdiction of the Financial Ombudsman Service and so outside of our DISP complaint handling rules (see DISP 3.1.2R). In this circumstance, the consumer's concerns are not a *complaint* as defined for the purposes of our complaint handling rules or the Financial Ombudsman Service's jurisdiction, and so the firm is not obliged to consider those concerns in accordance with DISP. Firms that provided restricted credit were generally not subject to the Ombudsman's jurisdiction before 6 April 2007, but there could be exceptions, for example where the act or omission occurred before 1 December 2001 and the respondent was subject to the jurisdiction of the Banking Ombudsman Scheme immediately before 1 December 2001. Firms that provided non-restricted credit are generally subject to the Financial Ombudsman Service's jurisdiction, but there could be exceptions, for example where the act or omission occurred before 1 December 2001 and the respondent was not subject to the jurisdiction of the Banking Ombudsman Scheme immediately before 1 December 2001.

3 We recognise that for some firms, an act or omission concerning insurance mediation (including the sale of PPI) may be outside the jurisdiction of our complaint handling rules if it occurred before 14 January 2005, when insurance mediation became a regulated activity.

4 DISP App 3.11 required firms that sold PPI to write (by 29 November 2017) to those previously rejected mis-selling complainants eligible to complain again in light of *Plevin* to tell them this and remind them of our deadline.

new complaint to the lender about non-disclosure of commission, either in light of RND or *Plevin* (depending on the circumstances), and remind them of our deadline.

1.3 Our view is that the final guidance and proposed mailing requirements:

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

Who does this affect?

1.4 This final guidance will mainly affect firms that sold regular premium PPI and/or provided credit agreements covered by this PPI.

1.5 Our proposed mailing requirements will affect both these firms and firms that sold single premium PPI and/or provided credit agreements covered by this PPI.

Is this of interest to consumers?

1.6 This final guidance and proposed mailing requirements will be of interest to:

- Consumers who were sold PPI, or may have been. In particular, those who were sold regular premium PPI, including where it covered restricted credit[5] such as home shopping and catalogue accounts, store cards, or loans taken in-store to buy specific goods. This is the case even if it was sold to them a long time ago, for example, before 6 April 2007.
- Consumer organisations and claims management companies (CMCs), or other paid advocates, who take forward complaints about PPI on behalf of consumers or otherwise help them.

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

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

The wider context

1.8 In CP18/18, we explained that:

- There was some uncertainty about whether firms should consider both the non-disclosure of commission at the point of sale *and* subsequent RND, when assessing complaints about regular premium PPI.
- Some firms had rejected, or intended to reject, any complaint involving undisclosed commission for restricted credit PPI where the point of sale was before 6 April 2007. This was because they saw these complaints as outside the jurisdiction of DISP and the Financial Ombudsman Service (the Ombudsman Service).

1.9 We therefore proposed guidance to resolve this uncertainty and ensure that firms do not cause consumers harm by rejecting complaints without considering RND.

1.10 Specifically, we proposed various guidance which in outline said:

- RND is a kind of omission that can make a credit relationship unfair under section 140A of the Consumer Credit Act[6] (s140A CCA).
- When handling regular premium PPI complaints, firms should assess whether RND makes the relationship unfair under s140A CCA, unless they uphold the complaint as mis-sold or in light of *Plevin* and provide appropriate redress.[7]
- Firms should make this assessment of RND even if the PPI complaint does not specifically mention the non-disclosure of commission either at point of sale or later.
- Firms should assess RND under our general complaint handling rule in DISP 1.4.1R, not the PPI-specific rules and guidance in DISP App 3.
- This need to assess RND applies equally to restricted and non-restricted credit. Non-restricted credit includes, among other things, mortgages, credit cards and unsecured personal loans.
- Any PPI complaint about a restricted credit agreement involving RND on or after 6 April 2007 is within the jurisdiction of our complaint handling rules. This means that firms need to assess the RND on or after 6 April 2007, even if the PPI was sold and credit agreement entered into before that date.

1.11 We did not propose guidance about how firms should assess or, where appropriate, redress RND. Instead, we:

- proposed that these aspects could reasonably and better be left to the Ombudsman Service to decide through individual complaints
- noted that the Ombudsman Service could take account of our existing *Plevin* framework when determining what is 'fair and reasonable' in all the circumstances of individual RND complaints

6 Generally, ss140A-C CCA only apply where the credit agreement is entered into on or after 6 April 2007 or before that date if it remains uncompleted as at 6 April 2008 (see transitional provisions in para 14 Schedule 13 to the Consumer Credit Act 2006) and where the credit agreement is not excluded by s140A(5) CCA.

7 See our rules and guidance on the fair assessment of PPI complaints in respect of potential mis-selling in DISP App 3.

- said that firms should take a fair and consistent approach to assessing RND, including taking into account what they learn from the Ombudsman Service's decisions

1.12 We also noted that where a firm did not previously consider RND when it rejected a regular premium PPI complaint, the consumer can make a new complaint. The firm would then have to assess this (if it is in scope of s140A CCA) in relation to RND.

1.13 Firms may receive complaints about other issues not covered by our PPI-specific rules and guidance in DISP App 3 but relating to the sale of PPI or matters related to the sale. We proposed guidance which said that, in these circumstances, firms should also assess these under our general complaint handling rule in DISP 1.4.1R.

Summary of feedback and our response

1.14 We received 20 responses from a range of stakeholders, including trade bodies, firms, consumer bodies and CMCs (see Annex 5).

The nature and jurisdictional effect of RND

1.15 Briefly:

- Most responses agreed with or accepted our description of RND and our view that firms need to assess it when dealing with some regular premium PPI complaints.
- Some firms said they have already been taking RND into account when handling *Plevin* complaints. These firms said they upheld these complaints if, at any point, commission went over 50% of the premiums being paid.
- Some responses supported our view that for complaints about restricted credit PPI, any RND on or after 6 April 2007 would need to be assessed, as within jurisdiction, even if the PPI was sold and credit agreement entered into before that date.

1.16 However, some respondents:

- Disagreed with our view of RND. They argued that our view did not have legal backing from *Plevin* or other case law, and was technically flawed.
- Disagreed with our view of RND's jurisdictional effect, for similar reasons. They also argued that it contradicts what we said in our previous consultations on *Plevin*.
- Raised concerns about the implications for non-PPI related credit and insurance.

1.17 We have carefully considered these various points. But we do not agree with them and so have not changed our view of RND or our guidance that sets this out (see Chapter 2).

How to assess complaints involving RND

1.18 Most responses disagreed with our proposal to direct firms to handle RND complaints under our general complaint handling rule but not give any detailed guidance on how to assess them. These responses also disagreed with our proposal to rely on emerging case decisions from the Ombudsman Service to assist firms.

1.19 Most responses said that this approach would leave a period of uncertainty while waiting for the Ombudsman Service decisions to emerge. They argued that this uncertainty would extend too close to the deadline. In the interim, this would risk confusion, poor or inconsistent outcomes for complainants, firms having to undertake unnecessary or duplicate work, and potential calls to postpone the deadline.

1.20 So most responses called for us to clarify how firms should assess and redress RND. Most also said they would prefer us to broadly align our RND approach with the key elements of our *Plevin* complaints framework in DISP App 3.

1.21 We have carefully considered these various points. However, we do not propose to change the relevant parts of the guidance, or our view of the role the Ombudsman Service's decisions will play in helping firms understand how to reach fair answers. We also note that we had already said in CP18/18:

- that the Ombudsman Service could take account of our existing *Plevin* framework when determining what is 'fair and reasonable' in all the circumstances of each RND case, and that
- while we had not thought it appropriate to say that firms should necessarily assess RND in the same way as under our *Plevin* rules and guidance, firms might reach that conclusion themselves

1.22 However, given the responses and concerns raised, we have decided to add the following final guidance:

Our view is that in assessing and, where appropriate, redressing complaints involving RND, firms should take account of all relevant factors. In many cases it may be reasonable for firms to draw from our rules and guidance on non-disclosure of commission at point of sale. This is because, in our view, such non-disclosure has much in common with the issues around RND, so that, sensibly applied, this approach would tend to provide for fair outcomes in many complaints involving RND.

RND and the complaints deadline

1.23 Some respondents asked if our 29 August 2019 deadline rule would include complaints about RND. They stressed it was important that it did, to avoid RND complaints continuing after the deadline and preventing the PPI issue being concluded in an orderly way.

1.24 We confirm that the deadline applies to complaints involving RND and that it is our intention that it should do so.

Consumers who can make new complaints in light of RND

1.25 Some respondents pointed out that we had not said how many previously rejected complainants could now make a new complaint in light of RND. We had also not given a reason for not proposing proactive ways to reach these previous complainants. These respondents argued that because RND was hard to understand, and some affected consumers may already have complained unsuccessfully twice and so not respond to our campaign, it would be fairer if we require firms to:

- reassess previously rejected complaints in light of RND and send appropriate RND redress where needed, or

- mail affected consumers to tell them they can make a new complaint in light of RND, and waive the deadline for these consumers so they have more time to make a new complaint about RND

1.26 Other responses said that we should carefully assess any calls for an RND mailing for proportionality and potential disruption so close to the deadline.

1.27 We have carefully considered this feedback, including using information we requested from a small sample of firms during the consultation.

1.28 Our estimate now is that there are perhaps between 210,000 and 280,000 previously rejected regular premium PPI complainants who can make a new complaint in light of RND. (See Chapter 3 and Annex 4 for details and examples.)

1.29 Now that firms have clarity from our final guidance on RND, we consider that at least 150,000 of these previous complainants (mostly involving restricted credit PPI) should now be mailed under our existing *Plevin* mailing rule (DISP App 3.11). But firms will need to assess the complaints made in response in light of our new guidance on RND.

1.30 This supplementary *Plevin* mailing, which we would now expect firms to complete promptly, will be equivalent to around 12% of the 1.3m *Plevin* letters already sent.

1.31 We have carefully considered the remaining estimated 60,000 to 130,000 previously rejected regular premium PPI complainants who could make a new complaint in light of RND. These include:

- Around 10,000 previous *Plevin* complaints that were rejected as not involving an unfair relationship or as out of jurisdiction.

- Between 50,000 and 120,000 cases where the consumer complained previously about mis-selling, but the complaint was rejected as out of jurisdiction. As a result, these complaints were not caught by our previous *Plevin* mailing rule and so were not sent a letter. But in any case, these consumers could not have made *Plevin* complaints that were in jurisdiction.

1.32 We also estimate that there are between 10,000 and 20,000 cases where, again, the consumer complained previously about mis-selling, was rejected as out of jurisdiction, and so was not caught by our previous *Plevin* mailing rule. But these consumers could make a *Plevin* complaint (rather than an RND complaint) that is in jurisdiction. These cases mostly involve regular premium PPI, but also some single premium PPI.

1.33 We have assessed the position of these three groups of complainants. We consider that they are in similar circumstances, of potential disengagement from the PPI issue and our campaign, and have similar potential communication needs. As a result, it is now our view that firms should write to these complainants to tell them they can make a new complaint.

1.34 However, we know that some firms may not be able to identify whether complainants whose PPI mis-selling complaints they rejected as out of jurisdiction would now be able to make a new complaint, in light of RND or of *Plevin*, that would be in jurisdiction. This is particularly the case for brokers, who sold PPI but did not provide the credit it covered.

1.35 As a result, and balancing comprehensiveness and proportionality, we propose rules (see Chapter 3 for full details) which require:

i. Lenders to write to specific regular premium PPI *Plevin* complainants whose complaints they previously rejected on the grounds that they did not involve an unfair credit relationship or were out of jurisdiction. These letters should tell these consumers that they can make a new complaint in light of RND, and remind them of our 29 August 2019 deadline for complaining.

ii. Sellers (including brokers) to write to specific regular and single premium PPI mis-selling complainants whom they previously rejected as out of jurisdiction. These complainants were not caught by our previous *Plevin* mailing rule and so were not written to. These letters should tell these consumers that they can make a new complaint to the lender about non-disclosure of commission, either in light of RND or *Plevin* (depending on the circumstances), and remind them of our deadline.

1.36 We also propose to exclude cases where sending a letter would be pointless. This includes where:

- the firm is both seller and lender and knows that the consumer would not be able to make a complaint in response, in light of RND or *Plevin*, that would be in jurisdiction
- the consumer has already, by 29 April 2019, been offered or paid redress in respect of the PPI for a mis-sale or an unfair relationship

1.37 We estimate that these proposed mailings would be equivalent to between 7% and 13% of the 1.3m letters sent in the previous *Plevin* mailing.

1.38 Similar to the previous *Plevin* mailing, we also:

- propose that firms should complete the mailings as soon as practicable and no later than 3 months from when the rules come into force
- would expect to agree a standard text for firms to use in the mailings
- would carry out, as a priority, supervisory work to check and ensure that firms are mailing the correct consumers and not wrongly leaving any out

1.39 We are consulting on these new proposals for one month, until 7 December 2018. We consider this to be sufficient, given the specific nature of the proposals and the importance, if we proceed, of firms completing the mailings as soon as possible before the 29 August 2019 deadline. That will give recipients as much time as possible to consider their letters and to respond if they choose.

Other types of PPI complaints

1.40 Most respondents agreed with us that other types of PPI complaint not covered by DISP App 3 should be assessed under DISP 1.4.1R. But some did not, arguing that we should decide this on a case by case basis in the future, depending on the nature and volume of those types of complaints.

1.41 We have carefully considered this feedback (see Chapter 2), but we have not changed our view or the guidance.

What we are changing

1.42 The final Handbook and non-Handbook guidance set out in Appendix 1 comes into effect on 8 November 2018. And we are proposing requirements on firms to write to specific previously rejected complainants to tell them they can make a new complaint.

The outcome we are seeking

1.43 We want firms to assess relevant regular premium PPI complaints in light of RND and our final guidance about it. This will give complainants fair and consistent outcomes at the earliest stage in the handling process.

1.44 We want the proposed mailings to help complainants who were previously rejected to engage with our campaign and consider whether they want to make a new complaint in light of RND or *Plevin* before the deadline.

Measuring success

1.45 We will monitor and evaluate firms' assessment of RND as part of our ongoing supervision of the way they treat PPI complaints. This will include discussion with the Ombudsman Service about its experience of firms' approaches to handling complaints involving RND. We would also assess how firms have complied with any new mailing requirements.

Equality and diversity considerations

1.46 We have carefully considered equality and diversity implications throughout our PPI work and put appropriate measures in place, as set out in our Equality Impact Assessment (EIA) and our recent update.

1.47 In CP18/18, we said that having regard to our EIA of the package of measures in PS17/3:

- We did not consider that our proposed guidance would adversely or disproportionately affect any of the groups with protected characteristics. These are: age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation and gender reassignment.

- We had taken into account, when assessing the issue of RND and our potential approach, that some of the customer groups affected by our proposed guidance have lower than average incomes, and may have lower financial confidence and capability. This may make them less likely to complain.

1.48 We asked for input on the equality and diversity implications of our proposed guidance. Most responses did not comment, or said they could see no implications.

1.49 However, some responses said our proposal that consumers should have to complain again, possibly for a third time, was likely to have an unfair and disproportionate impact on vulnerable consumers and groups with a protected characteristic.

1.50 We have carefully considered this feedback. We discuss it in Chapter 3 in the context of our proposed mailing requirements, and ask for feedback on the equality and diversity implications of these proposals.

Next steps

1.51 Firms should:

- review their PPI complaint handling policies and procedures in light of the final guidance on RND and make changes where needed
- assess PPI complaints fairly in light of our final guidance on RND and their engagement with, and lessons learned from, the Ombudsman Service
- resolve the complaints they put on hold since CP18/18 promptly and fairly
- ensure they keep their policies and procedures under review to monitor their continued compliance with the requirements

What you need to do

1.52 We want to know what you think of our proposed mailing requirements. Please send us your comments within one month by **7 December 2018**.

How to send us your response

1.53 Please use the online response form on our website, or email us at cp18-33@fca.org.uk, or write to us at the address on page 2.

What we will do next

1.54 We will consider your feedback on the proposed mailing requirements. After we have assessed your comments, and if we go ahead with some or all of the proposed requirements, we will aim to issue a policy statement with final rules by the end of January 2019, with an immediate implementation date.

1.55 In the meantime, we will also be conducting supervisory work with firms to ensure they are handling complaints fairly in light of our final guidance on RND.

2 Feedback on the proposed guidance and our response

2.1 This chapter discusses the feedback we received to the guidance proposed in CP18/18 and our responses.

What we had proposed

2.2 In CP18/18, we proposed Handbook guidance to be included at the start of our PPI-specific complaint handling rules and guidance in DISP App 3. This guidance stated that these PPI-specific rules and guidance do not set out how a firm that has received a complaint relating to the sale of PPI by the firm, or matters related to the sale, should assess whether RND made the relationship unfair under s140A CCA. Our proposed guidance stated that firms should assess complaints involving such issues under our general complaint handling rule in DISP 1.4.1R.

2.3 We proposed the following accompanying non-Handbook guidance:

- RND is a kind of omission or omissions that can make a credit relationship unfair for the purposes of s140A CCA.
- The need to assess RND applies equally to regular premium PPI on restricted credit and on non-restricted credit.
- Any RND on or after 6 April 2007 would bring a complaint about restricted credit within scope of our complaint handling rules in DISP (provided the credit agreement is in scope of s140A CCA), so that the RND after that date would need to be assessed. This will be the case even if the PPI was sold, and credit relationship entered into, before that date.
- Firms do not have to consider RND if they decide under our *Plevin* rules and guidance ('Step 2' in DISP App 3) that not disclosing the existence or level of commission and/or profit share at the point of sale gave rise to an unfair relationship under s140A CCA, and redress the complaint accordingly. Nor do firms have to assess RND if they decide under our rules and guidance concerning mis-selling ('Step 1' in DISP App 3) that the PPI was mis-sold and provide full redress.

2.4 In light of existing guidance in DISP App 3 and DISP 1, we also proposed non-Handbook guidance that:

- Firms should assess whether any RND makes the relationship unfair under s140A CCA, even if the complaint does not expressly mention non-disclosure of commission (whether at point of sale or later).
- Firms should adopt a fair and consistent approach to making these assessments of RND, including taking into account what they learn from the decisions of the Ombudsman Service.

The nature of RND

2.5 In CP18/18, we asked:

> **Q1:** ***Do you agree RND is a matter that should be assessed by firms when assessing complaints about regular premium PPI covering restricted or non-restricted credit relationships within the scope of s140A CCA?***

2.6 Some responses, including all those from consumer bodies and CMCs and some from industry, agreed with this in principle. They argued, for example, that an analysis of fairness under s140A(1)(c) CCA must take into account all the circumstances of the relationship, not just those that applied at the point of sale as discussed in the *Plevin* judgment.

2.7 Some firms said they already assessed RND in practice. They said they uphold complaints if commission went over the tipping point (typically 50% of the premium) at any point in the life of the policy, even if commission was under the tipping point at the point of sale. They gave various reasons for doing this, including:

- to be consistent with the spirit of our measures in PS17/3, including our *Plevin* rules and guidance
- to ensure they were handling complaints fairly, taking into account all relevant factors
- following indications from the Ombudsman Service that this was likely to be a reasonable approach
- for practical reasons of efficient complaint handling

2.8 Some responses, while arguing that the assessment of RND was not necessarily required legally in light of *Plevin* or by our current rules and guidance, accepted that:

- we wanted to address the uncertainty about RND and the risk of harm to some complainants, particularly given our aim of bringing the PPI issue to an orderly close
- we considered it necessary for transparency to do this by consulting on guidance, rather than by working with individual firms on a one-to-one basis

2.9 However, some respondents disagreed with our view of RND. They argued that:

a. RND as a concept does not have legal authority:

i. Only a court can determine whether a credit relationship is unfair under s140A CCA, not the FCA or Ombudsman Service. The proposals have no legal precedent and are a major extension beyond case law. They are based solely on the opinion of the FCA and Ombudsman Service, who are not equipped to assess questions of law with such wide-reaching implications.

ii. The decision in *Plevin* was focused on the unfair relationship created by non-disclosure of high commission at the point of sale, when Mrs Plevin was making her purchase decision. The decision involved her ability to assess the value of the policy then. The FCA's existing rules and guidance appropriately focused on

precisely that development in the law. Nothing has changed since legally, so the basis for the consultation is unclear.

iii. The FCA is stepping into the trap we previously said we wanted to avoid, of moving too far from the approach set out in *Plevin*.

b. RND is inconsistent with *Plevin* and technically flawed:

i. Under *Plevin*, the cause for complaint was that an unfair relationship was created from the point at which disclosure of high commission might have been reasonably expected, which was the point of sale.

ii. If, at point of sale, commission was high or it was foreseeable that it would become high but this was not disclosed, then the relationship was made unfair. And it continued to be unfair until the source of unfairness was remedied, for example, by disclosing the amount of commission later on. But in the meantime, there was no 'creation anew' of the unfair relationship with each subsequent premium the customer paid.

iii. If, instead, at point of sale the commission was not high or it was not foreseeable that it would become high, then no unfairness arose from the non-disclosure. If it became high later, neither *Plevin* or any other authority state that an unfair relationship could be created then, or that the lender has a continuing obligation to assess whether its post-sale commission is high enough that they should disclose it to avoid unfairness. The fact the policy is paid for by recurring premiums does not mean it is 're-sold' with each premium.

iv. So, a proper analysis shows there is no "recurring" non-disclosure that gives rise to fresh causes of complaint. There is one single omission at the point of sale that gives the cause of complaint and either creates an unfair relationship at that point or does not.

c. RND does not address any consumer harm:

i. Changes made after the sale in the commission arrangements or rates the insurer (not the policyholder) paid to the lender did not affect the amount the policyholder paid or their benefits.

ii. So RND cannot create an obligation to disclose such back-office adjustments (in a monthly statement or otherwise), or be a kind of omission that can make a credit relationship unfair for the purposes of s140A CCA, or give rise to a valid complaint.

d. RND would create inappropriate and retrospective disclosure obligations:

i. RND implies an ongoing obligation to disclose commission and earnings throughout the term of an agreement, including in monthly statements, even where the cost to the customer and benefits remain the same. This would be to allow the customer the chance to revisit their decision to keep the policy.

ii. But there is no legal precedent or regulatory requirement for this kind of obligation, which is not and never has been market practice. It would be highly unusual if financial services firms were required to continuously monitor the

income they get from a product in order to give a customer a view of whether the product continues to be good value.

iii. Also, if, as was proposed, RND is defined to include a failure to disclose the existence of commission, even low commission PPI would be affected. This would go far beyond the principles of *Plevin* and its tipping point.

iv. The proposed approach implies that every monthly PPI statement that failed to disclose a commission of whatever level to the borrower is grounds for the borrower to make a complaint about an unfair credit relationship.

e. RND would also apply to single premium PPI:

i. The proposed guidance does not include any express limitation of RND to regular premium PPI. This means a customer could make an RND complaint in any PPI case where the lender receives undisclosed commission in regular instalments through the term. This will always have been the case for any PPI involving post-sale profit share arrangements, including single premium PPI.

f. RND will prompt groundless complaints and cause disruption:

i. Once the Ombudsman Service upholds complaints on the basis of RND, then it and the FCA will have created an entirely new and retrospective cause of action, with no basis in statute, case law or regulation.

ii. The proposals effectively signpost this new cause of action and will guide CMCs on how to craft a complaint about RND, increasing complaint volumes and the operational burden on firms.

g. RND would affect a wide range of other credit and insurance products too:

i. The apparent regulatory support for this new cause of action and for post-sale disclosure obligations will retrospectively mean all credit agreements caught by s140 CCA can be complained about. It also creates a risk that RND complaints can be extended to other areas and types of insurance.

ii. This risk of contagion is increased by the proposal that firms should handle RND complaints under the general complaints rule. This is not the natural place for guidance that is intended to apply to a particular product.

2.10 Aside from agreement or disagreement with the principles of our proposed approach to RND, most responses had concerns about its potential practical consequences. We cover most of these in our discussions of the feedback on Q2 and Q3 further below.

Our response

Authority, flaws, harm and disclosure

We know that only the courts can definitively declare that a credit relationship is unfair under s140A CCA. But that does not prevent us, as regulator, from setting out our view on the kinds of omission or omissions that can cause a relationship to be unfair for the purposes of s140A CCA. We have done so with the aim of ensuring fair and

consistent outcomes for complainants and to help ensure an orderly conclusion of the wider PPI issue. As we previously said of our approach to *Plevin*, if a court subsequently takes a very different view of RND from ours, we will take account of that then.

It is true that our *Plevin* rules and guidance focused on point of sale and did not refer to RND. This led to uncertainty, and so we saw it was necessary to consult on new guidance to remove that uncertainty.

Having considered the objections of principle raised, we are not changing our approach to the concept of RND as set out in CP 18/18. In particular:

i. We do not state or imply that firms have (or should have) 'continuing obligations' to disclose commission. The *Plevin* judgment made clear that s140A CCA did not involve the question of a duty, but what the lender could reasonably have been expected to do.

ii. We do not state or imply that the PPI policy is 're-sold' with each premium, and do not base our approach on this view.

iii. Our view is based instead on the clear wording of s140A(1)(c) CCA – namely, that RND is essentially a 'thing or things not done'. So there is no reason in principle why it cannot amount to a cause of an unfair relationship for the purposes of s140A CCA.

iv. We do not agree that our approach retrospectively creates a disclosure obligation. To the extent our guidance recognises that RND can create an unfair relationship, it just sets out the existing effect of s140A CCA. At most we are emphasising an aspect of s140A CCA that was not emphasised before.

v. We do not agree that RND does not address a harm. While commission, and in particular, profit share, may have risen even where premiums stayed the same, that does not mean there is no harm. The potential harm addressed in *Plevin*, and by RND, is about undisclosed commission. It is not about whether premiums were disclosed or whether there were changes in premiums that were not disclosed after the sale. That is why we rejected this broad argument previously (in PS17/3), when some firms made it against our proposal to include profit share in our approach to complaints in light of *Plevin*.

Single premium PPI

CP18/18 and its proposed guidance explicitly referred throughout to regular premium PPI complaints only. Our view is that the circumstances surrounding single premium PPI and the non-disclosure of commission are generally quite different.

New and groundless complaints

Concerning the perceived potential for duplicate or speculative complaints about RND, we would note that it is our understanding that a CMC should:

- ensure it has a valid letter explaining it is authorised to represent a client and the exact nature of the authority granted to it
- ensure it provides as much information as possible to the firm, about the underlying product being complained about and the reason why its client believes the firm is at fault
- learn from the decisions of the Ombudsman Service
- not submit RND complaints where the consumer has already been redressed for mis-selling and/or in light of *Plevin*

The impact on other types of credit or general insurance

Our guidance on RND only concerns PPI, and this is the case even though it points firms to consider PPI complaints involving RND under our general complaint handling rule.

As we previously said about our *Plevin* rules and guidance, and as remains the case for RND, we have not proposed rules or guidance about undisclosed commission, or other matters which may give rise to an unfair relationship under s140A CCA, in relation to non-PPI markets and complaints, because we are not currently aware of any evidence of potential relevant issues with inconsistent complaints handling in markets other than PPI.

We also note again what we said in PS17/3, that:

- our insurance mediation rules did not and do not require firms to disclose commission to retail consumers, unless requested by the consumer (see ICOBS 4.4.3G) and our new guidance here does not change that position;
- our consumer credit rules do provide for pre-contract commission disclosure by credit brokers but only for contracts entered into on or after 1 April 2014 (see CONC 4.54); and
- the non-disclosure of commission in PPI sales before 1 April 2014 is unlikely in and of itself to have been in breach of our Principles.

If potential future decisions in the courts address s140A-B CCA and the non-disclosure of commission in other kinds of credit relationship that are not linked to PPI, then we will consider the issues and case law on a case by case basis then in light of our statutory objectives and regulatory priorities.

The jurisdictional effect of RND

2.11 We asked:

> **Q2:** ***Do you agree that any RND on or after 6 April 2007 brings a complaint about restricted credit covered by PPI sold before 6 April 2007 into DISP jurisdiction?***

2.12 Some of the responses that disagreed with our view of RND also disagreed with this, arguing that:

i. It is not for the FCA to decide or amend the Ombudsman Service's jurisdiction and how DISP applies. It is prescribed by Parliament, and is for the courts to interpret and determine, through judicial review proceedings if necessary. The FCA's opinion has no legal impact on the position.

ii. Firms already accept that a complaint about restricted credit which explicitly refers to omissions after 6 April 2007 is in jurisdiction, so there is no need for new guidance to clarify that.

iii. Acts or omissions before 6 April 2007 cannot be brought into jurisdiction, regardless of whether they are complained about in combination with a complaint about RND occurring after 6 April 2007.

iv. The jurisdiction only concerns actual complaints, and so would only include complaints which explicitly express dissatisfaction about RND that took place after 6 April 2007. Our view that there are circumstances after 6 April 2007 which could give rise to a RND complaint does not bring into jurisdiction complaints that are only about the pre-6 April 2007 sale or non-disclosure at that time.

v. The statutory framework cannot be circumvented by trying to require firms to handle complaints as if a consumer had made a complaint about post-6 April 2007 RND.

vi. Even if such a complaint is actually made, if an unfair relationship had already been created at point of sale before 6 April 2007, then no subsequent RND can be an omission that creates an unfair relationship, even if it happened after 6 April 2007. As a result, a firm can properly reject such a complaint on its merits.

vii. It is this correct interpretation of the law, jurisdiction and merits which should be set out in guidance, to avoid misinterpretation and provide clarity to everyone.

2.13 These responses further argued that:

i. There had been no new legal development since our final *Plevin* rules and guidance. Responses to the FCA and Ombudsman Service during 2015–2017 had made them fully aware of all the issues raised in CP18/18.

ii. Those previous responses set out specific concerns that the proposed *Plevin* rules and guidance should not apply to restricted credit PPI sold before 6 April 2007. To do so would be to extend the reach of DISP and the Ombudsman Service's jurisdiction to complaints which they did not apply to.

iii. We confirmed at the time that we did not intend to extend the reach of DISP and the Ombudsman Service. And our final rules and guidance on *Plevin*, which rightly concerned only non-disclosure at point of sale, avoided doing so.

iv. In engagement with the Ombudsman Service, it was made clear that commission levels before 6 April 2007 were not relevant, as they were out of jurisdiction.

v. So it is hard to reconcile this history, which the FCA acknowledged in CP18/18, with our statement that we were consulting in response to recent developments.

vi. It was a further disappointment, in the circumstances, that we consulted in CP18/18 without any prior discussion with stakeholders.

2.14 Other responses either agreed with us about the proposed significance of RND for restricted credit complaints and their jurisdiction, or made no comment. Some noted current differences among some restricted credit providers' approach, which they said confirmed the uncertainty we had highlighted in this area.

2.15 However, some responses, while agreeing with our view of jurisdiction, said that it was still disappointing that we were consulting on new guidance just a year before the deadline, and that this suggested there were flaws in our previous consultations.

Our response

We do not agree that RND occurring on or after 6 April 2007 is only in jurisdiction if there is a complaint which specifically alleges that RND occurred after that date. We still consider that there is no need for a complaint that specifically alleges a failure to disclose after 6 April 2007. This is because, as for complaints in general, a firm must take a broad approach when handling PPI complaints and take into account all relevant surrounding facts and circumstances, including RND, even if the complainant does not raise them.

However, where omissions were out of jurisdiction (eg because they happened before 6 April 2007), they will remain so. We have not proposed anything that changes this.

We understand that some firms may feel frustrated that we appear to have opened up a matter they thought settled by our previous consultations about *Plevin*. But they overstate the significance of what was discussed previously:

i. In the previous consultations we deliberately focused only on point of sale complaints, to give clarity to firms in the light of the *Plevin* judgment.

ii. While there has been no legal change since then, we have found that some firms were uncertain and that different restricted credit firms were using different approaches. This shows that matters are not as clear-cut as some responses suggest.

iii. We said previously that we weren't changing jurisdiction and we have not: where omissions concerning the policy were out of jurisdiction (eg because they occurred before 6 April 2007) they remain so. But we have now decided to deal expressly with RND, and its implications under DISP and the Ombudsman Service's jurisdiction when it occurs after 6 April 2007.

As we said in CP18/18, we did not engage with stakeholders before consulting on our proposed guidance because we considered that it was potentially market sensitive information.

2.16 Some responses asked specific questions about RND complaints and jurisdiction:

i. Would a firm have to respond to a complaint involving RND where the consumer cancelled or paid the PPI in full before 6 April 2007 but the credit agreement remained formally open as at 6 April 2008 (the relevant date for s140 CCA scope)?

ii. Would any redress for complaints involving a sale on or before 6 April 2007, but brought into jurisdiction by RND after 6 April 2007, be limited to the period after 6 April 2007, or start from the time of sale?

Our response

We consider that, typically, a relevant PPI complaint would not be brought into jurisdiction if there was no RND on or after 6 April 2007.[8] This is the case even if the credit agreement remained open as at 6 April 2008 and so came within s140A CCA. There would in any case be no loss after 6 April 2007 and no redress due.

In relevant complaints, redress is only for the loss from those omissions that were in jurisdiction. For restricted credit, this would generally mean only the RND after 6 April 2007, as RND before that date would generally remain out of jurisdiction.[9]

How to assess complaints involving RND

2.17 We asked:

Q3: ***Do you agree RND should be assessed under our general fair complaint handling rule (DISP 1.4.1R)?***

8 We say typically because it might be possible that the complaint is properly construed to concern an allegation of RND after 6 April 2007 (for example because it explicitly alleges this), even though this allegation might turn out to be factually mistaken. However, it would still be the case that there was no loss after 6 April 2007 and no redress due, and so the complaint in this scenario could still be fairly rejected, on its merits.

9 There may be some restricted credit cases where RND before 1 December 2001 are in jurisdiction and should potentially be redressed – see Annex 4 for details.

Q4: ***Do you agree with our decision not to propose rules and guidance about how to assess RND in PPI complaints and to let details of how to assess and potentially redress RND emerge from firms' learnings from the ombudsman service and its decisions on individual cases?***

2.18 Some responses agreed that it was right for RND to be assessed under DISP 1.4.1R. They argued, for example, that not all the PPI-specific rules and guidance in DISP App 3 necessarily apply to the assessment of RND. Considerations about RND under s140A CCA may also be wider than is set out in DISP App 3.

2.19 Some responses agreed with or accepted our proposed approach. They said, for example, that we had needed to act quickly, given the approaching deadline. They felt no additional rules or guidance were required, as the existing ones provided a well-established framework which the Ombudsman Service would take into account when assessing RND complaints.

2.20 However, most responses disagreed with our proposed approach. Most industry responses said it would:

i. Create a risk of confusion, delay, and poor or inconsistent outcomes for consumers, rather than ensure a straightforward process.

ii. Aggravate the already significant challenge for firms of implementing a new approach so close to the deadline. This will be a particular problem for firms who now have to assess complaints for undisclosed commission that they would previously have simply dismissed as out of jurisdiction.

iii. Increase the number of PPI complaints, including duplicate or speculative ones, creating unnecessary extra work for firms who already paid redress, including in light of RND.

iv. Threaten the deadline, as confusion, delays or large numbers of new complaints might lead consumers to call for it to be extended.

2.21 Most consumer bodies and CMCs argued that:

i. We would leave firms confused, consumers uncertain, and create the risk of delays in redress and of poor and inconsistent outcomes. For example, those who complain about RND later, after Ombudsman Service decisions emerge, might get higher redress than earlier complainants.

ii. We had not explained why the presumptive 50% tipping point and approach to redress in the existing *Plevin* rules and guidance should not also apply to RND.

iii. We should waive the deadline for RND complaints, particularly those from previously rejected complainants, who would otherwise have less than a year to complain about it.

2.22 Most responses also doubted that leaving details to emerge from the Ombudsman Service's decisions on RND would reduce these various risks. This is because:

i. The Ombudsman Service's approach is not suited to doing this. It has to focus on individual cases and their circumstances, rather than general principles, and does not offer decisions as precedents.

ii. If the Ombudsman Service was able to do this, it would have already done so, without the need for the FCA's intervention and proposed guidance.

iii. At best, clarity would emerge only slowly and too close to the deadline, as the Ombudsman Service evolves its approach gradually from assessing many cases. Also, it is already overloaded with a backlog of PPI cases.

2.23 Some industry responses feared that, in the meantime, CMCs might start referring all decisions from firms to the Ombudsman Service. Equally, some CMCs felt the proposed approach removes the responsibility on firms to handle complaints right first time. They highlighted their past bad experiences of some firms who did not work effectively with the Ombudsman Service or learn from it.

2.24 Overall, there was significant agreement among responses that our proposed approach could damage public confidence in PPI complaint handling. This made our approach hard to justify and out of line with our aim of bringing the PPI issue to an orderly close.

2.25 There was similar agreement among responses that we should therefore give more details about how firms should assess RND. Most responses also said that such additional details should be clearly aligned with our existing *Plevin* complaint rules and guidance in DISP App 3. This was because:

i. those provisions had given complainants quick and predictable outcomes, as even some of those who disliked elements of the provisions agreed

ii. this alignment would keep the credibility of the existing provisions, and avoid penalising firms that had already considered RND

iii. this would be the best way to help consumers affected by RND, without creating undue extra complexity and cost for firms

iv. it would be unreasonable for an entirely different presumptive tipping point to apply where a lender failed to disclose a commission later in the life of the policy

v. it would be unrealistic to separate redress of RND from the existing provisions

vi. it would help manage consumers' expectations about whether, and how much, redress was likely to be due, thereby supporting orderly closure of the PPI issue

2.26 There were several suggestions as to how to deliver such alignment:

i. Our supervisors should simply direct those firms who are not doing so already to consider RND complaints from the perspective of DISP App 3, particularly the presumptions there. Such individual guidance would be a more proportionate solution and avoid over-regulation of an issue that only involves some firms.

ii. We should add guidance to point firms toward DISP App 3 when they assess RND complaints, even if we still leave the Ombudsman Service's decisions on RND to set out the further detail.

iii. We should formally extend the existing rules and guidance in DISP App 3 to include RND. This would not restrict a firm or the Ombudsman Service from making adjustments in light of the circumstances in individual RND complaints.

iv. We should restrict any new rules and guidance on RND to restricted credit. This is because many lenders of non-restricted credit have already been including RND in their assessments and redress offers.

Our response

In CP18/18, we said that the circumstances and timescales of RND, and so their potential significance for the consumer, could be more varied than non-disclosure at the point of sale. As a result, the Ombudsman Service was better placed than us to consider the particular circumstances in individual cases, and to provide lessons to firms over time, through decisions, about more typical fact patterns and their fair treatment.

The Ombudsman Service could have pressed ahead with issuing relevant decisions without our intervening and proposing the guidance in CP18/18. But we felt it was an appropriate regulatory response, and more transparent, for us to set out our view of the key aspects about RND where there was uncertainty. We felt this was important, so that firms and consumers could be confident that we and the Ombudsman Service took a broadly similar view of relevant considerations, and that our supervision of firms' handling of RND complaints, and the Ombudsman Service's decisions on individual RND complaints, would on that basis be appropriately consistent with one another.

When we developed our proposals, we also considered that it would be better, on balance, to consult at a high level swiftly, to enable the Ombudsman Service to press on with issuing its views and decisions. The alternative would have been for us to delay, to prepare detailed rules and guidance. But the Ombudsman Service would in any case only have needed to take those detailed rules and guidance into account, not necessarily follow them, when deciding RND complaints on a fair and reasonable basis in light of their individual circumstances.

We also thought that our statement in CP18/18 that the Ombudsman Service could take account of our *Plevin* rules and guidance when deciding RND cases would offer some reassurance about a likely broad continuity. After all, some firms were already redressing cases on an RND basis and the Ombudsman Service was already passing some of these offers on to the complainants.

However, most respondents were not reassured by this statement and were worried that there would be uncertainty. Some firms were concerned that this would lead CMCs to make unreasonable or duplicate

complaints. And some CMCs were concerned that the uncertainty would lead firms to make unfair complaint assessments.

These concerns could lead to even small issues or inconsistencies being developed into a list of perceived problems in the run up to the deadline, damaging confidence in fair complaints outcomes and the orderly closure of the PPI issue.

So, given these concerns, we consider that it would be reasonable and sensible to say more now to address them. We have added the further non-Handbook guidance set out at paragraph 1.22 above to do this.

But we are not changing the proposed guidance about DISP 1.4.1R, because we:

- Do not consider that a one-to-one supervisory approach to some firms about RND would be transparent enough for all potentially affected firms or for consumers.

- Do not consider that providing additional rules and guidance to restricted credit firms only would be appropriate. This is because RND is relevant to both non-restricted and restricted credit, and not all non-restricted credit firms are currently assessing RND in practice.

- Still consider, for the reasons set out above and in CP18/18, that it would not be appropriate to formally extend our DISP App 3 rules and guidance to apply to RND, or to put forward separate detailed rules and guidance about RND.

We still expect firms to apply the lessons from Ombudsman Service decisions about RND appropriately. We have had discussions with the Ombudsman Service and know it intends to start engaging with firms and issuing provisional views as soon as it has had a chance to consider our final guidance.

The Ombudsman Service fully appreciates the need to progress these actions promptly. It is thoroughly experienced in balancing in practice the principles of treating like cases consistently, and unalike cases differently, to provide for a fair and reasonable result in the individual circumstances of each case. So we do not anticipate difficulties or significant delays in practice, unless firms choose not to engage sensibly and constructively with the Ombudsman Service. In that case we would intervene appropriately, as part of our robust supervisory strategy for RND. We encourage CMCs or others to raise concerns about firms' PPI complaint handling with us. And as noted, CMCs too should learn from the decisions of the Ombudsman Service.

We are confident that our final guidance, supported by forthcoming decisions from the Ombudsman Service, will provide clarity and consistent outcomes to complainants and avoid any risk of confusion or disruption before the deadline. All complaints should now be assessed in light of RND where it is relevant, regardless of whether the complainant has mentioned it. So there is limited need for any detailed

consumer understanding of the issue. Our proposed mailings would also help affected consumers to take action in good time.

2.27 Some responses asked:

i. how the assessment of RND relates to firms' obligations under Step 1 and Step 2 (in DISP App 3), including if a complaint is made only about RND

ii. whether we should waive the 8-week complaint handling time limit for complaints that have had to be put on hold during the consultation on CP18/18

Our response

We expect firms to fairly assess complaints, and redress them where appropriate, at the earliest stage in the complaints process. Where a consumer is making their first PPI complaint, we expect a firm (if it is seller and lender) to assess this:

- first, for a mis-sale; and if there was not a mis-sale, then
- second, for an unfair credit relationship created at the point of sale in light of our *Plevin* rules and guidance; and if there was no such unfair credit relationship at that point, then
- third, for an unfair credit relationship arising subsequently in light of our final RND guidance

We would expect the firm to follow this sequence, unless the complainant expressly said they did not wish to complain about mis-selling or did not wish to complain in light of *Plevin*. The former is rare but sometimes happens, the latter seems unlikely.

If a firm upholds a complaint and redresses at a later step, without having assessed at the earlier step, in order, for example, to reduce the redress it pays, then this would be unfair complaint handling. We would intervene if we became aware of this practice.

As with complaints put on hold during our previous consultations in light of *Plevin*, firms can and should have sent complainants whose cases they were not progressing until our RND consultation concluded, a communication under DISP 1.6.2R which informed them of this. This communication should also have explained why and told complainants of their right to go to the Ombudsman Service. So a waiver of the 8-week rule for responding to complaints would not be appropriate.

RND and the complaints deadline

2.28 Some responses said that our deadline rule (DISP 2.8.9R) might be read as not applying to RND. The deadline applies to complaints which express dissatisfaction about the sale or matters related to the sale. But RND, these responses suggested, is a post-sale omission, and so complaints based on RND might continue indefinitely. This would be

illogical, inconsistent with our campaign, and prevent the orderly conclusion of the PPI issue.

Our response

We can confirm that the deadline applies to complaints involving RND and that it is our intention that it should do so. As we set out in PS 17/3, our purpose in making the deadline rule was, broadly, to bring closure to the PPI issue. This required a single PPI deadline generally applying to all new complaints about PPI. Set against that background, and bearing in mind the very broad and flexible natural meaning of the language we used in the deadline rule, we do not agree that RND are not 'matters related to the sale' of the PPI. After all, the initial sale of the PPI forms part of the factual matrix of the entire credit relationship (including its termination), during which commission was taken (and paid for) but not disclosed.

Consumers who can make new complaints in light of RND

2.29 Respondents were interested in what we had said about the scope for new complaints about RND from previously rejected complainants. They were also interested in what we had not said, for example about any potential proactive measures. We discuss these responses in the next chapter.

Other types of PPI complaint

2.30 In CP18/18, we also proposed Handbook guidance, to be located at the start of our PPI-specific complaint handling rules and guidance, to the effect that:

- our PPI-specific rules and guidance in DISP App 3 do not set out how a firm that has received a complaint relating to the sale of PPI by the firm, or matters related to the sale, should assess any other issue not covered by our rules and guidance in DISP App 3, and
- firms should assess complaints about such issues under our general complaint handling rule in DISP 1.4.1R

2.31 We asked:

> **Q5:** ***Do you agree that types of PPI complaint which are not covered by our detailed PPI rules and guidance should be assessed by firms under our general fair complaint handling rule?***

2.32 Most responses agreed with this. But some agreed only if the new issue was clearly separate from the issues covered under our current rules and guidance on PPI complaints, and if the volume of complaints about the new issue was low.

2.33 Some respondents disagreed with our proposed prescription. They said that we should consider the fair approach to handling PPI complaints involving any such new issue on a case-by-case basis at the time.

Our response

In practice, we might assess whether the nature of a new PPI issue and the volume of complaints about it would require bespoke new provisions in DISP App 3, as we did previously for *Plevin*. However, our *Plevin* rules and guidance were a rare exception to the general position that complaints need to be assessed with reference to DISP 1.4.1R only. The main previous exception before that was in 2001, when the FSA gave guidance on the fair treatment of mortgage endowment complaints. In general, we do not consider that different types of complaint need bespoke guidance, because firms have an overarching obligation to consider complaints fairly, and opportunity to apply lessons from the decisions the Ombudsman Service gives them. We remain of that view about PPI RND complaints.

3 Consultation on proposed mailing requirements

Previously rejected complainants and new complaints about RND

3.1 In CP18/18, we explained that if a firm did not consider RND when it rejected a regular premium PPI complaint previously, then the consumer can make a new complaint and the firm would have to assess this complaint (if it is in scope of s140A CCA) in light of RND.

3.2 We also said that, having regard to our EIA of the measures in PS17/3, we had taken into account, when assessing our potential approach to RND, that some of the customer groups affected by our proposed guidance may be less likely to complain. This is because they have lower than average incomes and may have lower financial confidence and capability.

3.3 Some responses argued that:

- We had not said how many previously rejected complainants could now make a new complaint in light of RND.
- We had not proposed any proactive measures for these consumers, and had not explained why.
- RND was hard to understand, and some consumers affected may already have complained unsuccessfully twice and be unresponsive to our campaign messaging.
- Our own assessment said that some of the affected customer groups may have lower financial confidence and capability and be less likely to complain. Given this, our proposal that consumers should have to complain again, possibly for a third time, seemed likely to have an unfair and disproportionate impact on vulnerable consumers and groups with a protected characteristic.

3.4 Some responses therefore said that we should require firms to proactively review previous cases and send RND redress where necessary. This would be better protection than making consumers complain again, particularly for those with lower financial confidence or who were vulnerable.

3.5 Other responses said that we should require firms to mail affected consumers to tell them they can make a new complaint in light of RND, given our previous *Plevin* mailing requirement. They also said we should waive the deadline for these consumers, to give them more time to make a new complaint about RND.

3.6 But some responses said that we should carefully assess any potential RND mailing for its proportionality and potential disruptive impact so close to the deadline.

3.7 We have carefully considered this feedback.

Background

3.8 When formulating our CP18/18 proposals, we recognised that the *Plevin* mailing departed from our general position that firms were not required to mail PPI consumers to inform them of the deadline. It could therefore seem to have set a precedent for consumer protection of any further classes of previously rejected complainants who might now be able to make a new complaint, for example in light of RND.

3.9 However, we were also aware that:

- Our *Plevin* mailing rule did not require firms to write to consumers whose previous mis-selling complaints they had rejected as out of jurisdiction, rather than on the merits. This was because these were not 'complaints' for the purposes of DISP and our mailing rule.
- Because firms did not need to report these cases, we did not know how many of them there were, or what proportion might be caught by a new RND mailing rule.
- There might be issues about record keeping, as these cases would generally involve sales before 14 January 2005, or even before 1 December 2001.

3.10 So, as we were unable to assess scale or feasibility, we did not propose an RND mailing rule in CP18/18. But we did source relevant information from some firms during the consultation.

Estimated potential impact of RND on previously rejected complainants

3.11 Based on that information, our estimate now is that there are perhaps between 210,000 and 280,000 previously rejected regular premium PPI complainants who can make a new complaint in light of RND.

3.12 Of these, we consider that at least 150,000 should now be mailed promptly by firms under our existing *Plevin* mailing rule in DISP App 3.11R, given the clarity our final guidance on RND provides.

3.13 That rule requires the PPI seller to write to previous mis-selling complainants it rejected on the merits as not mis-sold. However, some firms that previously rejected some restricted credit complaints on their merits as not mis-sold, did not subsequently mail them all about *Plevin*. These firms thought that there was no point writing about *Plevin* to these particular previous complainants, as they were sold the PPI before 6 April 2007, putting any *Plevin* complaint out of jurisdiction.

3.14 But, in light of our final guidance on RND, there would be a point in writing to those cases where there was RND on or after 6 April 2007. This is because a complaint made in response, considered in light of RND under our guidance, would be in jurisdiction.

3.15 We will discuss this supplementary mailing with firms as part of our supervisory work. Some firms may have to send slightly more letters than in their original mailing. In aggregate, we estimate it will be equivalent to around 12% of the 1.3m *Plevin* letters already sent.

3.16 We set out detail on which cases we consider should fall into this supplementary *Plevin* mailing in Box 1 in Annex 4.

3.17 We now turn to the remaining estimated 60,000 to 130,000 previously rejected regular premium PPI complainants who could make a new complaint in light of RND.

3.18 First, we estimate that around 10,000 of these are previous *Plevin* complainants who were rejected by the lender. They were rejected on the merits (because the level of commission at point of sale that was not disclosed did not create an unfair credit relationship) or as out of jurisdiction (usually because the point of sale was before 6 April 2007). Some of those cases will involve complainants who received and responded to the *Plevin* mailing but were then rejected again.

3.19 These previous *Plevin* complainants could now make a new complaint in light of RND. This is either because there was RND of commission levels that were higher than at the point of sale, or because there was RND at a date that would bring the new complaint into jurisdiction.[10] To help feedback on this consultation, we set out more detail on which cases we have in mind in Box 2 in Annex 4.

3.20 Second, we estimate that there may be between 50,000 and 120,000 regular premium PPI complaints that were previously rejected by PPI sellers as out of jurisdiction for the purposes of mis-selling because of the date of sale.[11] As a result, these complaints were not caught by our current *Plevin* mailing requirement and were not written to. In any case, they could not make a *Plevin* complaint that would be in jurisdiction. However, these consumers can make a new complaint because there was RND at a date that would bring the new complaint into jurisdiction.

3.21 To help feedback on this consultation, we set out more detail on which cases we have in mind in Box 3 in Annex 4. Some of these cases are likely to involve PPI that was sold by brokers, ie non-lenders.

3.22 Third, our assessment of the RND issue has led us to identify that, separately, there are mis-selling complaints that had been rejected as out of jurisdiction and not been caught by our current *Plevin* mailing requirement, but who can make a new complaint about *Plevin*, rather than RND, that would be in jurisdiction.

3.23 To help feedback on this consultation, we set out more detail on which cases we have in mind in Box 4 in Annex 4. Most are likely to involve regular premium PPI, but some may involve single premium PPI.[12] Most are likely to have occurred where the seller was a broker. We have not gathered information from brokers. But, given that they have received less than 5% of total reported PPI complaints, and given the probably rarely met criteria described in Box 4, we estimate that there may perhaps be only between 10,000 and 20,000 such cases. Many of these are likely to involve PPI on mortgages, where relatively more credit agreements entered into before 31 October 2004 (the start of mortgage regulation) will still have been in force at 6 April 2008.

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

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

12 We consider that there are unlikely to be many single premium PPI cases, as the loans covered by single premium PPI were mostly 5 year contracts (and many cancelled early), so most of those entered into before 14 January 2005 will have terminated before 6 April 2008 and thus would not fall within s140A CCA. However, second charge mortgage credit agreements were often for much longer periods, up to 25 years (albeit often terminated early), during which time the borrower paid interest on the additional sum they had borrowed to pay the single premium for a PPI policy that, typically, protected the first 5 years of repayments of their total loan.

Our assessment of these previous rejected complainants

3.24 We have carefully considered the position and potential communication needs of these three sets of previous complainants, including in light of the responses to the consultation and our final RND guidance. We consider that:

- These consumers may have disengaged from the PPI issue, and be desensitised to our campaign's messaging and prompts to action. This is because they previously complained about mis-selling but were rejected, and were subsequently either not included in our *Plevin* mailing requirement, or were included and responded to it but were again rejected.
- If these consumers were to re-engage with the PPI issue and our campaign and make a new complaint before the deadline, then some, and perhaps many, would be upheld and redressed in light of RND (or in some cases *Plevin*).
- There is a limit to how much RND-specific messaging we can include in our campaign, given RND's relative complexity.[13]
- So there is a clear risk that these previous rejected complainants may miss out on the opportunity to seek redress, and potentially suffer harm as a result.
- This is just as true of those who can make a new complaint in light of *Plevin* but were not caught by our previous mailing requirement, as for those who can make a new complaint in light of RND.

3.25 So we have decided that we should require firms to send letters to the particular previous complainants in these circumstances. These letters should explain that the recipients can now make a new complaint and should consider doing so before the deadline. These letters will be a good supplement to our campaign and be likely to resonate with the recipients about their particular circumstances, helping them to re-engage with the PPI issue and our campaign's messaging.

3.26 However, we know that brokers will generally not know whether the previous PPI mis-selling complainants they rejected as out of jurisdiction can make a new complaint to the lender, in light of RND or of *Plevin*, that would be in jurisdiction.

3.27 So we have balanced considerations of comprehensiveness and proportionality when designing our proposed requirements.

13 We already provide information aimed at people who have previously complained and been rejected. This alerts them to the fact that they may now be entitled to redress due to undisclosed high commission. This information is carried on our website, in leaflets, on our social media customer service channels and through our partners. We also direct consumers to our PPI-specific contact centre for further information on these and related matters. However, we consider RND to be too specific and complex to be referenced in our headline advertising, which needs to focus on broader messages about the deadline and the need for consumers to consider their position and potentially act before 29 August 2019.

Our proposed requirements

3.28 We are proposing new rules that would require:

i. Lenders to write to specific regular premium PPI *Plevin* complainants whose complaints they previously rejected on the grounds that they did not involve an unfair credit relationship or were out of jurisdiction. These letters should tell these consumers that they can make a new complaint in light of RND, and remind them of our 29 August 2019 deadline for complaining.

ii. Sellers (including brokers) to write to specific regular and single premium PPI mis-selling complainants whom they previously rejected as out of jurisdiction. These complainants were not caught by our previous *Plevin* mailing rule and so were not written to. These letters should tell these consumers that they can make a new complaint to the lender about non-disclosure of commission, either in light of RND or *Plevin* (depending on the circumstances), and remind them of our deadline.

3.29 We propose to exclude cases where sending a letter would be pointless, including where:

- The firm is both seller and lender and knows the consumer would not be able to make a complaint in response, in light of RND or*Plevin*, that would be in jurisdiction.
- The lender already, in its assessment of a mis-selling or *Plevin* complaint, considered RND in a way compatible with our final guidance but did not offer redress on the basis that an unfair credit relationship had arisen. (This applies regardless of whether the firm's final response mentioned RND. However, the firm should be able to demonstrate its fair consideration of RND if asked to do so.)
- The consumer had already been offered or paid redress in respect of the PPI for a mis-sale or an unfair relationship by 29 April 2019.
- The lender, or the Ombudsman Service, has indicated to the complainant in writing that it will consider or reconsider the complaint.

3.30 We estimate that these proposed additional mailing requirements would together be equivalent to between 7% and 13% of the 1.3m letters sent in the previous *Plevin* mailing.

3.31 We set out in the proposed rules the main information we expect the letters to give, including:

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

3.32 As for the previous *Plevin* mailing, if we proceed following consultation we will expect to agree a standard core text for firms to use in their mailings.

Costs and proportionality

3.33 Based on the information some firms gave us, it doesn't appear that most affected firms will have significant record keeping issues, and so the mailings would be likely to be feasible for most of them.

3.34 We consider that it should be reasonably straightforward for larger firms who were both the PPI seller and the CCA lender to identify which cases they should include in their mailings. Smaller firms that played both roles may find this exercise more time consuming and costly, if they have less sophisticated databases.

3.35 Brokers may be more likely to find the task challenging. They may not necessarily be able to identify from their own records whether the potential letter recipient would be able to make a new complaint to the lender that would be in jurisdiction.

3.36 Therefore, we have designed the proposed requirement so that brokers mail all the previous mis-selling complainants they previously rejected as out of jurisdiction. This means some complaints made in response will be rejected by the lender as out of jurisdiction. That will not be the best journey for those consumers, but it will not significantly increase the broker's administrative costs, though it will increase the lender's administrative costs. We accept that some brokers may have to send as many letters as in their previous *Plevin* mailings, or even more.

3.37 Based on the information we obtained from firms, the likely RND redress levels, and the consumer response rate to the previous *Plevin* mailing, we consider that the per letter costs of the proposed mailings would be:

- reasonable, though higher than for the *Plevin* mailing, and
- proportionate, because the costs would probably be significantly exceeded by the likely resulting increase in redress to recipients

3.38 We provide the full cost benefit analysis in Annex 2. We estimate that the initial administrative costs of sending the proposed mailings would be between **£1.75m and £3.75m**. This compares to the £18m which we now know the *Plevin* mailing to have cost, which was substantially higher than the £4-5m we had estimated in PS17/3.

Timing considerations

3.39 We are consulting on these proposed mailing requirements for one month. We consider this to be sufficient, given the specific nature of the proposals and the importance, if we proceed, of firms completing the mailings as soon as possible before the 29 August 2019 deadline. This will give recipients as much time as possible to consider their letters and to respond to them if they choose.

3.40 As for the previous *Plevin* mailing, we propose that firms should complete the mailings as soon as reasonably practicable. In any case, they should complete them within around 3 months of when any rules come into force, which we consider to be a reasonable timeframe.

3.41 That would mean, given our one month consultation period, and assuming a Policy Statement in late January 2019, that we would require the mailings to be completed by 29 April 2019, four months before the deadline. We consider this to be a reasonable length of time for recipients because:

- they need only call or reply by email to the letters and do not need to search for or provide any further documents
- they would be deciding whether to respond to their letters during the final burst of our campaign messaging about acting before the deadline, which should also help prompt them to respond in good time

3.42 We note that the 29 August 2019 deadline will apply to these consumers and any complaints they make in due course, regardless of whether they should receive letters under the proposed mailing requirements or whether they actually do so.

3.43 We do not consider that the proposed mailings will cause disruption ahead of the deadline. They are of limited scale, compared to both the previous *Plevin* mailing and current monthly PPI complaint volumes (which are averaging over 300,000). The work firms will need to do to carry out the mailing will be completed well before the eve of the deadline and any final surge of complaints that might take place then. And the responses to the mailings are unlikely to add significantly to most firms' current complaint volumes.

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

Q2: **Do you agree with our description (in Annex 4) of the kinds of previously rejected complaints that would potentially fall within the proposed mailings?**

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

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

Equality and Diversity Considerations

3.44 Mindful of our public sector equality duty, and noting the EIA in PS 17/3 and our recent update on it, we have carefully considered the feedback about the particular position of RND affected consumers who may have lower financial confidence and capability and may be less likely to complain.

3.45 We consider that our proposed requirements to mail relevant previously rejected complainants will give them specific additional prompts and help them to re-engage

with the PPI issue and our campaign. We do not believe that previous complainants with lower financial confidence and capability will necessarily be more disengaged currently, or harder to re-engage, than others. We also note that the easy means of complaining in response to the letters would be particularly helpful for recipients with lower financial confidence and capability.

3.46 However, we will also consider further during the consultation whether we can provide any additional targeted messaging or support to recipients who have lower financial confidence and capability. We could do this, for example, through our campaign, PPI helpline, and partnerships with relevant third sector organisations. **We would welcome feedback and suggestions on this**.

3.47 We also note that the proposed mailing rules allow for firms to reassess previously rejected complaints in light of RND and redress the consumer directly, where appropriate, without mailing them to invite a new complaint. If firms take up that option, it would also particularly help affected consumers who have lower financial confidence and capability.

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

Reporting considerations

3.48 Some responses suggested that firms should not have to treat new complaints about RND as 'new' for reporting purposes. This is because it would artificially inflate reported complaints numbers, as these complaints are really a further revised consideration by firms in light of a previous *Plevin* complaint.

3.49 In PS17/3, we said that where a complaint was previously decided in respect of mis-selling (at Step 1), but the customer now brought a further complaint in light of *Plevin* (at Step 2), this should not be treated as a new complaint for DISP 1.10 reporting purposes. We noted, however, that such a complaint would nonetheless trigger its own obligations under DISP, including the eight-week period for responding (see also DISP 2.8.8 G), as if it were a new complaint.

3.50 We take a similar view for DISP 1.10 reporting purposes now, where a complaint was previously decided in respect of mis-selling (at Step 1) and/or in light of *Plevin* (at Step 2), but the customer now brings a further complaint in light of RND.

3.51 In addition, some firms submit additional detailed reports about PPI complaints monthly:

i. For the purposes of this reporting, we do ask firms, as with *Plevin* complaints now, to treat and report complaints about RND by previously rejected complainants as new complaints. As such, they will be included in the updated total of PPI complaints that we publish each month.

ii. We are not amending this reporting template in light of our guidance on RND (as we had following our rules and guidance in light of *Plevin*). But we would like RND

complaint decisions and outcomes to be made visible to us by firms. **So we would welcome views from firms on how best and most efficiently they can do that in the context of the monthly reporting.**

Annex 1
Questions in this paper

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

Q2: Do you agree with our description (in Annex 4) of the kinds of previously rejected complaints that would potentially fall within the proposed mailings?

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

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

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

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

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

Annex 2
Cost benefit analysis

1. The Financial Services and Markets Act 2000 (FSMA) requires us to publish a cost benefit analysis (CBA) of proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs together with an analysis of the benefits' that proposed rules will bring. It also requires us to include estimates of those costs and benefits, unless we cannot reasonably estimate them or it is not reasonably practicable for us to produce this estimate.

2. Below, we first discuss the feedback on our CBA in CP18/18 about the guidance we proposed, and then put forward our CBA of the proposed new mailing requirements.

Feedback on our CBA on proposed guidance in CP18/18

3. In CP18/18, we said that for our proposed guidance on RND:

- Our view was that we could not reasonably estimate the costs and benefits (s.138I(8)(a) FSMA) and that it was not reasonably practicable for us to produce an estimate (s.138I(8)(b) FSMA).[14]
- But we felt able to identify the dynamics of costs and benefits likely to flow from our proposed guidance, compared to the current situation. We also felt that these dynamics should be viewed in the context of the small proportion of total PPI complaints that our proposed guidance would affect.
- Overall, these dynamics of costs and benefits (which we set out in the table on page 19 of CP18/18) gave us a reasonable basis for expecting that our proposed guidance would deliver a net benefit for consumers (and other potential benefits), compared to the current situation. However, given the uncertainties involved, we could not guarantee this overall conclusion.

4. We asked:

Q6: ***Do you have any comments on our cost benefit analysis?***

5. Most respondents did not comment. Some responses said our CBA did not include the costs of some negative consequences they foresaw, such as:

14 We explained that this was because: i. The relative impact on redress costs of our proposed guidance would largely depend on firms' approaches to assessing complaints involving RND and to potentially redressing some. Firms would develop these approaches subsequently through their learnings from Ombudsman Service decisions (as we had proposed); and ii. The absolute impact on administrative and redress costs of our proposed guidance would largely depend also on: a. How many restricted credit PPI complaints firms assess in detail in the future, compared to how many they currently reject as out of jurisdiction - but we cannot predict the former, and do not know the latter (because firms have not reported these cases, consistent with their regarding them as out of the jurisdiction of our complaints rules); and on b. How many restricted credit and non-restricted credit PPI complaints are made in the period before our deadline – but these are volumes which, like PPI complaint volumes in general, we cannot predict. (In our CBA in PS17/3, we noted that the past pattern of PPI complaints is not a reliable predictor of the future, and concluded that no amount of data or effort could give us reasonably precise and meaningful numbers on the future path of PPI complaints. As a result, we concluded there that we could not construct a meaningful benchmark against which to quantify the effects of our package of measures.)

i. the costs if the deadline does not apply to RND complaints

ii. the costs of handling further PPI complaints from consumers who have already received PPI redress but mistakenly think they are entitled to more from RND

iii. the costs of RND-like complaints about non-PPI related credit and insurance

Our response

The deadline does apply to RND complaints, as discussed in Chapter 2.

We do not believe that the number of RND complaints from consumers who have already been redressed will be significant. We noted in Chapter 2 that CMCs should not make complaints in these circumstances. But to the extent that some such complaints are made and cause firms costs, these costs are already caught in our CBA table as 'increased administrative costs to firms'.

Our guidance on handling PPI complaints in light of RND applies only to complaints about PPI policies which cover, covered or purported to cover a credit agreement which falls under s140A CCA. Our guidance does not apply to complaints about any other type of credit or insurance. Therefore, we do not consider that the potential costs or benefits that may flow from any complaints that may arise in the future concerning other types of credit or insurance are relevant to our CBA of the guidance or need to be factored into it.

6. One response said that our suggestion that the proposed guidance would create a saving in Ombudsman Service case fees might only apply to smaller firms who pay fees on a case by case basis. Larger firms, who pay block fees, might instead make a commercial decision to continue to reject cases and allow them to queue at the Ombudsman Service, to deter other potential complainants.

Our response

We do not consider it likely that larger firms will behave in this way. But we will intervene if they do.

7. Having carefully considered the feedback on our CBA of the proposed guidance, we conclude that:

- We do not need to change our previous summary of the dynamics of costs and benefits. As set out in Table 1 below, it gives an appropriate account of the costs and benefits of our final guidance.
- Overall, these dynamics of costs and benefits provide us with a reasonable basis for expecting that our final guidance will deliver a net benefit for consumers (and other potential benefits), compared to the current situation. However, given the uncertainties involved, we cannot guarantee this overall conclusion.

Table 1: Summary table of costs and benefits of our final guidance

	Firms	Consumers	Wider Economy
Costs	Increased redress payments		
	Increased administrative costs of complaint handling		
Benefits	Reduced Ombudsman service fees per complaint involving regular premium PPI	Increased redress receipts	Reduced likelihood and numbers of court claims, with their attendant costs for claimants and firms
		Saved time/effort in making complaints involving regular premium PPI	

Our CBA of our proposed new mailing requirements

8. In Chapter 3, we estimated that the proposed new requirements would lead to mailings that would be equivalent to between 7% and 13% of the 1.3m letters sent in the previous *Plevin* mailing.

Costs to firms

9. We estimate that the administrative costs to firms of sending the new mailings would be around £25 per letter. This compares to around £14 per letter for the *Plevin* mailing. Both these costings are based on the information some firms recently gave us.

10. The higher per letter cost for the proposed new mailings reflects the fact that:

- identifying relevant cases to include is likely to require more work than for the previous *Plevin* mailing, and
- the proportion of cases ultimately mailed, relative to those that first need to be sifted, is likely to be lower than for the previous *Plevin* mailing

Benefits to consumers

11. We consider that the additional requirements are proportionate. The costs involved would be significantly outweighed by the benefits to these consumers from increased redress, and from saved time and effort as the letters will make it easy for them to complain in response.

12. RND redress for restricted credit PPI will usually be limited to the post-6 April 2007 portion of accounts. We estimate that typical RND redress will be around £400. This is based on information from some firms that have been paying *Plevin* redress for complaints about restricted credit agreements entered into after 6 April 2007.

13. We estimate that typical RND redress for non-restricted credit cases would be between this £400 and the £1100 which is the current average for all upheld *Plevin* complaints.

14. Even if we cautiously assume that just half of complaints made in response to the mailing would be upheld, only around 15% of recipients would need to respond for the likely aggregate redress to exceed our estimate of firms' administrative costs.

15. But the response rate would probably be much higher than this, given that the response to the *Plevin* mailing was around 40%, and that recipients will be deciding whether to respond to the new letters during the final burst of our campaign advertising.

16. So, the likely redress will be more than the estimated administrative costs by at least two- or three-fold and probably more.

17. We accept that this probable additional redress could be significant for some firms, including as a proportion of what they have paid out as PPI redress so far.

18. The Ombudsman Service has told us that some home shopping account PPI cases involve accounts with very low previous spend and PPI premiums. This can lead to very low *Plevin* redress, even when interest is factored in. We can be open to discussions with firms in due course around how they might implement the proposed requirements sensibly and efficiently in such circumstances.

Conclusion

19. Relative to the current situation with our package of PPI measures, including now our final guidance on RND, the proposed mailing requirements mean that there would be an increase in aggregate future PPI complaints and redress to consumers, and an increase in administrative costs to firms.

20. These dynamics of costs and benefits are reflected in Table 2 below as 'Increased administrative costs of complaint handling' (for sellers and lenders), and 'Increased redress payments' (for lenders). We do not consider that there will be costs or benefits to the wider economy.

21. Overall, these dynamics of costs and benefits provide us with a reasonable basis for expecting that our proposed mailing requirements would deliver a net benefit for consumers, compared to the current situation. However, given the uncertainties involved, we cannot guarantee this overall conclusion.

Table 2: Summary table of costs and benefits of our proposed mailing requirements

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

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

Annex 3
Compatibility statement

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

2. In CP18/18, we gave our view of the compatibility of our proposed guidance and asked:

> **Q7:** ***Do you have any comments on our compatibility statement? Are there any issues relating to mutual societies that you believe would arise from our guidance?***

3. In CP18/18, we said we were satisfied that the proposed guidance was compatible with our general duties in accordance with section 1B of FSMA, having regard to the regulatory principles in section 3B. By reducing uncertainty and enabling firms to continue to take a fair and consistent approach to handling PPI complaints, the proposed guidance would help us to deliver our operational objectives of providing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

4. In response, some respondents said that whereas we had claimed our proposed guidance would reduce uncertainty, they felt it had the potential to undermine stability and integrity across the consumer credit market, contrary to our objectives.

Our response

As we discuss in Chapter 2, we do not consider that our final guidance will have these negative effects. We can reasonably anticipate that fair and consistent complaint outcomes will flow from firms in light of the guidance and the lessons from relevant Ombudsman Service decisions. We note again that we do not consider that our guidance imposes any disclosure obligations for consumer credit covered by PPI. And our guidance only concerns PPI complaints.

Therefore, our view is that our final guidance will help us to deliver our operational objectives of providing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

And we now consider that the proposed mailing requirements would similarly help us to do this.

5. In CP18/18, we said that the scope for promoting effective competition was limited. However, we had considered the FCA's competition duty under s.1B(4) and considered

that our proposed guidance would not have a significant effect on competition between firms or a disproportionate impact on the ability of new firms to enter the market.

6. We received no responses concerning this, and our view of the final guidance remains the same. And we now take the same view of the proposed mailing requirements.

7. We also had due regard to the recommendations made by the Treasury under section 1JA FSMA about aspects of the economic policy of Her Majesty's Government. The Treasury published its first set of recommendations for the FCA on 8 March 2017. In particular, we said that our proposed guidance took into consideration the recommendations relating to better outcomes for consumers. The purpose of the proposed guidance was to provide certainty to firms and ensure consistent handling of PPI complaints that delivers fair, consistent outcomes to consumers.

8. We received no responses concerning this, and our view of the final guidance remains the same. And we now take the same view of the proposed mailing requirements, which will help deliver better outcomes for consumers.

Expected effect on mutual societies

9. In CP18/18, we said that we had not identified any likely significantly different impact on mutuals from our proposed guidance. We also said mutuals would benefit like other firms from the certainty our proposed guidance would bring to handling relevant PPI complaints.

10. Responses from mutuals agreed that they would not be impacted differently by the proposed guidance compared to other firms. But they also said that mutuals were in the same position as those non-mutuals who were already taking RND into account in handling complaints, as both wanted clarity on how our RND proposals would apply to them.

Our response

We consider that our final guidance, and in particular the additional guidance noting that, in many cases, it may be reasonable for firms handling RND complaints to draw from our *Plevin* rules and guidance, provides sufficient clarity for mutual and non-mutual firms alike. Also, we note that our proposed mailing requirements do not catch previous complaints where a firm already, in its assessment of a mis-selling or *Plevin* complaint, assessed RND appropriately.

Therefore, we do not consider that our final guidance, or proposed mailing requirements, will lead to significant additional work for mutual or other firms who have already been assessing RND.

Legislative and Regulatory Reform Act 2006

11. In CP18/18, we said that we had had regard to the principles in the Legislative and Regulatory Reform Act 2006 and the Regulator's Compliance Code. We had not engaged with firms or other stakeholders in formulating our proposed guidance, as we considered that it was potentially market sensitive information. However, we considered that the proposed guidance was proportionate and would result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition.

12. Most responses did not comment on these aspects, though (as noted in Chapter 2), some responses said that we ought to have pre-consulted, and that this would have helped avoid some of the problems they perceived in our proposed guidance.

Our response

We remain of the view that it was reasonable for us not to have engaged with firms or other stakeholders before publishing our proposed guidance for consultation, as we considered that it was potentially market sensitive information.

We did not engage with stakeholders before proposing the mailing requirements we are consulting on here (though as noted we did seek relevant information from some firms). We consider this to be a reasonable approach, given the specific nature of the proposals and the importance, if we proceed, of firms completing the mailings as soon as possible before the 29 August 2019 deadline, to give recipients as much time as possible to consider their letters and to respond if they choose. We will of course assess carefully the feedback we receive on these proposals.

Our view is that our final guidance is proportionate and will result in an appropriate level of consumer protection, when balanced with the impacts on firms and on competition.

And we now take the same view of our proposed mailing requirements.

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

Annex 4
Previous complainants' potential inclusion in proposed mailings

1. The four boxes below describe the criteria that we think put a previous complainant into one of the four populations we discuss in Chapter 3, including as relevant to:

- a supplementary mailing for sellers under our existing *Plevin* mailing rule (Box 1)
- our proposed new mailing requirement on lenders for RND (Box 2)
- our proposed new mailing requirements on PPI sellers (including brokers) for RND (Box 3) and *Plevin* (Box 4)

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

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

Box 1

Cases requiring supplementary mailing under existing *Plevin* mailing rule

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

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

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was in a relevant Ombudsman predecessor scheme[15] then, but the lender wasn't.

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

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

Non-restricted credit

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

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

15 In our Handbook, we use the term "former scheme", which is defined in our Glossary as any of the following: (1) (except in relation to a relevant transitional complaint) any of the following: (a) the Banking Ombudsman scheme; (b) the Building Societies Ombudsman scheme; (c) the FSA scheme; (d) the IMRO scheme; (e) the Insurance Ombudsman scheme; (f) the Personal Insurance Arbitration Service; (g) the PIA Ombudsman scheme; (h) the SFA scheme; (2) (in relation to a relevant transitional complaint) (a) the GISC facility; or (b) the MCAS scheme.

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

To inform feedback on this consultation, we consider that this proposed new mailing requirement on lenders will be relevant to the following classes of previous regular premium PPI complaint.

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

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

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

i. ***Restricted credit***

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

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

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

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

ii. ***Non-restricted credit***

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

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

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

Box 3
Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about *Plevin*, but they can make an RND complaint that is in jurisdiction

To inform feedback on this consultation, we consider that this proposed new mailing requirement on sellers will be relevant to the following classes of previous regular premium PPI complaint.

Restricted credit

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

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

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

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

Non-restricted credit

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

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

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140 CCA, and
- there is RND on or after 1 December 2001, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Box 4
Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about *Plevin*, but they can make a *Plevin* complaint in jurisdiction

To inform feedback on this consultation, we consider that this proposed new mailing requirement on sellers will be relevant to the following classes of previous complaint about regular premium PPI or single premium PPI.

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

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

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

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

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

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

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

Annex 5
List of non-confidential respondents to CP18/18

Building Societies Association

Crystal Legal Services Ltd

Finance and Leasing Association

Financial Services Consumer Panel

Gladstone Brookes Ltd

MoneySavingExpert.com Ltd

National Franchised Dealers Association

Professional Financial Claims Association

Synergy Financial Solutions Ltd

The Claims Guys

UK Asset Resolution

Annex 6
Abbreviations used in this paper

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

Appendix 1
Final Guidance

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 3) INSTRUMENT 2018

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the power in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ('the Act').

Commencement

B. This instrument comes into force on 8 November 2018.

Amendments to the Handbook and other guidance

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

D. The guidance at Annex B to this instrument is issued.

Citation

E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 3) Instrument 2018.

By order of the Board
25 October 2018

Annex A

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

Application

3.1.1G …

(3) It does not ~~require firms to~~ set out how a *firm* which has received a *complaint* referred to in (1)(a) should assess:

(a) 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 and/or profit share paid;

(b) whether any omission (other than the omission referred to in *DISP* App 3.3A.2E) to disclose either the existence of, or level of, commission and/or profit share made the relationship unfair under section 140A of the *CCA*;

(c) any other issue not dealt with in step 1 or step 2 set out in this appendix.

Complaints concerning such issues should be dealt with under *DISP* 1.4.1R.

(4) …

…

Annex B

Non-Handbook guidance

What is RND?

Recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share (RND) is a kind of omission or omissions that can make a credit relationship unfair for the purposes of s140A Consumer Credit Act 1974 (CCA).

When do firms need to assess RND?

The need to assess RND applies equally to regular premium PPI on restricted credit and on non-restricted credit.

Any RND on or after 6 April 2007 would bring a complaint about restricted credit within scope of our complaint handling rules in DISP (provided the credit agreement is in scope of s140A CCA), so that the RND after that date would need to be assessed. This will be the case even if the PPI was sold, and credit relationship entered into, before that date.

Firms do not have to consider RND if they decide under our Plevin rules and guidance ('Step 2' in DISP App 3) that not disclosing the existence or level of commission and/or profit share at the point of sale gave rise to an unfair relationship under s140A CCA, and redress the complaint accordingly. Nor do firms have to assess RND if they decide under our rules and guidance concerning mis-selling ('Step 1' in DISP App 3) that the PPI was mis-sold and provide full redress.

Firms should assess whether any RND makes the relationship unfair under s140A CCA even if the complaint does not expressly mention non-disclosure of commission (whether at point of sale or later).

How should firms assess RND?

Firms should adopt a fair and consistent approach to making these assessments of RND, including taking into account what they learn from the decisions of the Financial Ombudsman Service.

Our view is that in assessing and, where appropriate, redressing complaints involving RND, firms should take account of all relevant factors. In many cases it may be reasonable for firms to draw from our rules and guidance on non-disclosure of commission at point of sale. This is because, in our view, such non-disclosure has much in common with the issues around RND, so that, sensibly applied, this approach would tend to provide for fair outcomes in many complaints involving RND.

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

Appendix 2
Draft Handbook text

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

Powers exercised

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

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

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

Commencement

C. This instrument comes into force on [28 January 2019].

Amendments to the Handbook

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

Citation

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

By order of the Board
[*date*]

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

Application

3.1.1 G …

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

…

…

App 3.11 Obligation to write letters to certain rejected complainants

Definitions

3.11.-1 R In this section:

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

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

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

Letters required to be sent by 29 November 2017

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

…

…

Letters required to be sent by [29 April 2019]

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

(1) (in relation to a regular premium *payment protection contract*) a *complaint* to the *CCA lender* that was rejected before [28 January 2019] in that:

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

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

(2) a purported complaint to the selling *firm* that would otherwise have fallen to be considered under step 1 of *DISP* Appendix 3 but was rejected before [28 January 2019] by that *firm* on the basis that it did not come under the jurisdiction of the *Financial Ombudsman Service*.

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

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

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

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

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

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

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

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

(1) the *firm* who is otherwise required to send such a written communication is the *CCA lender* and knows that only a purported complaint in relation to non-disclosure of commission could be made;

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

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

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

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