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Dear CEO

### **PPI: WHAT WE EXPECT FROM CLAIMS MANAGEMENT COMPANIES**

The PPI deadline passed on 29 August 2019. I am writing to remind you of what we expect from claims management companies (CMCs) in this new period, both when acting for their PPI customers and when issuing relevant financial promotions.

#### **Background**

In August, lenders received an unprecedented volume of PPI checking enquiries and complaints, most from CMCs. So, lenders face very significant operational challenges.

We have told lenders that, in the circumstances, we regard maintaining fair, consistent outcomes as the clear priority, not the speed of complaints-handling.<sup>1</sup> It is important that CMCs play their part in helping to ensure this by acting professionally and reasonably, including in the ways we explain in this letter.

#### **How CMCs should deal with lenders**

Due to the operational challenges, many lenders are now acknowledging checking enquiries and complaints more slowly than usual. CMCs should recognise this and allow a reasonable length of time before expecting an acknowledgement. We suggest at least three months. CMCs should not send lenders copies of enquiries or complaints that have still to be acknowledged, as this will only further slow the process. ([Our rules and guidance about dealing with complaints](#), including timings, do not apply to checking enquiries.)

The current circumstances also mean that most PPI complaints will not now get a final response within the usual 8 weeks (see [DISP 1.6.2R](#)). Instead, we understand that typical response times to complaints may sometimes stretch well beyond 24 weeks. (Individual lenders will be able to give more detail on their own timescales.)

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<sup>1</sup>However, lenders should remain alert to complainants who are vulnerable consumers or in financial difficulty and assess whether it would be appropriate to deal with their complaints sooner.

A complainant can, strictly speaking, refer their complaint to the Financial Ombudsman Service after 8 weeks if they have not received a final response to their complaint. However, we expect CMCs to act responsibly and professionally. In line with [CMCOB 2.1.8G](#), we expect CMCs to take all reasonable steps to investigate the existence and merits of a complaint before referring it, with evidence of the merits, to the Ombudsman Service.

As part of that, we expect CMCs to allow lenders a reasonable amount of time to give a final response. This includes allowing a reasonable amount of time after the CMC provides evidence of the merits to the lender. In considering what is a reasonable amount of time for a lender to provide a final response to a PPI complaint, we will consider the current very high volumes and operational challenges. We would expect CMCs to do the same.

### **What the Financial Ombudsman Service expects from CMCs**

The Ombudsman Service has been clear in the past about its expectations when CMCs deal with lenders at the start of a complaint. It expects CMCs to work together with lenders to resolve complaints. This includes applying the '8-week rule' pragmatically and sensibly before referring a complaint, as it may well be in the consumer's best interests to give the lender more time to respond. The Ombudsman Service will also consider the current high volumes and operational challenges. The Ombudsman Service may decide that a complaint has been referred to it without the lender being given a reasonable opportunity to respond. In these cases, it is likely to return the referred case to the CMC, and to ask the lender to get in touch with the CMC directly to discuss timings and the way to resolve the complaint.

We agree that the Ombudsman Service's likely approach will be in CMCs' customers' best interests. We would expect CMCs to cooperate with the Ombudsman Service in these areas. If a CMC fails to act as we expect, it will potentially be in breach of its regulatory obligations:

Under [CMCOB](#):

- to act honestly, fairly and professionally in the best interests of its customer (CMCOB 2.1.1)
- to not pursue a claim if the CMC knows or has reasonable grounds to suspect that the claim does not have a good arguable base, is fraudulent, or is frivolous or vexatious (CMCOB 2.1.7R), and
- to take all reasonable steps to investigate the existence and merits of each element of a potential claim before making or pursuing a claim (CMCOB 2.1.8 G)

Under our [Principles for Businesses](#), including:

- to conduct its business with integrity, due skill, care and diligence, and
- to deal with its regulators in an open and cooperative way

Where relevant, we will consider CMCs' conduct under these rules and guidance (among others) when we assess if your firm meets our Threshold Conditions for authorisation.

### **Ensuring financial promotions about PPI are fair, clear and not misleading**

CMCs should have been complying with our financial promotions rules since 1 April 2019. We also set out our concerns and expectations around financial promotions in our Dear CEO letter and Press Release in June 2019. However, since the 29 August deadline, some

CMCs have put out new financial promotions whose headlines wrongly state that the PPI deadline did not apply to claims about undisclosed commission (commonly referred to as 'Plevin' cases). It is only gradually revealed in the subsequent detailed text that the action the promotion refers to is a legal claim in court, not a complaint under DISP rules. Some promotions do not mention the court element at all.

We consider that such promotions are potentially misleading and not clear and fair, as a claim via court action can differ significantly from action through the Ombudsman Service in terms of costs, timing, certainty and other matters. See [CMCOB 3.2.1R](#): the fair, clear and not misleading rule. In addition, such promotions do not make it sufficiently prominent that they involve court claims (see [Chapter 3 of CMCOB](#) and, particularly, [CMCOB 3.2.2G](#)).

CMCs should review their PPI financial promotions and, if necessary, revise them to ensure they make clear, in a prominent manner, that the promotion involves making court claims.

Please also note that a CMC which passes consumers' details to a third party 'legal partner' for potential PPI claims is likely to be carrying on the regulated activity of 'seeking out referrals and identification of claims or potential claims'. This means the CMC is required to include a prominent statement in its financial promotions to the effect that it receives payments from the third parties to which it passes customers ([CMCOB 2.2.8R \(2\)](#)).

We can ban financial promotions or adverts - including websites - that do not meet our financial promotion rules. We can also publicise any action that we take using this power (s.137S of the Financial Services and Markets Act 2000). We will also take poor financial promotions into account in our decisions about authorisation.

### **Do not ignore this letter - act now**

You should consider the points in this letter, and how you can demonstrate that you comply with our rules as set out in the FCA Handbook. As these are important areas of concern, we expect you to share this letter with your board, or equivalent.

If you do not comply with our rules we can use our powers to impose requirements on your CMC. Failure to comply with our rules could mean we remove your temporary permission or refuse authorisation. We will look at a range of evidence when we make these assessments.

If you have any questions about anything in this letter, please contact Greg Williams on 020 7066 1475.

Yours faithfully

**Jonathan Davidson**  
**Director of Supervision – Retail and Authorisations**