
FINAL NOTICE

To: **Clydesdale Bank PLC**

Firm Reference Number: **121873**

Address: **30 St. Vincent Place, Glasgow, G1 2HL**

Date: **14 April 2015**

1. ACTION

- 1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Clydesdale Bank PLC ("Clydesdale") a financial penalty of £20,678,300.
- 1.2. Clydesdale agreed to settle at an early stage of the Authority's investigation. Clydesdale therefore qualified for a 30% (Stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £29,540,500 on Clydesdale.

2. SUMMARY OF REASONS

- 2.1. On the basis of the facts and matters described below, Clydesdale breached Principle 6 (Customers' interests) of the Authority's Principles for Businesses between 10 May 2011 and 30 July 2013 ("the Relevant Period") in relation to handling complaints from its customers who had purchased Payment Protection Insurance ("PPI").
- 2.2. PPI complaint handling is a high priority issue for the Authority. Making sure customers previously mis-sold PPI are treated fairly now, and paid redress where it is due, is an important step in rebuilding trust in financial institutions. The Authority has made numerous statements raising concerns about the issues

around the sale of PPI to customers and the appropriate redress that should be paid to customers where PPI was mis-sold. These should have been reflected in Clydesdale's complaint handling processes to ensure that PPI customers who complained were treated fairly.

2.3. During the Relevant Period:

- (1) Clydesdale implemented an inappropriate policy which meant that its complaint handlers would not search for any documents relating to PPI complaints about loans and mortgages which had been repaid more than seven years prior to the date of the complaint, on the basis that the documents fell outside Clydesdale's seven year document retention period. This was despite the fact that, in a small percentage of cases, relevant documents had not in fact been destroyed and were still readily available on Clydesdale's electronic systems. The Authority makes no criticism of the document retention period itself;
- (2) Clydesdale implemented another inappropriate policy which meant that, when calculating redress for credit card PPI complaints, complaint handlers would not consider credit card statements that pre-dated the year 2000, or take steps to estimate the PPI payments made before that date. Credit card statements were available, albeit with large gaps, for some of the period pre-dating the year 2000, but the statements were held in microfiche rather than electronic form and were therefore not easily retrievable;
- (3) a team within Clydesdale's PPI complaint handling operation adopted a practice between May 2012 and June 2013 of providing false information to the Financial Ombudsman Service ("the ombudsman service"). This information was provided in response to requests from the ombudsman service for documents evidencing the information Clydesdale held about the PPI policies sold to individual customers. Specifically, the team:
 - (a) altered system print outs relating to loans and mortgages that had been repaid more than seven years prior to the date of the complaint, to make it look as if Clydesdale held no relevant loan documentation when in fact such documents were available (the Authority considers that this is likely to have affected a small number of cases); and
 - (b) deleted all PPI information from a separate print out listing the products sold to the customer.

These practices were not known to or authorised by Clydesdale's management or PPI leadership team;

- (4) Clydesdale was not transparent with, and in some cases provided misleading communications to, customers and the ombudsman service with regard to how complaints affected by the policies described at paragraphs 2.3(1) and (2) above were dealt with;
- (5) Clydesdale failed to ensure that the complaint handlers responsible for dealing with complaints referred to the ombudsman service were given adequate guidance and support;
- (6) Clydesdale failed to ensure that its complaint handlers were appropriately identifying cases where the PPI policy sold was, or may have been, unsuitable for the customer; and

- (7) there were deficiencies in Clydesdale's training and monitoring of complaint handlers.
- 2.4. As a result of the above:
- (1) Clydesdale was not considering all relevant available documents when deciding whether to reject some loan or mortgage PPI complaints;
 - (2) some customers' complaints were being unfairly rejected;
 - (3) Clydesdale was not paying the appropriate amount of redress to some customers; and
 - (4) in some cases, the ombudsman service would have been misled about the information available to Clydesdale for the purpose of determining the complaint and/or the redress due to the customer. Customers may therefore have been disadvantaged. The provision of false information has also led to delays in the ombudsman service considering complaints while the inaccuracies in the evidence are resolved.
- 2.5. During the Relevant Period, Clydesdale made decisions on approximately 126,600 complaints (13,600 of which were referred to the ombudsman service). Clydesdale's conduct meant that up to approximately 42,200 rejected complaints may have been rejected unfairly, and up to approximately 50,900 complaints that were upheld may have resulted in inadequate redress for customers. The average redress paid by Clydesdale to customers on upheld complaints was approximately £2,897.
- 2.6. Clydesdale's two inappropriate policies described at paragraphs 2.3(1) and (2) above were implemented early on in the Relevant Period when Clydesdale was dealing with a backlog of overdue PPI complaints and a high volume of new PPI complaints. The Authority recognises that firms may want to take steps to make their PPI complaint handling more efficient and resolve complaints on a timely basis. However, firms must ensure that the approaches they adopt, and the decisions they take, do not disadvantage customers.
- 2.7. The Authority considers Clydesdale's failings to be particularly serious for the following reasons:
- (1) Clydesdale's FOS PPI team were in some cases providing false information to the ombudsman service, including by altering documentary evidence to make it look as if Clydesdale held no relevant documents when in fact documents were available;
 - (2) from 2005 onwards, the Authority has issued guidance identifying issues around the sale of PPI to customers and the appropriate redress that should be paid to customers where PPI was mis-sold; and
 - (3) the failings resulted in detriment for some customers.
- 2.8. In one case, Clydesdale rejected a complaint from a husband and wife who had taken out single premium PPI on a loan on the basis that it had been repaid more than seven years prior to the date of the complaint. This was despite the fact that Clydesdale had not checked whether it held sufficient records to investigate the complaint. When the complaint was referred to the ombudsman service, Clydesdale's FOS PPI team informed the ombudsman service that it had been unable to trace any documentation. Accordingly, the ombudsman service was unable to determine the complaint. In fact, Clydesdale did hold sufficient records

to uphold the complaint. Had this information been considered by Clydesdale, or had the ombudsman service been given accurate information, the customers are likely to have received compensation of up to £5,100.

2.9. The Authority recognises that:

- (1) early in the Relevant Period, Clydesdale initiated a review by a professional services firm ("the professional services firm") of all aspects of its PPI complaint handling process, and implemented the recommendations arising from that review. The review did not highlight issues with the inappropriate policies referred to above;
- (2) the provision of false information to the ombudsman service was not part of Clydesdale's documented procedures or known to Clydesdale's management or PPI leadership team. Upon becoming aware of the relevant practices, Clydesdale took immediate steps to end the practices or confirm that they had ended, commissioned internal investigations to investigate the conduct and reported on the outcome of these investigations to the Authority;
- (3) upon becoming aware of concerns raised by the Authority in mid-2013 with the way in which historic PPI complaints had been handled, Clydesdale took prompt steps to change its procedures and enhance its governance and oversight arrangements in relation to PPI complaints. At the same time Clydesdale engaged another professional services firm to conduct a comprehensive review of its PPI complaint handling processes and to identify which customers had been affected by its failings so that customers could be contacted and their complaints reviewed appropriately. The Authority subsequently required this engagement to take place as a skilled person's review under s166 of the Financial Services and Markets Act 2000 ("the Act");
- (4) Clydesdale has decided to review all PPI complaints handled prior to August 2014 and will pay appropriate redress to any affected customers. This process will be overseen by the skilled person; and
- (5) Clydesdale has been open and cooperative with the Authority. After the referral to Enforcement, Clydesdale agreed a number of facts with the Authority which has saved the Authority time and resource and enabled the investigation to be completed in a more efficient and timely manner.

2.10. The total redress for PPI complaints paid to customers by Clydesdale during the Relevant Period was approximately £149 million. As at 30 September 2014 the total redress paid by Clydesdale to customers who were mis-sold PPI was £291 million with a total provision of £806 million.

3. DEFINITIONS

3.1. The following definitions are used in this Final Notice:

"the Act" means the Financial Services and Markets Act 2000;

"the Authority" means the body corporate previously known as the Financial Services Authority and renamed on 1 April 2013 as the Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London, E14 5HS;

"the Authority's File Review" means the Authority's review in April 2012 of files relating to 46 PPI customers, who had made complaints to Clydesdale between

May 2011 and April 2012, to assess the adequacy of the handling of complaints, the findings of which were reported by the Authority to Clydesdale in June 2013. This review was part of a wider thematic review by the Authority into the fairness of medium-sized firms' decisions and redress for PPI complaints;

"the Authority's Handbook" means the Authority's Handbook of Rules and guidance;

"BBA" means the British Bankers' Association;

"BAU PPI team" means the 'Business As Usual' PPI complaint handling team in Clydesdale, which was responsible for handling PPI complaints in the first instance;

"Business Response Forms" means the forms described in paragraph 4.47 below;

"Clydesdale" means Clydesdale Bank PLC, trading under both the Clydesdale Bank and Yorkshire Bank brands;

"Clydesdale's management" means Clydesdale's management senior to Clydesdale's PPI leadership team;

"Clydesdale's PPI leadership team" or "the PPI leadership team" means the individuals at Clydesdale with day to day responsibility for overseeing the activities of Clydesdale's PPI complaint handling operation;

"credit card policy" means the policy decision approved by Clydesdale in August 2011 which meant Clydesdale would not check any credit card statements dated before the year 2000 when calculating redress, nor apply any other methodology to make an assumption about the amount of PPI premium paid before the year 2000;

"DEPP" means the Authority's Decision Procedure and Penalties Manual which is part of the Authority's Handbook;

"DISP" means the Dispute Resolution: Complaints Sourcebook which is part of the Authority's Handbook;

"the ombudsman service" means the Financial Ombudsman Service;

"the FOS PPI team" or "Clydesdale's FOS PPI team" means the team in Clydesdale with responsibility for dealing with PPI complaints that had been referred to the ombudsman service, including preparing and submitting information and responses to the ombudsman service;

"Group" means National Australia Bank Group;

"the Judicial Review" means the Judicial Review proceedings challenging the Authority's decision to introduce measures set out in PS10/12;

"policy on loans" means the policy decision approved by Clydesdale in May 2011 which meant Clydesdale would not search for documents relating to loans repaid or closed more than seven years before the date the PPI complaint was made (confirmed in March 2012 to include mortgages);

"PPI" means payment protection insurance;

"PPI complaints" means complaints alleging that a PPI policy had been mis-sold;

"Principles" means the Authority's Principles for Businesses as set out in the Authority's Handbook;

"the professional services firm" means the professional services firm engaged by Clydesdale early in the Relevant Period to carry out a review of all aspects of its PPI complaint handling, as described at paragraphs 2.9(1) and 4.22;

"PS10/12" means the Authority's policy statement of 10 August 2010, entitled "Policy Statement 10/12: The assessment and redress of Payment Protection Insurance complaints; feedback on the further consultation in CP10/6 and final Handbook text";

"the Quality Control Team" means dedicated quality control staff that were based within the PPI complaint handling operation and monitored complaint handlers;

"Relevant Period" means the period between 10 May 2011 and 30 July 2013; and

"retention cases" means the cases described at paragraph 4.28 below.

4. FACTS AND MATTERS

Background

- 4.1. Clydesdale is a subsidiary of National Australia Bank Ltd and part of the Group. Clydesdale provides a wide range of banking and financial services and has been authorised by the Authority since 1 December 2001. Clydesdale operates the Clydesdale Bank and Yorkshire Bank brands.

PPI

- 4.2. PPI is an insurance product which is designed to help meet debt repayments in certain circumstances when the customer is unable to make repayments, such as in the event of an accident, sickness or unemployment and it may also include life cover.
- 4.3. Historically, Clydesdale sold five different types of PPI products:
- (1) single premium PPI to cover personal loans;
 - (2) regular premium PPI to cover: (a) mortgages; (b) personal loans; and (c) asset finance; and
 - (3) revolving credit PPI to cover credit cards.
- 4.4. Single premium PPI was paid for by customers in a single lump sum which was added to the loan and attracted interest throughout the term of the loan. Regular premium PPI was paid for by customers in instalments on a periodic, usually monthly, basis. Revolving credit PPI was paid for by customers as a proportion of their credit card balance, when they had an outstanding balance on their credit card, and could attract interest if the credit balance was not paid off before the next monthly statement.
- 4.5. Clydesdale ceased all sales of PPI by March 2012 with asset finance PPI and single premium loan PPI ceasing earlier in September 2007 and March 2009 respectively.

The Authority's concerns about PPI

- 4.6. There have been extremely serious problems in relation to PPI across the financial services industry, including widespread weaknesses in PPI selling practices and a very high number of complaints about PPI.
- 4.7. On 14 January 2005, the Authority became responsible for regulating firms selling general insurance products. Since that time the Authority has taken a series of steps to ensure that customers were treated fairly in the sale of PPI.
- 4.8. Firms conducting regulated activities are obliged to handle complaints in accordance with the rules outlined in DISP. In particular, they are obliged to investigate complaints, assess fairly whether complaints should be upheld and, if so, to determine what redress or remedial action may be appropriate. If they reject a complaint, they are obliged to notify the customer of the right to refer the complaint to the ombudsman service.
- 4.9. From 2005 onwards the Authority has published papers based on its thematic work around sales of PPI that highlighted issues around the consideration of the suitability of PPI for customers. Firms should have subsequently reflected these issues in their complaint handling processes to ensure that they treated customers fairly when handling PPI related complaints.

The Judicial Review of PS10/12

- 4.10. On 10 August 2010 the Authority published PS10/12 "*The assessment and redress of Payment Protection Insurance Complaints; feedback on the further consultation in CP10/6 and final Handbook text*" which introduced a package of measures to be implemented by firms from 1 December 2010 that were intended by the Authority to ensure that firms handled PPI complaints more fairly and consistently and delivered fairer outcomes for customers who had been mis-sold PPI.
- 4.11. On 8 October 2010 many UK banks, through the BBA, commenced judicial review proceedings in relation to the Authority's decision to introduce the measures outlined in PS10/12. Clydesdale has publicly stated that it was not involved in the Judicial Review.
- 4.12. On 20 April 2011 the High Court ruled in favour of the Authority and upheld PS10/12 in all respects. On 9 May 2011, the BBA confirmed that it would not seek to appeal the High Court's decision, bringing the Judicial Review to an end.

The ombudsman service

- 4.13. The ombudsman service is an independent service, created by the Act, for settling disputes between financial service providers and their customers. A customer who is not satisfied with the outcome of a complaint may refer the complaint for consideration by the ombudsman service.
- 4.14. The role of the ombudsman service is to assess the circumstances and to provide an independent assessment of whether the outcome of the complaint was fair and reasonable. Where, following an initial assessment, the ombudsman service takes the view that the outcome was not fair and reasonable, it may propose a settlement between the parties. If this is not accepted by both parties, the ombudsman service will issue a final decision. It may conclude that the firm's findings were fair or it may conclude that they were unfair, in which case it may decide to overturn the firm's findings and direct the payment of redress. If so, it produces a written decision with reasons which is provided to both the

complainant and to the firm. Subject to the limits set out in DISP, the firm is legally bound by the terms of the decision.

- 4.15. Firms should take account of the decisions of the ombudsman service in operating their complaint handling procedures. In addition to determining complaints, the ombudsman service provides, through its website, information about relevant matters including generic information about PPI related complaints and the approach of the ombudsman service.

Clydesdale's PPI complaint handling operation

- 4.16. From January 2011, Clydesdale established a separate PPI complaint handling operation and associated governance framework. Policy decisions relating to the PPI complaint handling operation were approved by one or two levels of committees.
- 4.17. There were approximately 150 to 250 staff within the complaint handling operation during the Relevant Period.
- 4.18. PPI complaints received by Clydesdale were handled in the first instance by complaint handlers within its BAU PPI team.
- 4.19. If a PPI complaint was rejected by Clydesdale or if the customer was dissatisfied with the redress offered in respect of an upheld complaint, the customer could refer the complaint to the ombudsman service. A team of complaint handlers within Clydesdale's PPI complaint handling operation, known as the FOS PPI team, was responsible for dealing with PPI complaints referred to the ombudsman service. This included responding to queries raised by the ombudsman service in relation to PPI complaints.
- 4.20. In total during the Relevant Period, Clydesdale made decisions on approximately 126,600 PPI complaints (13,600 of these were referred to ombudsman service). This included:
- (1) 73,200 complaints which were fully investigated. Of those, 72% were upheld and 28% were rejected;
 - (2) 29,700 complaints where Clydesdale determined that PPI had not been sold to the customer; and
 - (3) 23,600 complaints where Clydesdale considered that it had inadequate evidence to confirm whether PPI had or had not been sold to the customer.
- 4.21. During the Relevant Period approximately 5,700 complaints relating to Clydesdale's sale of PPI were assessed by the ombudsman service. Of those, 41% were upheld by the ombudsman service in favour of the customer and 59% were rejected.
- 4.22. In June 2011, following the outcome of the Judicial Review, Clydesdale initiated a review by the professional services firm of all aspects of its PPI complaints handling process, including a gap analysis of its complaint handling procedures against the requirements of PS10/12. This review made a number of recommendations which were implemented by Clydesdale.

The Authority's File Review

- 4.23. As part of a thematic review into the fairness of medium-sized firms' decisions and redress for PPI complaints, the Authority requested a sample of files relating

to 46 PPI customers who had made complaints to Clydesdale between May 2011 and April 2012, to assess the adequacy of the handling of their complaints. The sample covered 71 PPI sales.

4.24. The Authority determined that:

- (1) 14 customers (30%) had received an unfair outcome because Clydesdale had wrongly rejected the complaint;
- (2) 23 customers (50%) had received a fair outcome; and
- (3) for 9 customers (20%) the Authority could not determine whether a fair outcome had been provided because the evidence in the file was unclear.

Evidence of failings

Policy on loans

4.25. Clydesdale's PPI complaint handlers should have been considering all available evidence when making decisions on PPI complaints. Where the original sales documentation was not available, Clydesdale should have undertaken reasonable searches to identify what other sources of information were available to it to determine the existence of PPI, whether it had been mis-sold and the amount, or a reasonable estimate, of any redress due (generally the amount that the customer had paid for PPI). Complaint handlers should have weighed any information they had with the evidence provided by customers.

Approval of the policy decision

4.26. Clydesdale had a document retention period which meant that documents relating to products that had been repaid or closed more than seven years ago would not be retained. The Authority makes no criticism of this document retention period.

4.27. At the beginning of the Relevant Period Clydesdale was dealing with a backlog of overdue PPI complaints and a high volume of new PPI complaints. It was also experiencing difficulties in identifying and retrieving relevant information for loans that had closed more than seven years prior to the date of complaint. In most cases, the original sales documentation was no longer available and other sources of information that were available (such as bank statements) were time consuming to review, sometimes incomplete and did not always provide sufficient information to determine whether the PPI had been mis-sold or to enable redress calculations to be performed. This was adding to the time it was taking complaint handlers to deal with complaints.

4.28. In May 2011, Clydesdale's PPI governance committees approved a policy whereby its PPI complaint handlers would no longer be required to search for PPI documents relating to loans repaid or closed more than seven years before the date the complaint was made (known internally as 'retention' cases).

4.29. It was known within Clydesdale that relevant documents were in some cases available beyond Clydesdale's seven year document retention period. These documents would have been relevant to the consideration of PPI complaints, not least as they confirmed the premium and interest that the customer had paid for the PPI. Failing to search for these documents would have placed some customers at a disadvantage. Although Clydesdale had noted internally that, in most retention cases, there was insufficient documentation on which to base an investigation, Clydesdale did not determine in how many cases documents were in fact available prior to approving the policy on loans.

- 4.30. Representatives of Clydesdale's legal and compliance departments were involved in making the policy decision. Prior to the decision being approved, an opinion was obtained from the legal department which noted the guidance in DISP App 3.3.8G (see the Annex to this Notice) but concluded that it was comfortable that the PPI team was implementing a procedure which would treat all customers the same way. The opinion did however note that the Authority might take a different view and Clydesdale should document the reasons for the decision and the risks in making the decision. Other than the policy decision itself (which noted that, in most cases, Clydesdale no longer held sufficient information on which to base an investigation), the Authority has not seen any evidence that the reasons and risks associated with the policy were documented by Clydesdale.

Impact of the policy on loans on PPI complaint handling processes and outcomes for customers

- 4.31. From June 2011, complaint handlers in the BAU PPI team would use a business objects report (known as a 'BOXI report') for the customer to determine, among other things, the date the loan was repaid. A BOXI report was a print out of information held on Clydesdale's systems listing all products sold by Clydesdale to the customer and would in some cases give an indication of whether PPI had been purchased with a loan.
- 4.32. If the BOXI report showed that the loan was repaid more than seven years before the complaint was made, complaint handlers would not conduct any searches of Clydesdale's electronic systems (for example, its 'LiveLink' document management system onto which loan documentation was scanned and indexed) for relevant documents. This was despite the fact that key documents (such as loan agreements) were, in a small percentage of cases, available on LiveLink beyond Clydesdale's seven year retention period and could therefore easily have been considered by complaint handlers.
- 4.33. Moreover, even where loan agreements were no longer available on LiveLink, complaint handlers could have searched other sources of information, such as bank statements (which Clydesdale maintained electronically, or on microfiche records, as far back as 1990 and in some cases earlier, although customer microfiche records were sometimes incomplete). In some cases, this information, together with information held by third parties (such as the PPI product provider), would have provided sufficient information for complaint handlers to investigate the complaint and determine redress.
- 4.34. In retention cases, customers were told in final response letters issued by the BAU PPI team that due to the time elapsed, Clydesdale was unable to investigate their complaints further. This was despite PPI complaint handlers not in fact having checked what information was available to enable them to determine the complaint (and in circumstances where they would in some cases have been aware that the BOXI report indicated that the customer had taken out PPI). There were, however, some issues with the completeness and accuracy of BOXI reports, and they would not always accurately reflect whether PPI was in fact sold to a customer. Customers were told that if they were in possession of the original loan agreement then the complaint could be investigated further.
- 4.35. This approach was applied even to retention cases involving sales of single premium PPI made before 2008, despite Clydesdale's policy (for non-retention cases) that complaints about such sales should be automatically upheld because its root cause analysis had identified these sales as being inadequate (see paragraph 4.106 below). In some cases (in particular, PPI sold by Clydesdale through its Yorkshire Bank brand), it should not have been necessary for

complaint handlers to see the loan agreement in order to be able to determine these complaints.

Missed opportunities by Clydesdale to reconsider the policy on loans

- 4.36. After the policy on loans was implemented, Clydesdale initiated the review by the professional services firm referred to in paragraph 4.22 above. The professional services firm did not raise concerns with the policy on loans.
- 4.37. Nonetheless, Clydesdale had numerous opportunities to reconsider the policy but failed to do so.
- 4.38. From early August 2011, the ombudsman service began to raise queries with Clydesdale about the searches that had been carried out in individual retention cases to locate relevant documentation. In particular, from October 2011, the ombudsman service started to ask Clydesdale to supply it with screen prints evidencing the searches undertaken to confirm that loan documentation could not be located. These requests (which became increasingly more persistent) should have prompted Clydesdale to reconsider the policy on loans as it should have been clear from the ombudsman service's communications that it expected Clydesdale to search its systems for all available information relevant to a customer's complaint.
- 4.39. In October 2011 Clydesdale identified that, following the implementation of the policy on loans, the average number of PPI policies considered for each loan complaint had halved from 3.8 policies to 1.9 policies. Between June 2011 (when the policy decision was implemented) and October 2011, Clydesdale considered approximately 3,900 complaints relating to personal loans so Clydesdale considered approximately 7,400 fewer PPI policies than it might have done had it applied the previous policy, albeit that in many of these cases it may not have been possible for Clydesdale to have investigated these policies due to insufficient documentation.
- 4.40. In January 2012, the ombudsman service wrote to financial services practitioners, including Clydesdale, about the steps that should be taken to identify whether PPI was sold to a customer. In that letter the ombudsman service outlined that it would typically expect to see evidence that firms had taken a number of steps including:
 - (1) conducting reasonable searches of their systems (including archive systems);
 - (2) reviewing all available information about the customer; and
 - (3) setting out in the final response to the customer the level of investigation that had been undertaken together with relevant supporting documents (for example, screen-shots).
- 4.41. However, Clydesdale did not reconsider at that stage whether the policy on loans was appropriate and, accordingly, no amendment was made to this policy.
- 4.42. In March 2012 Clydesdale clarified, through another policy decision, that the policy on loans approved in May 2011 also included mortgages. Clydesdale did not review the impact of the original policy change in May 2011 nor were there any discussions about whether the policy was still appropriate. During the period that the policy on loans was in force Clydesdale determined approximately 4,100 complaints relating to mortgage PPI.

- 4.43. The ombudsman service's requests for screen prints in individual cases continued over 2012 and 2013, and, again, should have prompted Clydesdale to reconsider the policy on loans.
- 4.44. Despite the above prompts, Clydesdale did not change its policy on loans until late June 2013 following feedback from the Authority. After this date its complaint handlers searched LiveLink for all loans even if they were repaid more than seven years prior to the date of the complaint and fully investigated/upheld complaints where documents were found.
- 4.45. During the period the policy on loans was in place (1 June 2011 to 25 June 2013), up to approximately 28,200 loan and mortgage PPI complaints may have been rejected unfairly and up to approximately 44,900 loan and mortgage PPI complaints may have resulted in inadequate redress for customers as a result of this policy decision.

Misleading the ombudsman service with regard to the policy on loans

- 4.46. As referred to above, if complaints were referred to the ombudsman service, they would be handled by Clydesdale's FOS PPI team.
- 4.47. The FOS PPI team complaint handlers were responsible for submitting to the ombudsman service 'Business Response Forms' setting out the rationale for the rejection of the complaint, together with the evidence supporting that decision.
- 4.48. During the period that the policy on loans was in place, the standard wording used in the Business Response Forms for retention cases, similar to the wording used in letters to customers, was:

'unfortunately we have been unable to trace any documentation to allow us to carry out an investigation ... due to the length of time that has elapsed since the loan account was closed.'

This wording was misleading as it suggested that a search had been conducted when, in fact, complaint handlers had not even checked whether relevant documents were available.

- 4.49. Moreover, in retention cases, while FOS PPI team complaint handlers would not generally know whether loan documentation was available, members of the FOS PPI team would on occasion come across loan documents for loans dated outside the seven year retention period, either by accident or because they had searched for them out of curiosity. However they would not take these documents into account for the purpose of dealing with the complaint in question, and would still cite the above wording in Business Response Forms submitted to the ombudsman service. It appears that the FOS PPI team did so in order to take the approach they thought to be consistent with the policy on loans. The Authority has not seen evidence of this issue being escalated or known to the PPI leadership team or Clydesdale's management.
- 4.50. Furthermore, Clydesdale was not transparent with the ombudsman service as to the nature of the policy on loans, and its consequences, despite various opportunities to provide clarification. Members of the FOS PPI team escalated concerns on a number of occasions as to how they should explain the policy to the ombudsman service. Although Clydesdale's PPI leadership team had various discussions with the ombudsman service regarding its approach to cases where there was uncertainty about whether PPI had been sold to a customer, Clydesdale did not inform the ombudsman service that Clydesdale was in fact not conducting

any searches for records in relation to retention cases, despite knowing that in some cases relevant documents might be available.

- 4.51. As late as early June 2013, in an exchange relating to a case Clydesdale had incorrectly rejected because the customer could not provide a copy of the original loan agreement (the case had been thought to be a retention case but proved not to be), the ombudsman service said that it hoped the way in which the complaint had been handled was not Clydesdale's standard approach. The response, from a member of Clydesdale's PPI leadership team, stated merely that it was not Clydesdale's standard approach to disregard a complaint where there were limited records available to evidence the sale of the policy. This was despite the fact that, in retention cases, where customers could not provide a copy of the original loan agreement, Clydesdale would simply reject complaints without searching its own systems.
- 4.52. On another occasion involving a retention case in October 2011, a member of the FOS PPI team stated to the ombudsman service that Clydesdale did not hold any records prior to the seven year document retention period. This was misleading as, in some cases, documentation was available.

Credit card policy

- 4.53. Clydesdale's PPI complaint handlers should have been considering all PPI payments made by customers in its redress calculations. Where credit card statements were missing, Clydesdale should have considered what alternative options were available to ensure customers who had complained would not be disadvantaged, for example by estimating or making reasonable assumptions about the value of the payments made by the customer.

Approval of the policy decision

- 4.54. Clydesdale retained transactional data for credit cards in electronic form for the period from 2000 onwards. For the period prior to 2000, statements were available for some of the period between the late 1980s and 2000 in microfiche form, but there were large gaps in the data and it was not easily identifiable or retrievable.
- 4.55. In June 2011 Clydesdale's PPI governance committees approved a policy whereby, if a customer's credit card statements were not available or some were missing, Clydesdale would, when calculating redress, assume that the customer's balance was the higher of:
- (1) the last statement before the period of missing statements;
 - (2) the next statement after the period of missing statements; or
 - (3) the carried forward balance on the next statement after the period of missing statements.
- 4.56. In July 2011, the professional services firm referred to at paragraph 4.22 advised that this policy may have resulted in customers being paid a disproportionately large amount of redress. In August 2011, following discussions with the professional services firm, Clydesdale's PPI governance committees approved a new policy whereby, for credit card complaints, PPI complaint handlers would not check any credit card statements for the period prior to the year 2000 when calculating redress, or make any assumptions to estimate the redress due for this period. At the time of the decision, it was known that credit card statements were available in microfiche form for some of the period prior to 2000.

- 4.57. A paper provided to the more senior PPI governance committee when it approved the policy included an example provided by the professional services firm to demonstrate the effect of the policy. The example showed that, based on the assumption that Clydesdale first sold PPI for credit cards in 1998, redress under the old policy (calculated back to 1998) was calculated as £11,600. Under the new credit card policy (calculated back to 2000), redress was calculated as £8,000.
- 4.58. In fact, the average redress paid by Clydesdale to credit card customers during the period that the credit card policy was in place (approximately £2,400) was £1,380 lower than the average redress paid to credit card customers for the remainder of the Relevant Period (approximately £3,780).
- 4.59. Despite the change in policy, while Clydesdale made some amendments to the relevant template letters, the letters sent between August 2011 and June 2013 to customers whose credit card complaints had been upheld did not inform customers that Clydesdale was not paying any redress in respect of the pre-2000 period. Where statements were missing for the post-2000 period, the letters also retained the previous wording that assumptions had been used to calculate redress where statements were missing without explaining that this approach had only been used for the post-2000 period. This was misleading. In addition, until April 2013, the template letters used by the FOS PPI team for customers whose credit card complaints had been upheld following a referral to the ombudsman service stated that Clydesdale intended to place customers in the position they would have been in had they never taken out PPI. This was also misleading as, from August 2011, Clydesdale's policy was to not calculate redress for the period prior to the year 2000.

Missed opportunities to reconsider the credit card policy

- 4.60. After the credit card policy was implemented, Clydesdale had numerous opportunities to reconsider the policy but failed to do so. In August 2011 a member of the FOS PPI team raised concerns about the credit card policy with Clydesdale's PPI leadership team. These included concerns that the policy was not in line with guidance issued by the ombudsman service of making assumptions where statements were missing or unavailable and did not put the customer back into the position they would have been in had the PPI policy not been mis-sold. The FOS PPI team continued to raise concerns with Clydesdale's PPI leadership team in 2011 and 2012.
- 4.61. Moreover, from late 2011 through to early 2013, the ombudsman service was consistently challenging the credit card policy in correspondence with Clydesdale's FOS PPI team on individual complaints which, again, was escalated to Clydesdale's PPI leadership team. Clydesdale consulted with the professional services firm during this period who did not raise concerns that the policy needed to be changed.
- 4.62. At an internal meeting on 26 November 2012, one of Clydesdale's PPI governance committees, considered whether it was appropriate to continue with the credit card policy due to the challenges from the ombudsman service. However, Clydesdale concluded that it was comfortable that the policy was still appropriate.
- 4.63. In January 2013, Clydesdale obtained additional advice from another professional services firm regarding its approach to PPI complaint handling. Following this advice and further consideration of the matter, Clydesdale finally engaged in a further dialogue about the credit card policy with the ombudsman service during 2013, which led to it introducing a revised redress approach after the Relevant

Period which involved making reasonable assumptions to estimate redress for the period from the inception of the PPI policy through to 2000.

- 4.64. From 23 August 2011 (when the credit card policy was introduced) until the end of the Relevant Period, up to approximately 5,900 credit card PPI complaints investigated and upheld by Clydesdale may have resulted in inadequate redress for customers as a result of this policy decision.

Lack of transparency with the ombudsman service as to the nature of the credit card policy

- 4.65. The ombudsman service's challenge about the credit card policy was that Clydesdale was not making assumptions for the pre-2000 period where statements were missing. Throughout Clydesdale's communications with the ombudsman service regarding the credit card policy, Clydesdale in fact failed to disclose that it held microfiche records of credit card statements for some of the pre-2000 period but was not searching these.

Provision of false print outs to the ombudsman service about the extent of the records held by Clydesdale on the PPI policies sold to customers

- 4.66. As noted earlier, from October 2011, the ombudsman service was requesting Clydesdale to provide screen prints in individual cases.

Providing misleading communications to the ombudsman service as to the reasons why screen prints could not be provided prior to May 2012

- 4.67. The standard response given by the FOS PPI team to the ombudsman service's requests for screen prints prior to May 2012 on specific retention cases was '*Due to the nature of our internal system, we are unable to supply screen prints.*' This was approved as a standard response by a member of Clydesdale's PPI leadership team. However, this was misleading as, in fact, screen prints could have been generated from Clydesdale's internal systems.

Provision of false print outs to the ombudsman service

- 4.68. In May 2012, following internal discussions with Clydesdale's legal, compliance and data protection teams, Clydesdale reached an agreement with the ombudsman service as to the nature of the prints that would be provided on request to evidence that no documents had been located for the PPI product that was the subject of the complaint.

- 4.69. From this date until June 2013, Clydesdale's FOS PPI team adopted practices of providing false information to the ombudsman service in response to requests from the ombudsman service as to the extent of the records Clydesdale held on the PPI policies sold to individual customers. The information was contained in LiveLink screen prints and BOXI reports provided by the FOS PPI team to the ombudsman service in line with the above agreement.

- 4.70. The practices had arisen, at least in part, because of a desire by the FOS PPI team to ensure that the information provided to the ombudsman service was consistent with Clydesdale's statements in Business Response Forms that information was not available about the PPI sold, due to Clydesdale's policy on loans.

- 4.71. The practices were not part of Clydesdale's documented procedures and were not known to or authorised by Clydesdale's management or PPI leadership team. Upon becoming aware of the issues Clydesdale took immediate steps to end the practices or confirm that they had ended, commissioned internal investigations to

investigate the conduct and reported on the outcome of these investigations to the Authority.

- 4.72. As a result of Clydesdale's FOS PPI team's actions the ombudsman service would in some cases have been misled about the information available for the purpose of determining the complaint and/or appropriate redress. Customers may therefore have been disadvantaged. The provision of false information has also led to delays in the ombudsman service considering complaints while the inaccuracies in the evidence provided are resolved.

False system print outs from LiveLink provided to the ombudsman service about the documents available for individual customers

- 4.73. Clydesdale scanned and indexed loan sales documentation (which would evidence the sale of PPI and the amount of premium and interest payable by the customer) on LiveLink. A search against LiveLink would generate a screen print showing a list of documents held by Clydesdale in relation to a particular customer or loan account. Where no documentation was held, the search would state that there were no records found.
- 4.74. From May 2012, Clydesdale agreed that its FOS PPI team would provide a LiveLink screen print to the ombudsman service on request. When the FOS PPI team searched LiveLink for retention cases in response to a request for screen prints from the ombudsman service, in most cases the search would state that there were no records found. However, where the FOS PPI team searched LiveLink and found that documents were still available for a retention case, the ombudsman service was not informed. Rather, to ensure that the information provided to the ombudsman service was consistent with the statements made in the Business Response Form that records were not available, the FOS PPI team provided false print outs to the ombudsman service. This was achieved either by searching under an incorrect loan account number to produce a system print out stating that no records had been found, or by physically substituting the actual results print out with a print out from another customer file that stated that no records had been found.
- 4.75. From the print outs provided, the ombudsman service could not have identified that, contrary to what had been stated in the Business Response Form, Clydesdale did in fact hold information relevant to the complaint. As a result the ombudsman service would not have had all relevant documents available to determine the complaint and/or the redress due to the customer.
- 4.76. The Authority considers that this practice is likely to have affected a small number of cases.
- 4.77. The practice was only identified by Clydesdale in May 2014 after a member of the FOS PPI team raised concerns, although the practice had in fact ceased in June 2013 due to other changes being made by Clydesdale to its procedures following the Authority's feedback on Clydesdale's policies more generally.
- 4.78. In one case:
- (1) Clydesdale rejected a complaint made in late 2011 from a husband and wife who had taken out single premium PPI on a loan on the basis that the loan had closed more than seven years prior to the date of the complaint, informing the customers that the complaint could not be investigated "[d]ue to the time elapsed" and inviting the customers to send in the loan agreement. In fact, Clydesdale held (but had not searched for) a copy of the loan agreement, which showed that the customers had been sold

single premium PPI in 1998 at a cost of £2,800. In accordance with its policy of automatically upholding single premium PPI sales prior to 2008, Clydesdale should have automatically upheld the complaint and refunded the premium to the customers.

- (2) Following referral of the complaint to the ombudsman service, Clydesdale maintained that the complaint could not be investigated, stating in the Business Response Form that it was "*unable to trace any documentation*". In fact, no search of Clydesdale's systems had been undertaken.
- (3) Following a request from the ombudsman service for copies of screen prints to evidence the systems searched by Clydesdale, searches conducted by Clydesdale's FOS PPI team revealed that Clydesdale did in fact hold a copy of the relevant loan agreement. However, in response to the request from the ombudsman service, the FOS PPI team altered the screen print to make it look as if Clydesdale held no records, and sent this to the ombudsman service.
- (4) As a consequence, the ombudsman service was unable to determine the customers' complaint. It notified the customers in May 2013 that it was unable to consider the complaint further due to the lack of available records. Had the information available been considered by Clydesdale, or had the ombudsman service been provided with the correct information, the customers are likely to have received compensation of up to £5,100.
- (5) Clydesdale will be reviewing this complaint as part of the review described at paragraph 2.9(4) above.

Alterations to BOXI reports

- 4.79. As noted in paragraph 4.31, BOXI reports were print outs of information held on Clydesdale's systems listing the products sold by Clydesdale to the customer. In some cases, the BOXI report would also give an indication of whether PPI had been purchased with a loan, although there were some issues with the accuracy and reliability of this information. BOXI reports were printed by the BAU PPI team and included in all complaints files.
- 4.80. From May 2012, Clydesdale agreed that its FOS PPI team would provide BOXI reports to the ombudsman service on request. For example, where Clydesdale had indicated that original PPI sales documents were not available, the ombudsman service may have requested the BOXI report to confirm that Clydesdale held no other records of the PPI sale.
- 4.81. Where the ombudsman service requested a copy of a BOXI report, Clydesdale considered that any information not relevant to the complaint should be removed from the BOXI reports. However, between May 2012 and June 2013, the FOS PPI team were in fact going further in its alterations and adopted a practice of removing all PPI information from the BOXI reports, even where the information was relevant to the specific PPI policy against which the complaint was raised. One of the FOS PPI team's reasons for doing this was to ensure that the BOXI reports did not contain information that contradicted the policy on loans.
- 4.82. As a result of Clydesdale's FOS PPI team not providing all relevant PPI information to the ombudsman service, the ombudsman service would not have been able properly to determine the complaint and/or the redress due to the customer. Subject to the reliability and accuracy issues noted above, unedited BOXI reports together with other information, such as bank statements, in some cases provided sufficient information to investigate the complaints and determine redress (for

example, complaints about Yorkshire Bank single premium PPI sold prior to 2008).

- 4.83. During the period when this practice was in place (late May 2012 until late June 2013), up to approximately 6,800 loan and mortgage PPI complaints referred to the ombudsman service were at risk of an altered BOXI report being sent to the ombudsman service.

Factors contributing to the FOS PPI team's practices of providing false system screen prints

- 4.84. Clydesdale did not consider all of the consequences of the policy on loans when approving it in May 2011, in particular what information should be provided to the ombudsman service about the documents available to Clydesdale to determine retention cases.
- 4.85. Clydesdale should have been prompted to reconsider this issue on numerous occasions but failed to do so. These occasions were:
- (1) those set out at paragraphs 4.38, 4.40 and 4.42 - 4.43 above; and
 - (2) in October 2011, when a FOS PPI team member, in asking a member of Clydesdale's PPI leadership team for appropriate wording to use in response to the ombudsman service's requests for screen prints evidencing the documents held by Clydesdale, queried whether BOXI reports could be sent because all loans (including those repaid more than seven years ago) would be listed on them.
- 4.86. As a result, the FOS PPI team was not given adequate guidance as to what information should be provided to the ombudsman service. In particular, following the agreement with the ombudsman service to provide screen prints in May 2012, no written guidance was provided to the FOS PPI team as to the process that should be followed until October 2012. Even then:
- (1) there was no specific guidance issued to the FOS PPI team as to what amendments could or should be made to BOXI reports; and
 - (2) there was no mention of the approach to be taken in retention cases where the screen prints requested actually revealed the existence of loan documents, contrary to Clydesdale's position that information was not available.
- 4.87. This was despite the fact that Clydesdale was aware that relevant documents might be available beyond the seven year retention period in some cases.
- 4.88. As a result, in retention cases, the FOS PPI team was left to decide for itself how it could respond to the ombudsman service's requests where documents had been found to be available, whilst remaining consistent with Clydesdale's statements (in the final response letters sent to customers and the Business Response Forms submitted to the ombudsman service) that information could not be traced and/or the complaint not investigated due to the time that had elapsed. Consequently, for these cases, the FOS PPI team implemented a practice of providing false information to the ombudsman service in the form of altered screen prints.
- 4.89. While the practices were not known to or authorised by Clydesdale's management or the PPI leadership team, the Authority considers that the tone and example set by Clydesdale's PPI leadership team in some of its communications with the ombudsman service, particularly the lack of transparency surrounding

Clydesdale's loan and credit card policies and the ability to provide screen prints, as described above, is likely to have contributed to the FOS PPI team implementing these practices.

- 4.90. Moreover, the support and monitoring of the FOS PPI team during the Relevant Period was weak. Among other things, Clydesdale did not carry out any quality assurance or other monitoring of the information and documents provided by the FOS PPI team to the ombudsman service which might have revealed that false information was being provided in some cases.

Failure by complaint handlers to assess adequately whether the PPI for the customer was suitable

- 4.91. Clydesdale's complaint handlers should have been considering whether sales advisers had made a proper assessment of the suitability of PPI policies for customers at the point of sale, and upholding complaints where this was not the case.
- 4.92. Clydesdale's complaint handling policies and processes were inadequate because they did not sufficiently prompt complaint handlers to make an assessment of the overall suitability of the PPI policy.
- 4.93. The training given to complaint handlers also did not make reference to making an overall assessment of suitability.
- 4.94. As a result complaint handlers were failing to uphold complaints where the information on the file would suggest that the PPI policy was not suitable for the customer.
- 4.95. The Authority's File Review identified that, in 14 out of the 46 complaints (30%), complaint handlers did not identify that the sales adviser's evaluation of suitability was inadequate, or that the sale may otherwise have been unfair. In four cases, the limitations or exclusions of the PPI policy were not adequately disclosed. In two cases, the evidence suggested pressure selling. In 10 of the 14 cases, complaint handlers failed to identify that the sales adviser's evaluation of suitability was inadequate because the adviser had not properly assessed whether a customer's existing employee benefits and/or propensity to refinance meant that the PPI policy was unsuitable. These failings are described in more detail below.
- 4.96. Up to approximately 20,600 loan, mortgage, credit card and asset finance PPI complaints may have been unfairly rejected as a result of this issue.

Failure by complaint handlers to identify inadequate assessments of customers' existing employee benefits at the point of sale

- 4.97. Clydesdale's complaint handlers should have been considering if sales advisers had properly assessed whether the existing benefits provided by a customer's employer in terms of accident, sickness and life cover meant that the PPI policy was unsuitable.
- 4.98. Clydesdale's policies and training were inadequate. While there was high level guidance that complaint handlers should consider whether the customer had existing cover, Clydesdale's guidance and training did not specifically refer to consideration of existing employee benefits. Moreover the guidance did not sufficiently prompt complaint handlers to consider whether the sales adviser's assessment of the impact of employee benefits on the suitability of the policy was correct.

4.99. The Authority's File Review identified that, in 9 out of the 46 complaints (20%), complaint handlers failed to identify that the sales adviser's evaluation of suitability was inadequate because the adviser had not properly considered whether the customer's existing employee benefits made the PPI policy unsuitable.

4.100. For example, in one case reviewed by the Authority, during the sales telephone call the customer's employee benefits were not fully discussed. However, the customer had been employed by the same university for over 12 years and would have been entitled to redundancy payments as well as six months' full pay and six months' half pay in the event of being unable to work due to an accident or sickness. In rejecting the complaint, the complaint handler stated that the customer had not informed the sales adviser that they had sufficient cover from their employer despite the recording of the sales call confirming that the sales adviser had not adequately discussed existing cover with the customer.

Failure by complaint handlers to identify inadequate assessments of customers' propensity to refinance at the point of sale

4.101. Clydesdale's complaint handlers should have been considering if sales advisers, when recommending a single premium PPI policy to cover a loan, had properly assessed whether customers had a propensity to refinance (i.e. whether they were likely to cancel their loan before the end of the term and replace it with a new one) or to repay their loan before the end of the term.

4.102. If the customer had refinanced their loan or repaid it early, they would have received a refund which was substantially less than a 'pro rata' refund, and therefore would have paid a PPI premium which was disproportionately large considering the limited amount of time that they had had the policy. Therefore the single premium PPI product may not have met the needs of customers who expected (or were likely to want) to refinance the loan or repay it early.

4.103. Clydesdale's policies were inadequate as complaint handlers were only required to consider:

- (1) whether the customer had stated an intention at the time of the sale to repay the loan early; and
- (2) whether the sales adviser had considered, and advised the customer of, the refund terms applicable in the event of early redemption.

4.104. The guidance given to Clydesdale's complaint handlers did not therefore require them to undertake a full assessment of the evidence regarding a customer's propensity to refinance or repay their loan early.

4.105. Similarly, while there were references made to the non-pro rata refund terms in the training for complaint handlers, the training did not make any reference to the consideration that complaint handlers should give to the impact of a customer's propensity to refinance on suitability over and above the policies provided to the complaint handlers, which, as described above, were inadequate.

4.106. Clydesdale identified through its root cause analysis that its sales standards for single premium PPI were inadequate before March 2008 for sales made through its branches and before May 2008 for sales made through its other sales channels. Where there was adequate evidence of PPI having been sold, Clydesdale therefore automatically upheld any single premium PPI complaints where the sale was made before 2008, subject to loan documents being available under the policy on loans noted above (otherwise the complaint would not be considered). With

respect to complaints from customers who purchased single premium PPI after March/May 2008, however, complaint handlers were not adequately considering the customer's propensity to refinance or repay the loan early.

- 4.107. The Authority's File Review identified that in 8 out of the 46 complaints (17%) complaint handlers had failed to identify that sales advisers had not properly considered the customer's propensity to refinance or repay the loan early when making a recommendation. In some cases, the complaint handlers also failed to identify that the customer did in fact have a propensity to refinance even though there was clear evidence on the file.
- 4.108. For example, in one case reviewed by the Authority, the purpose of the loan was to repay existing debts and during the sales call the customer enquired about the possibility of redeeming the loan early. While the customer was told that the policy had a non-proportionate refund on cancellation the suitability of a single premium policy was not considered during the sale. These issues were not identified and considered by the complaint handler despite there being clear indicators of a propensity to refinance.

Inadequate monitoring of complaint handlers

- 4.109. Clydesdale's framework for monitoring the quality of the decisions made by its complaint handlers was inadequate. Clydesdale had three lines of defence over its PPI complaint handling operation, none of which identified the deficiencies in its PPI complaint handling described above.

First line of defence

- 4.110. During the Relevant Period the complaint handlers were monitored by the Quality Control Team which was based within the PPI complaint handling operation. All complaint files were submitted by the complaint handler to the Quality Control Team from which a sample was reviewed.
- 4.111. Until January 2012, the sample of complaints monitored for each complaint handler was inadequate as it was not fully risk-based. While the sample was increased for trainees or complaint handlers where quality issues had been identified, the sample selection did not have regard to the type of PPI policy or the types of issues considered. PPI complaints involving consideration of more complex issues would not therefore be monitored more closely than more straightforward complaints.
- 4.112. Throughout the Relevant Period, the monitoring checklists used were basic and focused on whether the proper administration process had been followed by the complaint handler. The checklists did not prompt the monitoring staff to make an adequate overall assessment of whether fair outcomes were being achieved for customers. Only one high level question addressing the adequacy of the complaint decision was considered "*Decision correct and rationale documented*" and then a space was provided for any observations noted. There was no guidance in the checklist to explain what factors should be taken into account over and above the policies provided to complaint handlers (which, as referred to above, were not adequate).
- 4.113. The professional services firm identified a number of issues with the monitoring in place in a report in August 2011, including that the monitoring was not fully risk-based and that the monitoring checklist and guidance notes focused on whether the correct process had been followed rather than assessing the quality of the complaint decision reached. In conjunction with the professional services firm, Clydesdale took steps to address these issues, including making the sample of

complaints monitored more risk-based. Notwithstanding these changes, the sample of complaints monitored remained insufficiently risk-based and the monitoring checklist and guidance remained inadequate.

Second and third lines of defence

- 4.114. Prior to October 2011, second line review was conducted by the Compliance Monitoring Function. Between October 2011 and November 2012 the Compliance Monitoring Function formed part of the Internal Audit Function such that second and third line review was effectively conducted by different functions within the same area. After November 2012 the second line was restored to a separate, differentiated Compliance Monitoring Function.
- 4.115. During 2011, Clydesdale relied principally on the monitoring activity that was undertaken by the first line Quality Control Team and the review work that was being undertaken by the professional services firm that had been engaged by Clydesdale.
- 4.116. The only second/third line review of PPI complaint handling during the Relevant Period was undertaken by the Compliance Monitoring Function, the findings of which were reported in May 2012. The review identified one material issue relating to the consideration of complaints prior to the Relevant Period and a number of minor amendments that needed to be made to Clydesdale's policies and procedures. Overall, however, the review concluded that Clydesdale's PPI complaint handling was effective in practice and was operating in line with regulatory standards. Other than a follow up review undertaken in March 2013 to confirm that the earlier review's recommendations had been implemented, no further testing was conducted by the Compliance Monitoring Function during the remainder of the Relevant Period.
- 4.117. The scope of the Compliance Monitoring Function review and the testing undertaken, including a sample of 90 complaints, should have been sufficient to identify the failings in Clydesdale's processes around the consideration of suitability by PPI complaint handlers and the weaknesses in first line controls but the review itself was either inadequately conducted or the results of the review were not assessed appropriately.

Monitoring of information being provided to the ombudsman service

- 4.118. As stated above, there was no quality assurance or other monitoring of the information and documents produced by the FOS PPI team prior to providing them to the ombudsman service which might have revealed that false information was being provided.

Training of complaint handlers

- 4.119. All new complaint handlers received the same initial induction training and then went through additional training within their team. The training material presented to complaint handlers included information about Chapter 1 of the Authority's Handbook that relates to general complaint handling requirements. The training did not however cover Appendix 3 to DISP which sets out specific considerations when handling PPI complaints. The only references to Appendix 3 were contained in the 'common failings spreadsheet' provided to complaint handlers, which contained guidance about the common sales failings identified in PS10/12. Moreover, the relevant wording from Appendix 3 was not included.
- 4.120. Monitoring (Quality Control) staff and the FOS PPI team staff were generally previously BAU PPI team complaint handlers and attended the induction training

when they first became BAU PPI team complaint handlers. They did not however receive any additional formal training when their role changed, only informal training within the Quality Control Team and the FOS PPI team.

Steps taken to address issues

- 4.121. From May 2013, following discussions with the ombudsman service, Clydesdale took steps in consultation with the ombudsman service to modify its credit card policy and implement an appropriate method for calculating redress for credit card PPI customers before the year 2000.
- 4.122. Once Clydesdale received feedback from the Authority's File Review in June 2013, it implemented changes to its policy on loans, so as to require complaint handlers to carry out more checks for available loan and mortgage documents. Clydesdale also revised its practice on the provision of information to the ombudsman service, by ensuring that BOXI reports were provided in unaltered form and that complaints were investigated wherever loan documentation was located on LiveLink, even if the complaint related to a loan which had been repaid more than seven years prior to the date of the complaint.
- 4.123. Clydesdale also took proactive steps to enhance its governance and oversight arrangements in relation to PPI complaints. This has included the establishment of new PPI governance fora; changes in the PPI leadership team; allocating responsibility for the oversight of the PPI complaint handling operation to a newly established Customer Trust and Confidence function overseen by one of Clydesdale's Executive Directors, the purpose of which is to ensure an appropriate focus on safeguarding customer interests throughout the customer journey; significant enhancements to its three lines of defence risk management framework; and the investment of approximately £96m which has been or will be spent to enhance relevant systems, infrastructure and resources and to conduct the review described at paragraph 4.125 below.
- 4.124. Clydesdale also at this time took steps to engage another professional services firm to conduct a further comprehensive review of its PPI complaint handling processes and to identify which customers had been affected by its failings so that customers could be contacted and their complaints reviewed appropriately. The Authority subsequently required this engagement to take place as a skilled person's review under section 166 of the Act. Clydesdale has co-operated in this process.
- 4.125. Clydesdale has decided to review all PPI complaints handled prior to August 2014 and will pay appropriate redress to any affected customers. This process will be overseen by the skilled person.

5. FAILINGS

- 5.1. Annex A sets out extracts from statutory and regulatory provisions and guidance relevant to this Final Notice.
- 5.2. During the Relevant Period Clydesdale breached Principle 6 because it failed to pay due regard to the interests of its customers and treat them fairly when handling complaints from its customers who had purchased PPI. It also breached DISP 1.4.1R (1) and (2) and 1.4.4R.
- 5.3. Specifically, on the basis of the facts and matters set out in paragraphs 4.24 to 4.120 (inclusive) above, Clydesdale:

- (1) implemented an inappropriate policy which meant that, for loan and mortgage PPI complaints, complaint handlers would not search for PPI documents relating to loans closed or repaid more than seven years before the date of the complaint. This meant Clydesdale was not considering these complaints unless customers provided loan documents to Clydesdale even though, in a small percentage of cases, relevant information was readily available on Clydesdale's electronic systems;
- (2) implemented another inappropriate policy which meant that, for credit card PPI complaints, complaint handlers would not consider credit card statements that pre-dated the year 2000 when calculating redress or take steps to estimate the payments made before that date. As a result some customers may have received an inadequate amount of redress;
- (3) was, as a result of the practices adopted by the FOS PPI team, in some cases providing false information to the ombudsman service about the records it held on the PPI policies sold to customers. This would have affected the ombudsman service's ability to determine PPI complaints appropriately and assess the appropriate amount of redress owed to customers. These practices were not part of Clydesdale's documented procedures and were not known to or authorised by Clydesdale's management or PPI leadership team;
- (4) was not transparent with, and in some cases provided misleading communications to, customers and the ombudsman service with regard to how complaints affected by the two inappropriate policies referred to above were dealt with;
- (5) failed to ensure that complaint handlers in its FOS PPI team were given adequate guidance and support;
- (6) failed to ensure that its complaint handlers were identifying cases where the underlying PPI sales were, or may have been, unsuitable. In particular, complaint handlers were failing to identify cases where inadequate consideration had been given to customers' existing employee benefits and propensity to refinance at the point of sale; and
- (7) failed to implement adequate training and monitoring of PPI complaint handlers to ensure that complaints were handled fairly.

6. SANCTIONS

Financial penalty

- 6.1. The Authority's policy for imposing a financial penalty is set out in Chapter 6 of DEPP. In respect of conduct occurring on or after 6 March 2010, the Authority applies a five-step framework to determine the appropriate level of financial penalty. DEPP 6.5A sets out the details of the five-step framework that applies in respect of financial penalties imposed on firms.

Step 1: disgorgement

- 6.2. Pursuant to DEPP 6.5A.1G, at Step 1 the Authority seeks to deprive a firm of the financial benefit derived directly from the breach where it is practicable to quantify this.

6.3. Clydesdale has decided to review all PPI complaints handled prior to August 2014 and to pay appropriate redress to any affected customers. This process will be overseen by the skilled person as part of the section 166 review. This should negate the financial benefit obtained by Clydesdale as a result of its breaches.

6.4. Step 1 is therefore £0.

Step 2: the seriousness of the breach

6.5. Pursuant to DEPP 6.5A.2G, at Step 2 the Authority determines a figure that reflects the seriousness of the breach. Where the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, that figure will be based on a percentage of the firm's revenue from the relevant products or business area. The Authority considers that the revenue generated by Clydesdale is not an appropriate indicator of the harm or potential harm caused by its breach in this case.

6.6. The Authority considers that an appropriate alternative to indicate the harm or potential harm caused by the breach to be a figure based on the potential redress payable to the customer population whose PPI complaints were rejected by Clydesdale during the Relevant Period or not investigated because Clydesdale considered that it had inadequate evidence to consider the complaint.

6.7. To reach the appropriate figure, the Authority has multiplied:

(1) the number of PPI complaints rejected during the Relevant Period plus the number of complaints during the Relevant Period which Clydesdale did not investigate because it considered that it had inadequate evidence to consider the complaint (42,227 complaints); by

(2) the average redress paid by Clydesdale on upheld PPI complaints (adjusted to take into account that, between 23 August 2011 and 30 July 2013, Clydesdale was paying insufficient redress on credit card complaints)(£3,041.59). This amounts to £128,437,220.93.

6.8. In cases where the Authority considers that revenue is an appropriate indicator of the harm or potential harm that a firm's breach may cause, in deciding on the percentage that forms the basis of the step 2 figure, the Authority considers the seriousness of the breach and chooses a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the breach; the more serious the breach, the higher the level. For penalties imposed on firms there are the following five levels:

Level 1 – 0%

Level 2 – 5%

Level 3 – 10%

Level 4 – 15%

Level 5 – 20%

6.9. For the purposes of this case, the Authority has applied the same range of percentages.

6.10. In assessing the seriousness level, the Authority takes into account various factors, including those set out at DEPP 6.5A.2G(9) and 6.5A.2G(11). The Authority considers the following factors to be relevant:

- (1) the breach caused significant loss or risk of loss to individual customers who had complained about the sale of PPI;
- (2) the breach revealed serious or systemic weaknesses in Clydesdale's PPI complaint handling procedures, management systems and internal controls, but does not impact other parts of Clydesdale's business, including its arrangements for the handling of non-PPI complaints;
- (3) the Authority considers that Clydesdale's senior management appreciated that there was a risk that their actions in approving the policy on loans could result in a breach but failed adequately to mitigate that risk; and
- (4) Clydesdale's FOS PPI team were in some cases providing false information to the ombudsman service, including by altering documentary evidence to make it look as if Clydesdale held no relevant documents when in fact documents were available.

6.11. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 5 and so the Step 2 figure is 20% of £128,437,220.93.

6.12. Step 2 is therefore £25,687,444.19.

Step 3: mitigating and aggravating factors

6.13. Pursuant to DEPP 6.5A.3G, at Step 3 the Authority may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach.

6.14. The Authority considers that the following factors aggravate the breach:

- (1) since 2005 the Authority has published numerous papers, guidance and enforcement notices that highlight issues around the consideration of suitability during the sale of PPI. Given the number of publications, and the time period elapsed since publication, Clydesdale should have ensured that complaint handlers were considering these common sales issues when determining PPI complaints during the Relevant Period to ensure that customers were treated fairly. The publications included:
 - (a) 'The sale of payment protection insurance – results of thematic work' dated November 2005. This publication noted, for example, that employee benefits should be considered in the assessment of suitability;
 - (b) 'The Sale of Payment Protection Insurance – results of follow-up thematic work' dated October 2006;
 - (c) 'The Sale of Payment Protection Insurance – Thematic update' dated September 2007'. This publication noted, for example, that propensity to refinance should be considered in the assessment of suitability for single premium PPI policies;
 - (d) an open letter addressed to the industry detailing 'common point of sale failings for PPI sales' first published in September 2009 and

subsequently amended in March and August 2010. This publication noted the issues raised in previous publications, including that assessment should be made of employee benefits and propensity to refinance;

- (e) the Authority also published papers prior to the Relevant Period about complaint handling in general in 2010 (review of complaint handling in banking groups) and also specifically on the handling of PPI complaints in 2009/2010 (CP09/23, CP10/6 and PS 10/12); and
 - (f) the ombudsman service has maintained a PPI Online Resource on its website throughout the Relevant Period which details the relevant considerations when assessing PPI complaints.
- (2) Clydesdale was fined £8,904,000 on 24 September 2013 for a breach of Principle 6 due to a failure to pay due regard to the interests of customers and treat them fairly after it discovered an error in how it calculated some of its customers' mortgage repayments.

6.15. The Authority considers that the following factors mitigate the breach:

- (1) early in the Relevant Period, Clydesdale initiated a review by a professional services firm of all aspects of its PPI complaint handling process and implemented the recommendations arising from that review; and
- (2) after the referral to Enforcement, Clydesdale agreed a number of the facts with the Authority which has saved the Authority time and resource and enabled the investigation to be completed in a more efficient and timely manner.

6.16. Having taken into account these aggravating and mitigating factors, the Authority considers that the Step 2 figure should be increased by 15%.

6.17. Step 3 is therefore £29,540,560.81.

Step 4: adjustment for deterrence

6.18. Pursuant to DEPP 6.5A.4G, if the Authority considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches, then the Authority may increase the penalty.

6.19. The Authority considers that the Step 3 figure of £29,540,560.81 represents a sufficient deterrent to Clydesdale and others, and so has not increased the penalty at Step 4.

6.20. Step 4 is therefore £29,540,560.81.

Step 5: settlement discount

6.21. Pursuant to DEPP 6.5A.5G, if the Authority and the firm on whom a penalty is to be imposed agree the amount of the financial penalty and other terms, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the Authority and the firm reached agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.

- 6.22. The Authority and Clydesdale reached agreement at Stage 1 and so a 30% discount applies to the Step 4 figure.
- 6.23. Step 5 is therefore £20,678,300.

Penalty

- 6.24. The Authority therefore imposes a total financial penalty of £20,678,300 on Clydesdale for breaching Principle 6 and DISP 1.4.1R(1) and (2) and 1.4.4R.

7. PROCEDURAL MATTERS

Decision makers

- 7.1. The decision which gave rise to the obligation to give this Final Notice was made by the Settlement Decision Makers.
- 7.2. This Final Notice is given under, and in accordance with, section 390 of the Act.

Manner of and time for Payment

- 7.3. The financial penalty must be paid in full by Clydesdale to the Authority by no later than 28 April 2015, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 7.4. If all or any of the financial penalty is outstanding on 29 April 2015, the Authority may recover the outstanding amount as a debt owed by Clydesdale and due to the Authority.

Publicity

- 7.5. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this Final Notice relates. Under those provisions, the Authority must publish such information about the matter to which this Final Notice relates as the Authority considers appropriate. The information may be published in such manner as the Authority considers appropriate. However, the Authority may not publish information if such publication would, in the opinion of the Authority, be unfair to Clydesdale or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.

Authority contacts

- 7.6. For more information concerning this matter generally, contact Pritheeva Rasaratnam (direct line: 020 7066 9806) of the Enforcement and Market Oversight Division of the Authority.

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Guy Wilkes
Financial Conduct Authority, Enforcement and Market Oversight Division

ANNEX A

RELEVANT STATUTORY AND REGULATORY PROVISIONS AND GUIDANCE

1. RELEVANT STATUTORY PROVISIONS

1.1. The Authority's operational objectives are set out in section 1B(3) of the Act (as amended by the Financial Services Act 2012) and include the consumer protection objective.

1.2. Section 206(1) of the Act provides:

'If the [Authority] considers that an authorised person has contravened a requirement imposed on him by or under this Act... it may impose on him a penalty, in respect of the contravention, of such amount as it appears appropriate.'

2. RELEVANT REGULATORY PROVISIONS

2.1. In exercising its power to impose a financial penalty, the Authority has had regard to the relevant regulatory provisions and policy published in the Authority's Handbook. The main provisions that the Authority considers relevant to this case are set out below.

Principles for Businesses (Principles)

2.2. The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Authority's Handbook. They derive their authority from the Authority's rule-making powers set out in the Act. The relevant Principle is Principle 6 (Customers' interests) which provides that:

'A firm must pay due regard to the interests of its customers and treat them fairly.'

Dispute Resolution: Complaints (DISP)

2.3. The DISP Handbook sets out how complaints are to be dealt with by firms.

2.4. Chapter 1 of the DISP handbook contains rules and guidance on how respondents should deal with complaints promptly and fairly, including complaints that could be referred to the ombudsman service.

2.5. DISP 1.4.1R states:

'Once a complaint has been received by a respondent, it must:

- (1) investigate the complaint competently, diligently and impartially, obtaining additional information as necessary;*
- (2) assess fairly, consistently and promptly:*
 - (a) the subject matter of the complaint;*
 - (b) whether the complaint should be upheld;*
 - (c) what remedial action or redress (or both) may be appropriate;*

- (d) *if appropriate, whether it has reasonable grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint;*

taking into account all relevant factors;

- (3) *offer redress or remedial action when it decides this is appropriate;*
- (4) *explain to the complainant promptly and, in a way that is fair, clear and not misleading, its assessment of the complaint, its decision on it, and any offer of remedial action or redress; and*
- (5) *comply promptly with any offer of remedial action or redress accepted by the complainant.'*

From 1 May 2011 until 1 September 2011 DISP 1.4.1R was identical to the above save for DISP 1.4.1R(1) which read '*investigate the complaint competently, diligently and impartially.'*

2.6. The relevant guidance to DISP 1.4.1R is given in DISP 1.4.2G which provides:

'Factors that may be relevant in the assessment of a complaint under DISP 1.4.1R(2) include the following:

- (1) *all the evidence available and the particular circumstances of the complaint;*
- (2) *similarities with other complaints received by the respondent;*
- (3) *relevant guidance published by the FCA, other relevant regulators, the Financial Ombudsman Service or former schemes; and*
- (4) *appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent (procedures for which are described in DISP 1.3.2AG).'*

From 1 May 2011 until 1 April 2013 DISP 1.4.2G was identical to the above save for DISP 1.4.2G(4) which read '*appropriate analysis of decisions by the Financial Ombudsman Service concerning similar complaints received by the respondent (procedures for which are described in DISP 1.3.2AG).'*' and the word 'FSA' which was replaced by 'FCA' in DISP 1.4.2G(3).

2.7. DISP 1.4.4R provides:

'Where a complaint against a respondent is referred to the Financial Ombudsman Service, the respondent must cooperate fully with the Financial Ombudsman Service and comply promptly with any settlements or awards made by it.'

Handling PPI complaints

2.8. Appendix 3 of DISP handbook sets out how a firm should handle complaints relating to the sale of a payment protection contract by the firm which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of a claim on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling).

2.9. DISP App 3.1.2G states that Appendix 3 of DISP handbook sets out how a firm should assess a complaint in order to establish whether the firm's conduct of the sale failed to comply with the rules.

2.10. DISP App 3.10.1E states that the evidential provisions in Appendix 3 of DISP handbook apply in relation to complaints about sales that took place on or after 14 January 2005.

2.11. DISP App 3.2.1G provides:

'The firm should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the firm, whether there was a breach or failing by the firm.'

2.12. DISP App 3.2.6G provides:

'The firm should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the firm through other means, for example, the root cause analysis described in DISP App 3.4.'

2.13. DISP App 3.2.7G provides:

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

2.14. DISP App 3.3.8G provides:

'The firm should not draw a negative inference from a complainant not having kept documentation relating to the purchase of the policy for any particular period of time.'

2.15. DISP APP 3.6.2E(5) and (9) provide:

'In the absence of evidence to the contrary, the firm should presume that the complainant would not have bought the payment protection contract he bought if the sale was substantially flawed, for example where the firm:

...

(5) *did not, for an advised sale (including where the firm gave advice in a non-advised sales process) take reasonable care to ensure that the policy was suitable for the complainant's demands and needs taking into account all relevant factors, including level of cover, cost, and relevant exclusions, excesses, limitations and conditions;*

...

(9) *recommended a single premium payment protection contract without taking reasonable steps, where the policy did not have a pro-rata refund, to establish whether there was a prospect that the complainant would repay or refinance the loan before the end of the term;...'*

2.16. DISP App 3.7.2E provides:

'Where the firm concludes that the complainant would not have bought the payment protection contract he bought, and the firm is not using the alternative approach to redress (set out in DISP App 3.7.7E to 3.7.15E) or other appropriate redress (see DISP App 3.8) the firm should, as far as practicable, put the complainant in the position he would have been if he had not bought any payment protection contract.'

2.17. DISP App 3.7.3E provides:

'In such cases the firm should pay to the complainant a sum equal to the total amount paid by the complainant in respect of the payment protection contract including historic interest where relevant (plus simple interest on that amount). If the complainant has received any rebate, for example if the customer cancelled a single premium payment protection contract before it ran full term and received a refund, the firm may deduct the value of this rebate from the amount otherwise payable to the complainant.'

Decision Procedure and Penalties Manual (DEPP)

2.18. Chapter 6 of DEPP, which forms part of the Authority's Handbook, sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

The Enforcement Guide

2.19. The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.

2.20. Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.