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## FINAL NOTICE

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To: **CT Capital Limited**

Firm Reference Number: **303371**

Address: **St Crispins House, Duke Street, Norwich, NR3 1PD**

Date: **1 June 2016**

### **1. ACTION**

- 1.1. For the reasons given in this notice, the Authority imposes on CT Capital a financial penalty of £2,360,900.
- 1.2. CT Capital agreed to settle at an early stage of the Authority's investigation. CT Capital therefore qualified for a 20% (stage 2) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £2,951,179 on CT Capital.

## **2. SUMMARY OF REASONS**

- 2.1. Between 10 May 2011 and 17 November 2013 (“the Relevant Period”), CT Capital breached Principles 3 (management and control) and 6 (customers’ interests) of the Authority’s Principles for Businesses in relation to its handling of PPI complaints.
- 2.2. CT Capital was the parent company of a group of companies conducting business as lenders and loan brokers, together known as the CT Group. CT Capital was responsible, during the Relevant Period, for handling PPI complaints on behalf of the CT Group. Between 14 January 2005 (when the selling of general insurance became an activity regulated by the Authority) until October 2008 (when the CT Group ceased selling PPI), the CT Group sold 31,591 PPI policies, receiving a net figure of approximately £63 million in commission as a result.
- 2.3. PPI complaint handling is a high priority issue for the Authority. The Authority has made numerous statements warning firms about the issues around the sale of PPI to customers and the appropriate redress that should be paid to customers to whom PPI was mis-sold. This guidance should have been reflected in CT Capital’s complaint handling processes to ensure that PPI customers who complained were treated fairly.
- 2.4. Specific provisions governing the handling of PPI complaints were introduced as DISP App 3 in the Handbook and came into force on 1 December 2010. Despite being aware of these provisions, CT Capital did not have in place complaint handling processes designed to comply with the provisions by the start of the Relevant Period and failed to implement such processes until November 2011.
- 2.5. During the period 10 May 2011 to 31 October 2011, complaint handlers were provided with insufficient guidance on how to determine complaints and focussed on determining whether the appropriate internal sales procedure had been followed, rather than on whether there had been, in each individual case, sales failings. No formal quality assurance process was in force to ensure the fairness of complaint outcomes.
- 2.6. On 1 November 2011, CT Capital introduced new PPI complaint handling processes. While these processes resulted in improved customer outcomes, and the uphold rates for PPI complaints continued to rise throughout the Relevant Period, significant weaknesses in the processes remained.
- 2.7. In particular, CT Capital directed its complaint handlers that failures, during the sales telephone call, in disclosure, or in obtaining explicit agreement to purchase the PPI policy need not lead to a PPI complaint being upheld if the subsequently provided sales documentation outlined the matters clearly. This was directly contrary to guidance from both the Authority and the Financial Ombudsman Service.
- 2.8. Moreover, although some guidance was given on how to assess whether reasonable care had been taken to establish suitability, this was inadequate in a number of respects.

- 2.9. Further, until January 2013, CT Capital operated inappropriate policies in relation to rejecting complaints on the basis of time bar. Before November 2011, all PPI complaints relating to sales made more than six years previously were rejected. Although this policy was updated in November 2011, it continued to fail to give consideration to the question of when a customer may have become aware (or ought reasonably to have become aware) of the cause for complaint. CT Capital received a number of warnings about its time-barring policy, before putting in place an appropriate policy in January 2013.
- 2.10. Throughout the Relevant Period, CT Capital failed to put in place adequate systems for assessing its PPI complaint handling processes and for monitoring the fairness of customer outcomes. In particular, it failed adequately to consider and analyse the content of Financial Ombudsman Service decisions and adjudications and to use them to inform its ongoing PPI complaint handling processes or adequately to assess its PPI sales processes to identify specific sales failings.
- 2.11. Throughout the Relevant Period, CT Capital operated an alternative redress methodology in relation to some upheld PPI complaints which meant that, where not all sales failings were identified, these complainants would recover less than the full redress to which they were entitled.
- 2.12. The above weaknesses in its PPI complaint handling systems were due to CT Capital not taking reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems. Accordingly, CT Capital breached Principle 3.
- 2.13. Moreover, as a direct result of the above failings, during the Relevant Period CT Capital failed to pay due regard to the interests of its customers making PPI complaints and those customers were treated unfairly. During the Relevant Period, CT Capital made decisions on 6,669 PPI complaints, upholding 3,550 (approximately 53%) but rejecting 3,032 (approximately 45%). A small number (87 – approximately 1%) were closed for other reasons.
- 2.14. The Authority conducted two reviews of PPI complaints handled by CT Capital between July 2011 and November 2013. These concluded that CT Capital had reached an inappropriate outcome in 47 of the 61 rejected cases reviewed, and in two of the nine upheld cases reviewed. Particular failings included:
- deficiencies in identifying failures by the sales advisers to disclose significant policy exclusions and limitations, the total cost or the optional nature of PPI policies;
  - a failure to consider whether sales advisers had taken reasonable care to ensure the policies recommended were suitable for the customer; and
  - a failure to identify the provision by sales advisers of inaccurate or misleading information about the nature of a non-proportionate rebate if the PPI policy was redeemed early.
- 2.15. These failings, which were consistent with some of the findings made against CT Capital by the Financial Ombudsman Service during the Relevant Period, meant

that some customers who should have been paid redress did not receive it and that some customers received less redress than they were due. The potential redress payments were significant: the average redress payment in respect of a fully upheld PPI complaint during the Relevant Period was £5,959. As a result of its failings, CT Capital also breached Principle 6.

- 2.16. These failings were serious because of the risk that significant numbers of customers would suffer financial detriment by not being paid the redress due to them. Further, these failings occurred despite both the Authority and the Financial Ombudsman Service publishing detailed rules and guidance on handling PPI complaints.
- 2.17. Having received feedback from the Authority on the results of the First Review by letter on 29 July 2013, CT Capital undertook a substantial remediation exercise which included developing a revised PPI complaint handling process with the assistance of an external consultant and a review of approximately 4,800 complaints, either previously rejected or in respect of which full redress had not been paid. By January 2016, CT Capital had paid approximately £74 million (including interest) in redress arising from PPI complaints.

### **3. DEFINITIONS**

- 3.1. The following definitions are used in this Warning 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;

“CT Capital” means the body corporate previously known as Central Trust PLC, renamed on 1 September 2011 as CT Capital PLC and renamed on 21 August 2015 as CT Capital Limited;

“CT Group” means the group of companies owned and controlled by CT Capital before and during the Relevant Period;

“DEPP” means the Authority’s Decision Procedure and Penalties Manual, which is part of the Handbook;

“DISP” means the Dispute Resolution: Complaints Sourcebook, which is part of the Handbook;

“DISP App 3” means Appendix 3 to DISP, the set of guidance and rules in respect of handling PPI complaints which was announced by PS10/12;

“First Review” means the review of 52 complaint files conducted by the Authority of PPI complaints handled by CT Capital between 1 July 2011 and 2 March 2012;

“Handbook” means the Authority’s Handbook of Rules and guidance;

“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 Handbook;

“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”*;

“Relevant Period” means the period between 10 May 2011 and 17 November 2013;

“Second Review” means the review of 18 complaint files conducted by the Authority of PPI complaints handled by CT Capital between 3 March 2012 and 17 November 2013; and

“Tribunal” means the Upper Tribunal (Tax and Chancery Chamber).

#### **4. FACTS AND MATTERS**

##### **Background**

###### PPI

- 4.1. PPI is an insurance product which is designed to cover debt repayments if the policyholder becomes unable to make repayments, such as in the event of an accident, sickness or unemployment. It was generally sold alongside loans or other credit products.

###### The Authority’s concerns about PPI

- 4.2. 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.
- 4.3. On 14 January 2005, the Authority became responsible for regulating firms selling general insurance products, including PPI. Since that time the Authority has taken a series of steps to ensure that customers were treated fairly by firms selling PPI. From 2005 onwards the Authority published papers based on its thematic work around sales of PPI that highlighted issues around the consideration of the suitability of PPI for customers and the disclosure of cost and policy details. Firms should have subsequently reflected these issues in their complaint handling processes to ensure that they treated customers fairly when handling PPI related complaints.

###### Complaints

- 4.4. Firms conducting regulated activities are obliged to handle those complaints which fall within the jurisdiction of the Financial Ombudsman Service 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, determine what redress or remedial action may be appropriate. If they reject a complaint, they are obliged to notify the complainant of the right to refer the complaint to the Financial Ombudsman Service.

- 4.5. In September 2009, the Authority consulted on proposals to introduce new provisions for the handling of PPI complaints. Following a further consultation, on 10 August 2010 the Authority published PS10/12. This announced the introduction of a package of measures 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.
- 4.6. These provisions became DISP App 3 and took effect on 1 December 2010. Among other measures, DISP App 3 outlined a number of potential sales failings which firms were obliged to consider when handling a PPI complaint and which, if found to have occurred, would lead to an assumption that the PPI policy had been mis-sold. These included failing to disclose the cost, optional nature or significant exclusions or limitations of the policy, failing to take reasonable care to ensure the policy was suitable for the customer's demands and needs and providing the customer with misleading or inaccurate information.

#### The Judicial Review of PS10/12

- 4.7. On 8 October 2010 many UK banks, through the British Bankers' Association, commenced judicial review proceedings of the Authority's decision to introduce the measures outlined in PS10/12.
- 4.8. On 20 April 2011 the High Court ruled in favour of the Authority. On 9 May 2011, the British Bankers' Association confirmed that it would not seek to appeal the High Court's decision, bringing the judicial review to an end.

#### The Financial Ombudsman Service

- 4.9. The Financial 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 Financial Ombudsman Service.
- 4.10. The role of the Financial 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 Financial 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 Financial 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 this case, it may decide to overturn the firm's findings and direct the payment of redress. If so, it produces a reasoned, written decision which is provided to both the complainant and to the firm. The firm is legally bound by the terms of the decision if it is accepted by the complainant.
- 4.11. Firms are obliged to take account of the decisions of the Financial Ombudsman Service in operating their complaint handling procedures. In addition to

determining complaints, the Financial Ombudsman Service provides, through its website, information about relevant matters including information about PPI complaints and the approach of the Financial Ombudsman Service.

#### CT Capital

- 4.12. CT Capital was the parent company of the CT Group, a group of companies which acted as brokers and lenders of secured and unsecured loans. It has been authorised by the Authority since 31 October 2004. CT Capital has not previously been subject to disciplinary proceedings by the Authority.
- 4.13. In acting as a loan broker, the CT Group employed sales advisers to receive telephone requests from customers seeking loans. During the telephone call (or calls), the sales advisers took details from the customers and, on the basis of these details, sought to sell the customers loans provided either by a member of the CT Group or by a third party lender.
- 4.14. Until October 2008, when the CT Group voluntarily ceased selling PPI, these sales advisers frequently sought to sell customers PPI alongside the loans. These sales were made on an advised basis: the sales adviser was responsible for recommending whether the particular PPI policy was suitable for the customer. If a PPI policy was sold, the CT Group company making the sale was paid a commission by the insurer or lender.
- 4.15. If the customer agreed with the terms of the loan and/or PPI policy on offer, he or she was sent a pack of documents by post, including information on the loan and the PPI, which he or she was required to sign and return before the loan monies were released.
- 4.16. Between 1988 and 2008, the CT Group sold a total of 31,591 PPI policies. As a result, it received net commission (after clawback of some payments for policies redeemed early) totalling approximately £63 million. Prior to October 2008, commission income from PPI was a significant contributory factor to the CT Group's income and profitability.
- 4.17. The vast majority of PPI sales made by the CT Group were of single premium policies. The premium was payable by a single instalment at the time the loan was taken out. The lender lent the customer the money to pay the PPI premium, and added this amount to the loan. This meant that the customer paid interest on the PPI premium, often significantly adding to the total cost of the loan.
- 4.18. The effect of single premium PPI was to increase the total repayment required to be made by the customer. For example, in 2005, the CT Group sold PPI to a couple in respect of a £25,500 secured loan. The premium payable for the PPI, which covered loan repayments for a term of five years, was £4,845; this would attract interest of £7,143 over the course of the 21 year loan term. So the total cost of the PPI policy to the couple was to be nearly £12,000.
- 4.19. Many of the single premium PPI policies sold by the CT Group provided a non-proportionate rebate in the event of cancellation of the policy. This meant that, if the customer redeemed the underlying loan before the expiry of the policy cover,

and therefore sought to cancel the policy, he or she would be refunded a part of the PPI premium which was not proportionate to the part of the policy period for which he or she would no longer need cover. The difference between a proportionate rebate and a non-proportionate rebate was often significant and meant that such policies were unlikely to be suitable for customers who were likely to re-finance or otherwise to redeem their loans early.

#### **CT Capital's PPI complaint handling operation**

- 4.20. During the Relevant Period, CT Capital was responsible for ensuring the regulatory compliance of the relevant parts of the CT Group responsible for selling PPI policies and was therefore responsible for the fair handling of PPI complaints.
- 4.21. Prior to the Relevant Period, a central department was established at CT Capital to handle PPI complaints in respect of the CT Group. Complaint handlers in this department would receive PPI complaints, request from other parts of the CT Group or external lenders relevant documents, including audio recordings of the sales telephone calls, and assess whether complaints should be upheld, and redress paid, or rejected.
- 4.22. During the Relevant Period, the PPI complaint handling department varied in number between 23 and 35 staff. The volume of PPI complaints received by CT Capital increased throughout 2011 and most of 2012, peaking at 440 complaints received in October 2012.
- 4.23. Overall, during the Relevant Period, CT Capital made decisions on 6,669 PPI complaints. Of these, it upheld 3,550 (approximately 53%) in favour of the customer and rejected 3,032 (approximately 45%). A small number of PPI complaints (87 - approximately 1%) were closed for other reasons. The average redress payment for a fully upheld complaint during the Relevant Period was £5,959 while the highest single award of redress was £51,278.

#### Before November 2011

- 4.24. Despite being aware that DISP App 3 came into force on 1 December 2010, CT Capital did not have, by the start of the Relevant Period, a process for handling PPI complaints which sought to follow the provisions of DISP App 3.
- 4.25. Its process for handling PPI complaints from May to October 2011 was based on an analysis of whether the sales adviser in question had followed the internal sales procedures in place at the time of the sale, rather than on analysing the potential sales failings. This meant that PPI complaint handlers would not give individual consideration in each case to whether any of the sales failings identified in DISP App 3 had occurred and, accordingly, whether the PPI had been mis-sold.
- 4.26. During the period May to October 2011, there were further weaknesses in the PPI complaint handling processes:
  - (1) the documentary procedures for handling PPI complaints were limited. Complaint handlers received written training material but this failed to



provide clear guidance on the process for handling and determining PPI complaints in accordance with DISP App 3;

- (2) there was no documented assessment by complaint handlers of whether the PPI policy was suitable at the time of sale;
  - (3) complaint handlers were wrongly advised not to consider the cost of a policy when considering whether reasonable care had been taken to ensure the policy was suitable at the time of sale unless the customer had made specific reference to it;
  - (4) CT Capital's policy was to reject any PPI complaint relating to a PPI policy sold more than six years before the date of complaint. This wrongly failed to consider when the complainant may have become aware (or ought reasonably to have become aware) that he or she had cause for complaint. CT Capital had been advised by external consultants in March 2011 that this stance was likely to be considered as not treating customers fairly;
  - (5) when rejecting PPI complaints on the basis that the sale had been made more than six years beforehand, CT Capital failed to notify complainants of their right to refer the complaint to the Financial Ombudsman Service; and
  - (6) despite handling 840 complaints during this period, there was no formal quality assurance process in place for monitoring whether complaint handlers were delivering fair outcomes to customers and for reporting the results to management.
- 4.27. In August 2011, CT Capital advised the Authority that it was not following DISP in handling PPI complaints but that it was implementing a revised approach to its complaint investigation process. It also undertook to reinvestigate using this new process all PPI complaints which it had rejected since 1 December 2010.

#### After November 2011

- 4.28. In November 2011, CT Capital implemented a new process for handling PPI complaints. This process was overseen by a senior committee at CT Capital. As part of the process, a number of procedural documents outlined the approach to be taken. These were supported by updated written training materials for complaint handlers.
- 4.29. Although the measures introduced by CT Capital in November 2011 improved the processes in place prior to that date and the proportion of PPI complaints upheld increased over the course of the Relevant Period, there remained significant weaknesses in its procedures.

#### *Time-barring*

- 4.30. When dealing with a PPI complaint relating to a sale made more than six years beforehand, CT Capital's written policy instructed complaint handlers to reject the complaint unless, in CT Capital's opinion, the cause for complaint related to

*'something within the last three years'*. Since virtually all PPI complaints related to the time of sale, this was unlikely to affect the treatment of the complaint.

- 4.31. CT Capital should have considered when a customer had become aware (or ought reasonably to have become aware) of the cause for complaint and, if this was within three years, to have handled the complaint in accordance with DISP. Because complaint handlers were not instructed to consider this, there was a risk that these customers would be treated unfairly.
- 4.32. By March 2012 at the latest, CT Capital became aware that an adjudicator at the Financial Ombudsman Service had ruled against CT Capital in a case in which it had applied this procedure. Nonetheless, it continued to apply the procedure to complaints until, in December 2012, it received a provisional ombudsman's decision which ruled against CT Capital.
- 4.33. In January 2013, CT Capital amended its policy: from that date, it would not seek to reject complaints relating to sales more than six years before unless there had been a clearly identified event which would have given the customer knowledge of the cause for complaint more than three years beforehand.

#### *Use of documents*

- 4.34. CT Capital's procedures relied upon information contained in the documents provided to the customer after the sales call to correct deficiencies in the call itself. CT Capital instructed its complaint handlers that the following failures during the sales call should only lead to a PPI complaint being upheld if the sales documentation did not make the position clear:
  - failing to inform the customer that the policy was optional;
  - failing to ensure that the customer had explicitly agreed to purchase the policy;
  - failing to inform the customer of the significant exclusions or benefits; or
  - failing to disclose the cost of the PPI.

However, in recommending PPI policies, firms must pay due regard to a customer's information needs at all times and, for many customers, the sales telephone call was when the decision to purchase was made. Accordingly, (as reflected in DISP App 3.3.12G(4)) it was important that, in sales conducted primarily orally (as all sales made by the CT Group were) sufficient information was communicated in that sales call for the customer to make an informed decision. PS10/12 made it clear that PPI complaints should be considered with this in mind and specifically stated: *'In sales primarily conducted orally, it [was] not enough just to provide important information in writing.'*

- 4.35. Moreover, the Financial Ombudsman Service noted in at least six decisions provided to CT Capital between July 2010 and July 2013 that issuing sales documentation was not sufficient to correct failings in the sales call. On at least 11 occasions, the Financial Ombudsman Service provided CT Capital with a link to

its guidance website ([www.financial-ombudsman.org.uk/publications/technical\\_notes/ppi/ombudsman-approach.html](http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi/ombudsman-approach.html)) on which it stated: *'If the sale was made primarily by phone or at a meeting, and the evidence suggests failures in the oral disclosure of information by the financial business, we are unlikely to consider that subsequent written information automatically corrects previous shortcomings'*. CT Capital's procedures did not reflect this guidance.

#### *Suitability*

- 4.36. All PPI sales made by the CT Group were made on an advised basis, meaning that, in accordance with the sales rules applicable at the time, the sales adviser had a responsibility to take reasonable care to ensure that the PPI policy was suitable for the customer's demands and needs.
- 4.37. It was therefore important that complaint handlers assessed whether such reasonable care had been taken by sales advisers. PS10/12 contained guidance on the information which might be expected to have been sought to allow the sales adviser to assess effectively the suitability of the PPI policy for the customer's demands and needs. This included:
- (1) existing means the customer already had of protecting the loan (including existing insurance, benefits from employer, and assets such as savings and investments);
  - (2) any pre-existing medical conditions which might be excluded under the policy;
  - (3) whether the policy would be affordable in light of the customer's income and outgoings;
  - (4) whether the customer's circumstances were likely to change; and
  - (5) whether there was a prospect that the customer would repay or refinance the loan before the end of the term of the policy.
- 4.38. However, the guidance given by CT Capital to complaint handlers in assessing whether the sales adviser had taken reasonable care to ensure the PPI policy was suitable was limited. CT Capital instructed its complaint handlers to consider as an initial question whether *'In broad terms – is the policy suitable for this client?'* If not, they were instructed to *'continue with investigation seeking additional information/reasons to mitigate initial assessment'* thus seeking reasons to reject a complaint after finding a reason to uphold it, rather than completing an impartial assessment.
- 4.39. CT Capital appreciated that sales advisers did not generally enquire about employer benefits or savings when assessing existing cover but instructed its complaint handlers that the relevant sales regulations did not make 'specific reference' to either. It asserted that, even if a customer had told the sales adviser that he or she had employer benefits, he or she *'probably'* still had a need for PPI.

- 4.40. Complaint handlers were directed that a failure to enquire about pre-existing medical conditions when assessing suitability would only be relevant if the customer had subsequently had a claim rejected, although this may have meant that a PPI policy was unsuitable for a particular customer.
- 4.41. CT Capital appreciated that the affordability of the policy was not generally a conscious consideration of sales advisers. However, complaint handlers were directed that cost may only be an issue if the customer had set a budget and that *'logic dictates the client would object if the loan (and PPI) was not affordable'*. Although other guidance directed complaint handlers to consider a customer's financial aims at the time of sale, it made no reference to what information the sales adviser should have been expected to ascertain.
- 4.42. Limited guidance was provided on the effect of a failure to establish whether a customer's circumstances were likely to change. While CT Capital appreciated that sales advisers did not generally discuss a customer's long-term intentions, and therefore would not generally enquire about the prospect of refinancing, it directed its complaint handlers to assume that some customers (whose loans, and the proportion of the loan value to that of their homes, were large) would be unable to refinance. In these circumstances, the guidance was that this would not amount to a flaw in the sale.
- 4.43. Overall, CT Capital's guidance on suitability did not address the fact that it was the duty of the sales adviser to take reasonable care to establish suitability and that the role of the complaint handler was to assess whether such reasonable care had been taken. CT Capital failed to provide any meaningful guidance to complaint handlers on what information the sales advisers may have been expected to ascertain, and what constituted 'reasonable care', to ensure suitability. Further, in respect of the matters outlined in paragraphs 4.38-4.42 above, the guidance provided was unhelpful in reaching an appropriate assessment.

#### *Monitoring of complaint handling procedures*

- 4.44. After November 2011, there remained weaknesses in CT Capital's systems for monitoring the fairness of its complaint handling procedures. Although each complaint handler was subject to quality assurance monitoring, this assessed their decisions against the complaint handling procedures and consequently was inappropriate to identify weaknesses in the procedures themselves.
- 4.45. Moreover, when forming the PPI complaint handling department, CT Capital had seconded senior staff from its compliance and internal audit departments but had not replaced their original roles. This meant that there was no internal department offering independent oversight of customer outcomes.
- 4.46. Although CT Capital received reasoned decisions of the Financial Ombudsman Service, their consideration of these decisions failed to identify the relevant parts which may have indicated weaknesses in CT Capital's complaint handling processes. For example, as set out at paragraph 4.35 above, CT Capital was notified in several decisions that it had incorrectly rejected complaints on the basis that disclosures in sales documentation cured disclosure failures in sales

telephone calls. This should have alerted CT Capital to this weakness in its complaint handling processes.

- 4.47. Further, after November 2011, CT Capital wrongly took the view that decisions of the Financial Ombudsman Service relating to complaints handled prior to the changes made in that month were of little assistance in identifying weaknesses in the process in effect from November 2011 onwards. Because of the delay between CT Capital handling a PPI complaint and receiving a decision from the Financial Ombudsman Service in respect of that complaint, this meant that, for approximately a year after November 2011, little analysis of Financial Ombudsman Service decisions was carried out. Four of the six decisions referred to in paragraph 4.35 were provided to CT Capital during that period.

#### *Root cause analyses*

- 4.48. An analysis of the root causes of complaints is important in the identification of any recurring or systemic problems in PPI sales practices. CT Capital undertook such analysis during the Relevant Period. This was initially completed in November 2011.
- 4.49. While the root cause analysis identified that the CT Group's PPI sales practices may not have complied with applicable sales rules, it failed to consider how these failings should affect CT Capital's handling of PPI complaints.
- 4.50. The root cause analysis considered a number of Final Notices issued by the Authority for PPI mis-selling. In at least one of these, the Authority considered that a firm had breached Principle 3 by providing inadequate information during a sales telephone call and relying on subsequent written information to provide it.
- 4.51. The root cause analysis included an analysis of a sample of decisions of the Financial Ombudsman Service in cases referred to it by CT Capital complainants. This analysis determined that failings relating to the disclosure of the consequences of early cancellation of a PPI policy was identified by the Financial Ombudsman Service in 71% of cases: this contributed to the conclusion of the root cause analysis that *'the absence of a proportionate rebate... was an indicator that the purchaser of the PPI cover was significantly more likely to make a complaint that was upheld'*.
- 4.52. Yet, while the analysis also revealed that failings in the disclosure of costs had been identified by the Financial Ombudsman Service in 54% of cases and failings in taking reasonable steps to ensure suitability in 55% of cases, neither of these elements contributed to the conclusions of the analysis which asserted simply: *'where a complaint is upheld in full, there is a broad range of reasons for that uphold'*.
- 4.53. As a result, CT Capital did not appropriately take account of the failings it identified in the CT Group's sales processes, the content of Final Notices issued by the Authority or the reasons for Financial Ombudsman Service decisions in handling complaints on an ongoing basis.

- 4.54. CT Capital updated its root cause analysis on 15 January 2013. For this purpose, it conducted an analysis of 42 Financial Ombudsman Service decisions arising from PPI complaints handled by CT Capital, and identified a number of “key failings”, including failures in the consideration of suitability and disclosure. However, this analysis was excluded from the updated root cause analysis on the basis that the complaints had been handled before CT Capital’s complaint handling processes had been changed in November 2011.
- 4.55. Although CT Capital recognised that, of 44 adjudications made in respect of PPI complaints handled by CT Capital since November 2011, 38 (86%) had been overturned in favour of the customer, it considered that there were not enough results to apply to its ongoing complaint handling operations.
- 4.56. As a result, CT Capital failed to take appropriate account of adjudications and decisions of the Financial Ombudsman Service and its root cause analysis failed adequately to identify weakness in PPI sales practices and in PPI complaint handling.

#### *Alternative redress*

- 4.57. In respect of PPI complaints where the only identified sales failing concerned the existence of a non-proportionate rebate, CT Capital operated an alternative redress methodology. Customers who had cancelled PPI policies early were offered a “top-up”: a payment amounting to the difference between what they had received and a fully proportionate rebate. Customers whose policies were still in force were offered a guarantee that CT Capital would provide this top-up if the policy was subsequently cancelled.
- 4.58. The effect of this method of calculation was that significantly less redress was likely to be payable than if full redress was paid.
- 4.59. While this was not inappropriate in cases where the only sales failing was the non-disclosure of the existence of a non-proportionate rebate, CT Capital’s failure to identify significant other sales failings meant that some customers, whose complaints were upheld but subjected to alternative redress, were likely to receive significantly less redress than they were due.

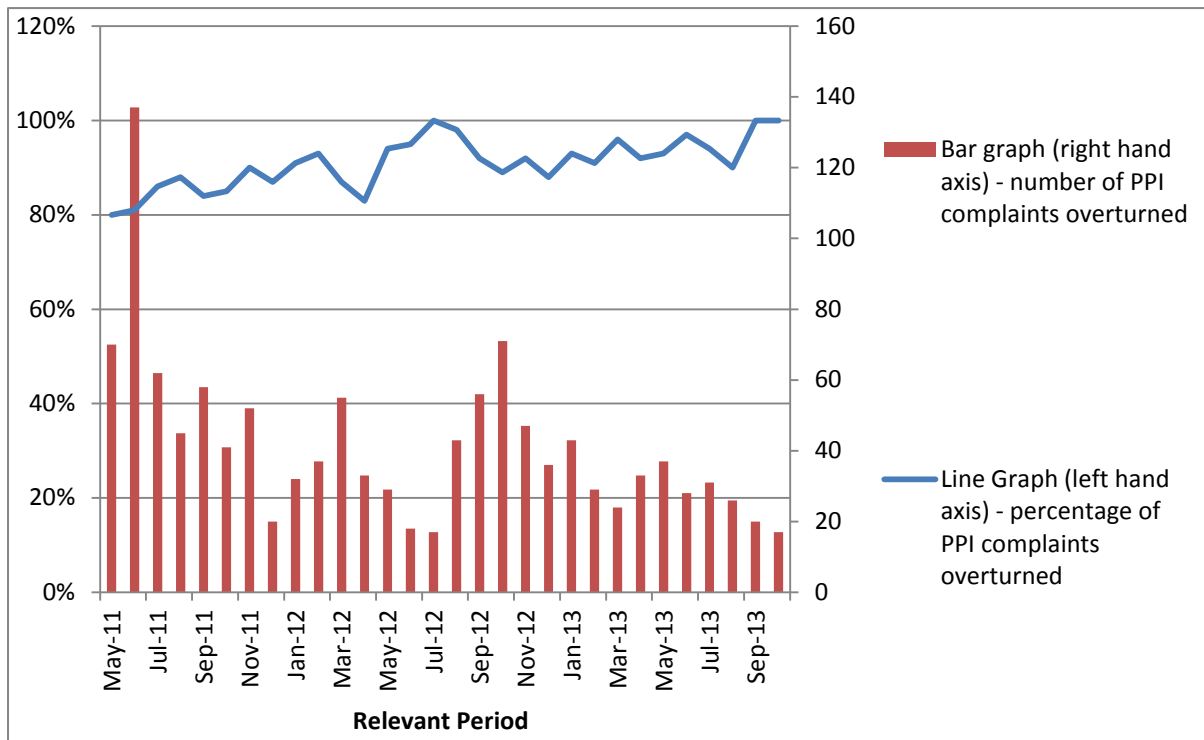
#### **Treatment of customers**

- 4.60. The effect of the above weaknesses was that customers who made PPI complaints to CT Capital during the Relevant Period were not treated fairly. This is demonstrated by the high rate of complaints overturned by the Financial Ombudsman Service and by reviews of CT Capital’s PPI complaint files conducted by the Authority.

#### *Financial Ombudsman Service outcomes*

- 4.61. Throughout the Relevant Period, the Financial Ombudsman Service consistently overturned a very high proportion of those PPI complaints originally handled by CT Capital. The following graph shows, on a monthly basis, the number of CT Capital PPI complaints overturned by the Financial Ombudsman Service during

the Relevant Period, and what percentage this was of the total CT Capital PPI complaint cases considered by the Financial Ombudsman Service each month:



4.62. The data shows that, over the Relevant Period, the Financial Ombudsman Service consistently disagreed with CT Capital’s complaint handling outcomes in over 80% of cases and, in three separate months, 100% of outcomes. This was significantly in excess of other market participants for most of the Relevant Period. In March 2013, CT Capital itself noted that recently published Financial Ombudsman Service complaints data showed that, as compared to other firms in respect of which data was published, in the second half of 2012 it had the third highest published overturn rate in favour of customers.

4.63. Because there was frequently a delay of several months between the handling of a PPI complaint by CT Capital and its determination by the Financial Ombudsman Service, the above cases do not all relate to PPI complaints handled by CT Capital during the Relevant Period.

4.64. Nevertheless, the duration and consistency of the high overturn rates provide clear evidence that many PPI complaints were wrongly decided by CT Capital during the Relevant Period.

*The Authority’s File Reviews*

4.65. In April 2012, as part of a thematic review into the handling of PPI complaints by firms, the Authority reviewed files relating to 52 PPI complaints made to CT Capital between July 2011 and March 2012, to assess the adequacy of the handling of complaints. Of the reviewed PPI complaints, 43 had been rejected by CT Capital; 9 had been upheld.

- 4.66. The Authority determined that, of the 43 complaints rejected by CT Capital:
- (1) 33 customers (77%) had received an unfair outcome as CT Capital had wrongly rejected the complaint; and
  - (2) 10 customers (23%) had received a fair outcome.
- 4.67. Further, of the nine complaints upheld by CT Capital, the Authority disagreed with the amount of redress offered in two of these. In both of these cases, CT Capital had applied its alternative redress methodology. The Authority considered that CT Capital had failed to identify all sales failings and that full redress should have been offered.
- 4.68. The Authority provided CT Capital with detailed findings of the First Review by letter on 29 July 2013.
- 4.69. In July 2015, the Authority reviewed a further 18 files relating to PPI complaints handled by CT Capital between March 2012 and November 2013. Each of the 18 complaints had been rejected by CT Capital.
- 4.70. The Authority determined that, of the 18 complaints rejected by CT Capital:
- (1) 14 customers (78%) had received an unfair outcome as CT Capital had wrongly rejected the complaint; and
  - (2) 4 customers (22%) had received a fair outcome.
- 4.71. The Authority identified a number of key failings in the First Review and the Second Review:

Optionality

- (1) complaint handlers did not always consider appropriately whether the optional nature of the PPI policy had been disclosed during the sales call;

Disclosure

- (2) in some cases, complaint handlers did not consider appropriately whether the total cost of the PPI policy had been adequately disclosed during the sales call. In one case, neither the cost, nor the optional nature of the policy was relayed to the customer during the sales call but the complaint was rejected on the basis that both were revealed in the sales documentation. As stated at paragraphs 4.34 and 4.35 above, both PS10/12 and communications from the Financial Ombudsman Service had revealed to CT Capital that this approach was not fair to customers and previous complaints had been overturned by the Financial Ombudsman Service on this basis; and
- (3) complaint handlers did not give appropriate consideration to whether sales advisers had failed to disclose significant policy exclusions and limitations;



### Suitability

- (4) complaint handlers did not consider whether the sales advisers had taken reasonable care to ensure that the PPI policies they recommended were suitable given the demands and needs of the customers. This included:
- (a) existing cover. For example, one customer said during the sales call that he had sufficient cover to protect the new borrowing, yet the sales adviser recommended a PPI policy anyway, without establishing what cover the customer had. This was not identified by the complaint handler;
  - (b) employee benefits. Even when sales staff made no attempt to determine what benefits may have been available to a customer in the event of accident or sickness through their employment, complaint handlers did not regard this as a sales failing;
  - (c) employment type. For example, one PPI sale was made to a customer who was a foster carer. The suitability of such a policy was not considered by the sales adviser and the customer's complaint was rejected;
  - (d) affordability. Even when a customer revealed financial strain and stated that he or she was looking for the lowest level of repayment, on occasion, a sale of PPI was made which significantly increased the repayment amounts without sufficient consideration of the suitability of such a policy. Complaint handlers did not always consider this failure despite the Financial Ombudsman Service having identified this failing in previous cases; and
  - (e) future plans. For example, in one case, even when told of the customer's intention to remortgage soon, the sales adviser recommended a single premium policy with a non-proportionate rebate in the event of the policy being cancelled. This was not regarded as a failing by the complaint handler despite CT Capital having earlier received a decision from the Financial Ombudsman Service which overturned a rejected complaint on the basis that it should have *'realised that the flexibility to reorganise her finances again at some point was more likely than not to be an important consideration to her.'*

### Inaccurate or misleading statements

- (5) complaint handlers failed to identify inaccurate and misleading statements made to customers during the sale. For example, a number of customers were told that they would be refunded the cost of the PPI if they did not make any claims during the cover period – but the sales adviser did not make it clear that the refund would only extend to the premium amount,

not to the interest charged (even though the interest was often a substantial part of the total cost of PPI).

- 4.72. The failure by complaint handlers to identify shortcomings in disclosure at the point of sale or a lack of reasonable care by the sales adviser to ensure the suitability of a PPI policy were a direct result of the procedural weaknesses identified above. Yet, because of the weaknesses in quality monitoring and root cause analyses, these procedures remained largely unchanged after November 2011 until the Authority notified CT Capital in July 2013 of the results of its file review.

### **Post-November 2013**

- 4.73. Having received feedback from the Authority on the results of the file review by letter on 29 July 2013, CT Capital undertook a substantial remediation exercise. This included:

- The development of a revised PPI complaint handling process. This was implemented on 18 November 2013.
- The engagement of an external consultant to advise on and oversee aspects of the complaint handling process.
- A review of all complaints rejected, or in which the alternative redress methodology outlined in paragraph 4.57 above, was applied. This involved the reconsideration of approximately 4,800 complaints.

- 4.74. By January 2016, CT Capital had made redress payments arising from PPI complaints, including interest, of approximately £74 million.

## **5. FAILINGS**

- 5.1. Annex A sets out extracts from the statutory and regulatory provisions and guidance relevant to this Notice.

### **Principle 3**

- 5.2. During the Relevant Period, CT Capital breached Principle 3 because it failed to take reasonable steps to ensure that it organised its affairs responsibly and effectively, with adequate risk management systems. Specifically:

(1) Between 10 May 2011 and 31 October 2011:

- (a) CT Capital did not have in place procedures for handling PPI complaints which sought to give effect to the provisions of DISP App 3. During that period, its complaint handling practices focussed on whether the sales adviser had followed the internal sales procedures rather than whether there were failings at the point of sale. This meant that complaint handlers did not consider in individual cases whether there had been sales failings and whether these failings had led to customer detriment;

- (b) the materials provided by CT Capital to its PPI complaint handlers provided inadequate guidance on how to determine complaints, particularly in relation to the question of whether a sales adviser had taken reasonable care to establish the suitability of a product for the customer's demands and needs;
  - (c) no effective or documented quality assurance process was in place in relation to PPI complaints; and
  - (d) CT Capital operated an inappropriate policy of refusing all PPI complaints in relation to sales made more than six years beforehand without considering when the customer may have become aware of the cause for complaint.
- (2) Between 1 November 2011 and 17 November 2013, despite introducing new complaint handling processes, CT Capital still handled PPI complaints inappropriately in that:
- (a) until January 2013, CT Capital continued to operate an inappropriate complaint handling policy in relation to sales made more than six years beforehand in that it considered the date when the cause for complaint arose, rather than when the customer became aware (or ought reasonably to have become aware) of the cause for complaint;
  - (b) CT Capital directed its complaint handlers that failures, during the sales telephone call, in disclosure or in obtaining explicit agreement to purchase the PPI policy need not lead to a PPI complaint being upheld if the subsequently provided sales documentation outlined the matters clearly;
  - (c) CT Capital failed to provide its PPI complaint handlers with appropriate guidance on how to conduct an assessment of whether reasonable care had been taken to establish the suitability of the PPI policy;
  - (d) CT Capital directed its PPI complaint handlers actively to seek reasons why the policy may have been suitable, or to seek to dismiss grounds for asserting that it may have been, rather than completing an impartial assessment;
  - (e) CT Capital failed to put in place adequate systems for assessing its PPI complaint handling processes and for monitoring the fairness of the complaint outcomes they produced. In particular, CT Capital failed adequately to consider and analyse the content of Financial Ombudsman Service decisions and adjudications or use them to inform its ongoing PPI complaint handling processes; and
  - (f) CT Capital failed to carry out a detailed assessment of its PPI sales processes as part of its root cause analysis, failed to identify specific sales failings and accordingly failed to use them in its consideration of ongoing PPI complaints.

- (3) Throughout the Relevant Period, even when PPI complaints were upheld, CT Capital operated an alternative redress methodology in calculating the redress owed to some customers. This meant that, where not all sales failings were identified, these customers may have received less than the redress to which they were entitled.
- 5.3. The above failings created a risk that CT Capital's handling of PPI complaints would lead to unfair customer outcomes and that CT Capital would fail to identify these unfair outcomes and mitigate the risks involved.

### **Principle 6**

- 5.4. In fact, CT Capital's failings in handling PPI complaints did lead to unfair customer outcomes and CT Capital failed to identify those unfair outcomes and mitigate the risks involved. During the Relevant Period, as a result, CT Capital breached Principle 6 because it failed to pay due regard to the interests of its customers and to treat them fairly when handling PPI complaints.
- 5.5. The effect of this was that:
- (1) CT Capital unfairly rejected some PPI complaints and consequently unfairly failed to pay redress to those customers whose PPI complaints it unfairly rejected; and
  - (2) CT Capital unfairly paid insufficient redress to some customers whose complaints were upheld but whose redress was calculated using the alternative redress methodology.

## **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. CT Capital has agreed to pay appropriate redress to any affected customers identified by its review of PPI complaints rejected during the Relevant Period, or whose complaints were upheld but subject to the alternative redress methodology. This should negate the financial benefit obtained by CT Capital 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 the 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 product or business area.
- 6.6. The Authority considers that the revenue generated by CT Capital is not an appropriate indicator of the harm or potential harm caused by its breach in this case.
- 6.7. However, the Authority considers 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 CT Capital during the Relevant Period. To reach the appropriate figure, the Authority has multiplied: (a) the number of PPI complaints rejected during the Relevant Period and in respect of which full redress was not otherwise offered (2,871 complaints) by (b) the average redress paid by CT Capital on fully upheld PPI complaints (i.e. those complaints in respect of which the alternative redress methodology was not used) (£5,959). This amounts to £17,108,289.
- 6.8. In deciding on the percentage of the relevant figure that forms the basis of the Step 2 figure, the Authority considers the seriousness of the breach and chooses an appropriate percentage level. In this case, the Authority considers that the range of percentage figures outlined in DEPP 6.5A.2G(3) are applicable. 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. The levels are as follows:
- Level 1 – 0%
- Level 2 – 5%
- Level 3 – 10%
- Level 4 – 15%
- Level 5 – 20%
- 6.9. In assessing the seriousness level, the Authority takes into account various factors which reflect the impact and nature of the breach, and whether it was committed deliberately or recklessly. These include:
- (1) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the breach, either directly or indirectly (DEPP 6.5A.2G(6)(a));
  - (2) the loss or risk of loss caused to individual consumers, investors or other market users (DEPP 6.5A.2G(6)(c));

- (3) the inconvenience or distress caused to consumers (DEPP 6.5A.2G(6)(e));
  - (4) the nature of the rules, requirements or provisions breached (DEPP 6.5A.2G(7)(a));
  - (5) the frequency of the breach (DEPP 6.5A.2G(7)(b));
  - (6) whether the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business (DEPP 6.5A.2G(7)(c)); and
  - (7) whether the firm's senior management appreciated there was a risk that their actions or inaction could result in a breach and failed adequately to manage that risk (DEPP 6.5A.2G(9)(a)).
- 6.10. CT Capital was aware of the implementation of the provisions of DISP App 3 on 1 December 2010. Despite being aware that its PPI complaint handling processes did not give effect to these provisions by the start of the Relevant Period, and consequently risked causing unfair customer outcomes, CT Capital failed to implement PPI complaint handling processes designed to give effect to the provisions of DISP App 3 until November 2011.
- 6.11. Despite being aware from the start of the Relevant Period that its policy on the use of time bar risked causing unfair customer outcomes, CT Capital failed to implement an appropriate policy in respect of the use of time bar until January 2013.
- 6.12. DEPP 6.5A.2G(11) lists factors likely to be considered 'level 4 factors' or 'level 5 factors'. Of these, the Authority considers the following factors to be relevant:
- (1) the breach caused a significant loss or risk of loss to individual consumers whose complaints were wrongly rejected;
  - (2) the breach revealed serious or systemic weaknesses in CT Capital's PPI complaint handling procedures and the management systems and internal controls relating to CT Capital's handling of PPI complaints; and
  - (3) in respect of the matters outlined at paragraphs 6.10 and 6.11 above, the Authority considers that the breach was committed recklessly.
- 6.13. Taking all of these factors into account, the Authority considers the seriousness of the breach to be level 4 and so the Step 2 figure is 15% of £17,108,289.
- 6.14. Step 2 is therefore £2,566,243.

### **Step 3: mitigating and aggravating factors**

- 6.15. 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.

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

- (1) from 2005 onwards the Authority has published numerous papers, guidance and enforcement notices that highlighted issues around the way PPI was sold and the standards expected of firms in handling complaints about PPI. Given the number of publications, and the time period elapsed since publication, CT Capital should have ensured that complaint handlers were considering these common sales issues when determining PPI complaints during the Relevant Period to ensure that customers fairly 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 PS10/12); and
  - (f) the Financial 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) On several occasions, CT Capital had been made aware by decisions of the Financial Ombudsman Service that the provision of post-sale documentation would not generally remedy a failure to make disclosure in sales telephone calls.

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

6.18. Step 3 is therefore £2,951,179.

#### **Step 4: adjustment for deterrence**

- 6.19. 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.
- 6.20. The Authority considers that the Step 3 figure of £2,951,179 represents a sufficient deterrent to CT Capital and others, and so has not increased the penalty at Step 4.
- 6.21. Step 4 is therefore £2,951,179.

#### **Step 5: settlement discount**

- 6.22. 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.
- 6.23. The Authority and CT Capital reached agreement at Stage 2 and so a 20% discount applies to the Step 4 figure which is therefore £2,360,943. This has been rounded down to the nearest £100. Step 5 is therefore £2,360,900.

#### **Total penalty**

- 6.24. The Authority therefore imposes a total financial penalty of £2,360,900 on CT Capital for breaching Principles 3 and 6.

### **7. PROCEDURAL MATTERS**

#### **Decision makers**

- 7.1. The decision which gave rise to the obligation to give this 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 CT Capital to the Authority by no later than 15 June 2016, 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 16 June 2016, the Authority may recover the outstanding amount as a debt owed by CT Capital 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 notice relates. Under those provisions, the Authority must publish such information about the matter to which the 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 you or prejudicial to the interests of consumers or detrimental to the stability of the UK financial system.
- 7.6. The Authority intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

## **Authority contacts**

- 7.7. For more information concerning this matter generally, contact Kerralie Wallbridge (direct line: 020 7066 6548) or William Walsh (direct line: 020 7066 5518) of the Enforcement and Market Oversight Division of the Authority.

**Anthony Monaghan**

**Financial Conduct Authority, Enforcement and Market Oversight Division**

## ANNEX A

### RELEVANT STATUTORY AND REGULATORY 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.'*

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

#### **Principles for Businesses (Principles)**

1.4 The Principles are a general statement of the fundamental obligations of firms under the regulatory system and are set out in the Handbook. They derive their authority from the Authority's rule-making powers set out in the Act.

1.5 The relevant Principles are Principle 3 which provides:

*'A firm must take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems'*

and Principle 6 which provides:

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

#### **Dispute Resolution: Complaints (DISP)**

1.6 DISP sets out rules and guidance on how complaints should be dealt with. By DISP 1.1.3R, it applies to 'a firm in respect of complaints from eligible complainants concerning activities carried on from an establishment maintained by it or its appointed representative in the United Kingdom'. An 'eligible complainant' is defined as 'a person eligible to have a complaint considered under the Financial Ombudsman Service'. For relevant purposes, a 'complaint' is defined as 'any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or redress determination which: (a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and (b) relates to an activity...which comes under the jurisdiction of the Financial Ombudsman Service'.

1.7 DISP 1.3.1R states:

*'Effective and transparent procedures for the reasonable and prompt handling of complaints must be established, implemented and maintained by:*

(1) *a respondent..'*

1.8 DISP 1.3.2AG (which was brought into force on 1 September 2011) states that the complaint handling procedures established, implemented and maintained by the respondent firm *'should, taking into account the nature, scale and complexity of the respondent's business, ensure that lessons learnt as a result of determinations by the Ombudsman are effectively applied in future complaint handling, for example by:*

(1) *relaying a determination by the Ombudsman to the individuals in the respondent who handled the complaint and using it in their training and development;*

(2) *analysing any patterns in determinations by the Ombudsman concerning complaints received by the respondent and using this in training and development of the individuals dealing with complaints in the respondent; and*

(3) *analysing guidance produced by the [Authority], other relevant regulators and the Financial Ombudsman Service and communicating it to the individuals dealing with complaints in the respondent.'*

1.9 DISP 1.3.3R states that *'a respondent must put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any recurring or systemic problems, for example, by:*

(1) *analysing the causes of individual complaints so as to identify root causes common to types of complaint;*

(2) *considering whether such root causes may also affect other processes or products, including those not directly complained of; and*

(3) *correcting, where reasonable to do so, such root causes.'*

1.10 DISP 1.4.1R states that *'once a complaint has been received by a respondent, it must:*

(1) *investigate the complaint competently, diligently and impartially;*

(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.'*

1.11 DISP 2.8.2R sets out the jurisdictional time limits applicable to the Financial Ombudsman Service: *'The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*

- (1) *more than six months after the date on which the respondent sent the complainant its final response; or*
- (2) *more than:*
  - (a) *six years after the event complained of; or (if later)*
  - (b) *three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*

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

1.12 DISP 1.8.1R provides that *'if a respondent receives a complaint which is outside the time limits for referral to the Financial Ombudsman Service... it may reject the complaint without considering the merits, but must explain this to the complainant in a final response in accordance with DISP 1.6.2 R.'*

1.13 DISP App 3 set out a specific set of provisions for how a firm should handle PPI complaints. The aspects of complaint handling dealt with by DISP App 3 (by DISP App 3.1.2G) are: *'how the firm should:*

- (1) *assess a complaint in order to establish whether the firm's conduct of the sale failed to comply with the rules, or was otherwise in breach of the duty of care or any other requirement of the general law (taking into account relevant materials published by the [Authority], other relevant regulators, the Financial Ombudsman Service and former schemes). In this appendix this is referred to as a "breach or failing" by the firm;*
- (2) *determine the way the complainant would have acted if a breach or failing by the firm had not occurred; and*

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

1.14 DISP App 3.3 provides guidance on how firms should consider evidence. DISP App 3.3.11G provides: *'The firm should consider in all situations whether it communicated information to the complainant in a way that was fair, clear and not misleading and with due regard to the complainant's information needs.'* In considering the information communicated and the complainant's information needs, DISP App 3.3.12G provides that the evidence to which the firm should have regard includes:

(1) *'the complainant's individual circumstances at the time of the sale (for example, the firm should take into account any evidence of limited financial capability or understanding on the part of the complainant);*

(2) *the complainant's objectives and intentions at the time of sale;*

(3) *whether, from a reasonable customer's perspective, the documentation provided to the complainant was sufficiently clear, concise and presented fairly (for example, was the documentation in plain and intelligible language?);*

(4) *in a sale that was primarily conducted orally, whether sufficient information was communicated during the sale discussion for the customer to make an informed decision (for example, did the firm give an oral explanation of the main characteristics of the policy or specifically draw the complainant's attention to that information on a computer screen or in a document and give the complainant time to read and consider it?);*

(5) *any evidence about the tone and pace of the oral communication (for example, was documentation read out too quickly for the complainant to have understood it?);*

(6) *any extra explanation or information given by the firm in response to questions raised (or information disclosed) by the complainant.'*

1.15 DISP App 3.6.1E states: *'Where a firm determines that there was a breach or failing, the firm should consider whether the complainant would have bought the payment protection contract in the absence of that breach or failing.'*

1.16 DISP App 3.6.2E states: *'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:*

(1) *pressured the complainant into purchasing the payment protection contract; or*

(2) *did not disclose to the complainant, in good time before the sale was concluded and in a way that was fair, clear and not misleading, that the policy was optional; or*

- (3) *made the sale without the complainant's explicit agreement to purchase the policy; or*
- (4) *did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the significant exclusions and limitations, i.e. those that would tend to affect the decisions of customers generally to buy the policy; or*
- (5) *did not, for an advised sale... 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; or*
- (6) *did not take reasonable steps to ensure the complainant only bought a policy for which he was eligible to claim benefits; or*
- (7) *found, while arranging the policy, that parts of the cover did not apply, but did not disclose this to the customer in good time before the sale was concluded and in a manner which was fair, clear and not misleading; or*
- (8) *did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the total (not just monthly) cost of the policy separately from any other prices (or the basis for calculating it so that the complainant could verify it); or*
- (9) *recommended a single premium policy 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; or*
- (10) *provided misleading or inaccurate information about the policy to the complainant; or*
- (11) *sold the complainant a policy where the total cost of the policy (including any interest paid on the premium) would exceed the benefits payable under the policy (other than benefits payable under life cover); or*
- (12) *in a sale of a single premium policy, failed to disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading:*
  - (a) *that the premium would be added to the amount provided under the credit agreement, that interest would be payable on the premium and the amount of that interest; or*
  - (b) *(if applicable) that the term of the cover was shorter than the term of the credit agreement and the consequences of that mismatch; or*

- (c) *(if applicable) that the complainant would not receive a pro-rata refund if the complainant were to repay or refinance the loan, or otherwise cancel the policy after the cooling off period.'*

1.17 DISP App 3.4.1G provides the following guidance: *'DISP 1.3.3 R requires the firm to put in place appropriate management controls and take reasonable steps to ensure that in handling complaints it identifies and remedies any recurring or systemic problems. If a firm receives complaints about its sale of payment protection contracts it should analyse the root causes of those complaints including, but not limited to, the consideration of:*

- (1) the concerns raised by complainants...;*
- (2) the reasons for both rejected claims and complaints;*
- (3) the firm's stated sales practice(s) at the relevant time(s);*
- (4) evidence available to the firm about the actual sales practice(s) at the relevant time(s)...;*
- (5) relevant regulatory findings; and*
- (6) relevant decisions by the Financial Ombudsman Service.'*

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

1.19 DISP App 3.7 sets how redress should be calculated in the event that a complaint is upheld. DISP App 3.7.2E sets out the general principle: *'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.'*

1.20 DISP App 3.7.3E further 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 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)**

- 1.21 Chapter 6 of DEPP sets out the Authority's statement of policy with respect to the imposition and amount of financial penalties under the Act.

## **The Enforcement Guide**

- 1.22 The Enforcement Guide sets out the Authority's approach to exercising its main enforcement powers under the Act.
- 1.23 Chapter 7 of the Enforcement Guide sets out the Authority's approach to exercising its power to impose a financial penalty.