

Finalised guidance

Payment protection insurance customer contact letters (PPI CCLs) – fairness, clarity and potential consequences

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Firms should be undertaking an analysis of complaints about their previous sales of payment protection insurance (PPI) policies. Where firms have identified that they may have mis-sold PPI policies, they may be contacting their customers to alert them that their policy may have been mis-sold and advising them that they may be entitled to redress. As part of this exercise, firms may also be asking customers whether they would like the sale of their PPI policy to be reviewed. In this guidance, we refer to letters or other types of communications (made in a durable medium) used to contact consumers to ask them to respond if they would like their sale to be reviewed, as ‘PPI consumer contact letters’ (PPI CCLs).

This guidance sets out our view of:

- what a PPI CCL should contain and how it should be presented so that it is clear, fair and not misleading;
- how our rules on complaint handling and the time limits on a consumer making a complaint¹ are relevant to PPI CCLs; and
- other relevant obligations such as record keeping.

Content, clarity and treating customers fairly

1. In our view, a PPI CCL which is targeted at specific groups of consumers on the basis of a thoughtful analysis of the root causes of complaints² should concisely set out a clear and fair explanation of the following matters:³

¹ Under our rules a consumer is always free to make a complaint, but where the complaint is made outside the relevant time limits, the firm may reject the complaint without consideration of its merits (and object to the Financial Ombudsman Service considering such a complaint).

² Which should include consideration of the matters set out in DISP App 3.4.1G.

(a) That the customer may have been mis-sold.

(b) Those key specific sales failings which have led the firm to conclude that the customer may have been mis-sold. The firm should explain (where relevant) that it has not reviewed the customer's particular sale, but that they belong to a group of consumers whose PPI sales may have been affected by certain common failings in the firm's sales practices. The firm should explain why it thinks the customer may be one of the (group of) customers affected.

(c) That there may be other reasons, in addition to the examples given, why the customer may have been mis-sold. The PPI CCL should make clear that the specific examples of sales failings which the firm has identified as potentially relevant to the customer are not exhaustive.

(d) That the customer may have suffered financial loss as a result of the potential mis-sale, and so may be entitled to redress. We do not expect firms to include a numerical money illustration of loss, but the firm should make the customer aware of the link between the potential mis-sale identified by the firm and the potential financial loss.

Firms should provide (as appropriate in light of the specific sales failings highlighted) broad explanations, for example, that premium payments were made for insurance that did not meet the customer's needs or requirements or that subsequent (or future) rejected claims may have been linked to the mis-sale.

The firm should also make it clear that there may be other ways in which a mis-sale could result in loss. The CCL should also include sufficient warning that the amount of loss (and, accordingly, the potential redress) resulting to consumers from such mis-sales is very often not trivial.

(e) The action the customer is invited to take in response to the letter (if they consider they have been mis-sold), and how the firm will act on such response. The PPI CCL should make clear how the customer should respond to the firm (including providing the relevant address, email address or telephone number) if they are concerned that they may have been mis-sold a PPI policy.

³ Such a PPI CCL is likely then to be consistent with firms' obligations under Principle 6 (treating customers fairly) and Principle 7 (clear, fair and not misleading communications).

If, despite our views in paragraph 11, the firm attempts to solicit responses that may not be complaints for the purposes of DISP, then the letter should clearly set out the matters in paragraph 12.

(f) The explanations above should not be diluted or obscured in the PPI CCL by, for example:

- the inclusion of financial promotions, marketing, arrears or other extraneous material unrelated to the purpose and content of the PPI CCL; or
- the use (without a simple gloss) of technical terms, jargon, legalese, unclear language, or general text that is too long.

(g) It should be made clear at the outset of the letter that it contains important information relating to the previous sale of PPI, and requires careful and immediate consideration. Firms should make the purpose of the letter clear in a prominent heading, and ensure it is clear that it is not, for example, a customer satisfaction, customer service, marketing, payment or arrears-related communication. The letter should be addressed personally to the relevant customer.

Firms should include the following wording as a heading at the start of the PPI CCL:

‘This letter is important and requires your careful consideration.’

2. The PPI CCL should also set out the consequences of the customer *not* taking the invited action promptly. It should clearly and fairly explain that there is a potential limit on the time the consumer has to make a complaint to the firm and the Financial Ombudsman Service (FOS). The PPI CCL should indicate that if the consumer wishes to act, they should do so promptly because the time limit for them to bring a complaint may well have started to run.
3. In our view, it is generally preferable for firms not to include PPI questionnaires in the PPI CCLs, as this may overwhelm the recipient or discourage them from reading the PPI CCL and potentially responding to it where appropriate. However, where, for example for reasons of economy, a firm wishes to include such PPI questionnaire, it should make clear in the text of the PPI CCL that filling in the questionnaire is not a precondition for the consumer responding to the CCL or having their sale reviewed. However they may need to fill in the PPI questionnaire in due course, should the firm have a reasonable need for further information from the consumer when subsequently reviewing the sale.

Time limits for complaining

4. Our rules concerning complaint time limits⁴ provide that a firm may reject a complaint without consideration of its merits (and object to FOS considering such a complaint), if:
 - the complaint was made to the firm more than six years after the event complained of (eg a PPI sale); or
 - (if later), more than three years from the date on which the complainant *became aware (or ought reasonably to have become aware) that they had cause for complaint*.
5. Whether and when a customer becomes aware (or ought reasonably to have become aware) that they had cause for complaint for the purpose of our time limit rules is a matter of fact that will depend on the individual circumstances of each case. A customer's previous experience of the PPI policy and dealings with the firm about it may impact on the extent to which the customer may be aware (or ought reasonably to have been aware) that they had cause for complaint.
6. Assuming that the three-year time period has not already begun, receiving a PPI CCL will be an important factor to consider in determining whether a customer has sufficient awareness to trigger the start of the three-year time limit.
7. Where all the information described in paragraph 1 above has been clearly and fully set out in a PPI CCL which has been targeted at the customer, then the customer who receives it:
 - is likely to have received sufficient awareness to trigger the start of the 3 year time limit (if it has not already begun) for bringing a complaint about the mis-sale of the policy as a result of any of the key sales failings set out in the PPI CCL; and
 - may, depending on the circumstances, also have received sufficient awareness to trigger the start of the three-year time limit (if it has not already begun) for bringing a complaint about the mis-sale of the policy more generally.

⁴ DISP 1.8R and 2.8.2R

8. If, in the future, a firm is considering rejecting a complaint about the mis-sale of a policy without considering its merits because it received the complaint more than three years after the complainant had received a PPI CCL (and more than 6 years since the PPI sale complained of) it will need to consider carefully, and satisfy itself, on a case by case basis that the complaint is indeed time barred based on the particular facts, because:
- the complainant received the PPI CCL;
 - the content of the PPI CCL was complete and sufficient (i.e. the information described in paragraph 1 above was clearly and fully set out in the PPI CCL targeted to the customer);
 - the specific cause of the complaint raised relates sufficiently closely to matters set out in the PPI CCL, that the complainant ought reasonably to have been aware of such cause for complaint (given the content of the PPI CCL and/or other information relevant and available to him at that time from other communications by the firm to him or from other sources or dealings) from the time of receipt of the PPI CCL; and
 - the recipient's failure to comply with the time limit was not a result of exceptional circumstances (eg the complainant had been incapacitated).
9. The FOS will be likely to consider these (and any related) facts in assessing the potential applicability of the time limit rules to the complaint.
10. Where a firm decides it can appropriately reject the individual complaint as out of time, the firm must comply with its obligation⁵ to issue a final response to the complainant which clearly explains the reasons for this rejection and indicates that the FOS may waive the time limit in exceptional circumstances.

The potential consequences for firms' complaint-handling obligations

11. In our view, where a PPI CCL clearly and fairly provides all the information described in paragraph 1 above, then a response from the consumer asking the firm to act is very likely to be a complaint for the purpose of firms' complaint-handling obligations under our rules (DISP).
12. However, if a firm's PPI CCL invites consumer responses that may not be complaints for the purpose of DISP, then it should explain this clearly and consistently to all the recipients of that letter. The PPI CCL should also set out:

⁵ See DISP 1.8.1R.

- that the response will not be handled as a complaint by the firm;
- the further action the customer would need to take if they wished to complain; and
- the fact that the time limit for complaining may well be running down in the meantime.

Other obligations including record keeping

13. Firms will wish (and we would expect them, in line with their obligations under Principles 6 and 7 and SYSC⁶) to:

- take all reasonable steps to ensure that customer data is correct before sending a PPI CCL, in particular the customer's name and address;
- ensure systems and controls are in place to prove they have sent the PPI CCL and when; and
- keep adequate and accessible records of: the content, distribution, posting and likely receipt dates of PPI CCLs and any subsequent reminders; any response made by the customer; and the subsequent actions taken by the firm.

14. The accuracy and quality of such data and records will be especially important, and potentially considered by the FOS, where the firm seeks to rely on the content and receipt of the PPI CCL to reject a subsequent complaint as out of time.

15. In our view, firms should, in line with Principle 6, consider whether it would be appropriate for them to provide one or more reminders to those customers who have not responded within a reasonable time.

⁶ SYSC 3.1.1R and 3.2.20R (for insurance firms, managing agents and the Society of Lloyd's); and SYSC 4.1.1R or 9.1.1R (for all other firms).