

Guidance consultation

Payment protection products

FSA/OFT joint document, including FSA product risk report and OFT guidance

November 2011

OFFICE OF FAIR TRADING



Consultation summary

The FSA and the OFT are jointly consulting on proposed guidance to firms in relation to payment protection products. This document is the result of joint working by both organisations in the light of recent developments on payment protection insurance (PPI) and emerging concerns about new products and practices. Comments are invited by 13 January 2012.

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Key messages

For payment protection products within the FSA's regulatory responsibilities, this document builds on existing high-level guidance. The key messages for providers and distributors are:

- Poor product design and distribution strategy can lead to unfair consumer outcomes.
- When designing new payment protection products (or reviewing the design and distribution of existing products) firms should ensure they have given due consideration to (i) identifying the target market for the protection, (ii) ensuring that the cover offered meets the needs of that target market, and (iii) ensuring that the product does not create barriers to comparing, exiting or switching cover.
- Firms should be able to demonstrate that they have sound product governance arrangements in place.
- This guidance (once finalised, following consultation) will inform the FSA's supervision of firms that provide or distribute payment protection products.
- The FSA will consider taking action against firms where breaches of the FSA's Principles or other rules are identified.

For payment protection products within the OFT's regulatory responsibilities, the key messages for consumer credit licensees and applicants are:

- Firms should be aware of the relevant statutory provisions and how these may impact on payment protection products.
- In particular, there should be adequate transparency regarding the nature, price and implications of payment protection products.
- Firms should ensure that they treat actual and potential customers fairly and do not engage in unfair or improper business practices.
- Failure to do so, or to comply with relevant statutory provisions, may cast doubt on fitness to hold a consumer credit licence and may lead to enforcement action by the OFT.

Introduction

- 1 We are aware that some firms have developed, or are seeking to develop, new forms of protection that aim to meet similar consumer needs to payment protection insurance (PPI). These may, however, pose similar risks to consumers, and the previous failings identified with PPI must not be repeated. It is important that firms mitigate the risks associated with such products to help achieve good outcomes for consumers and avoid significant consumer detriment arising.
- 2 This document is issued jointly by the Financial Services Authority (FSA) and the Office of Fair Trading (OFT) as proposed guidance to firms in relation to payment protection products. It is the result of joint working by both organisations in the light of the Competition Commission's (CC) market investigation into PPI and emerging concerns about new products and practices.
- 3 For the FSA, the guidance in this document builds on existing high-level guidance, in particular the regulatory guide 'the Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD). For the OFT it reaffirms previous guidance in relation to fitness to hold a consumer credit licence.
- 4 We will expect firms to have regard to the contents of this document (once finalised following consultation) and to take action where appropriate to meet their obligations under the relevant regulatory framework.¹ We will continue to monitor developments in the market, and will consider taking action under our respective powers where we identify that firms' products and/or practices risk causing detriment to consumers.

Scope of the document

- 5 This document focuses on products or product features (together 'payment protection products') which are designed to offer consumers short-term protection in case of loss of income, by providing the means for them to meet their financial obligations including repayments under a regulated mortgage contract (RMC) or a credit agreement. The protection will typically be triggered by specified life events such as accident, sickness and/or unemployment, although other risks may also be covered.

¹ Payment protection products involving insurance are regulated by the FSA under the Financial Services and Markets Act 2000. The FSA also regulates non-insurance payment protection products linked to first charge mortgages. Non-insurance payment protection products linked to second charge mortgages, unsecured loans, credit/store cards, hire-purchase or consumer hire agreements are in most cases regulated by the OFT under the Consumer Credit Act 1974. Note that references in this document to 'credit agreement' include a hire-purchase or consumer hire agreement where applicable.

6 Different payment protection products are subject to different regulatory regimes. Table 1 summarises the FSA’s and the OFT’s current regulatory responsibilities. A key distinction between products is whether or not they involve insurance. Insurance products are regulated under the Financial Services and Markets Act 2000 (FSMA) even if the linked credit agreement is regulated under the Consumer Credit Act 1974 (CCA) or is unregulated.

7 *Insurance* forms of protection include **short-term income protection** (STIP).

8 *Non-insurance* forms of protection include where the terms of an RMC or credit agreement are modified on the occurrence of specified events. Two examples are **debt freeze** and **debt waiver** (see glossary in Annex 3). Neither is covered by the CC’s point-of-sale prohibition relating to PPI, or by the ‘anti-avoidance’ clause in the CC’s Order.²

9 References to ‘payment protection products’ in this document cover both insurance and non-insurance products, unless the context otherwise makes clear.

Table 1: Summary of current FSA and OFT responsibilities for payment protection products

Linked credit product	Insurance product (e.g. STIP)	Non-insurance (e.g. debt freeze)
None (standalone cover)	FSA	n/a
First charge mortgage	FSA	FSA
Second charge mortgage	FSA	OFT
Unsecured loan	FSA	OFT
Credit card	FSA	OFT

Who should read this document?

10 This document is primarily aimed at firms who provide and/or distribute short-term payment protection products, or who may be considering doing so.³ Although the focus of the document is on new forms of payment protection, firms who provide and/or distribute PPI products may also want to consider this document as part of any ongoing review of product design or distribution strategies.

11 The document will also be of interest to consumer organisations and trade bodies, whose views we would also be very interested to hear.

² See Annex 3. Article 8.10 of the CC’s Order applies to insurance arrangements which have the same effect as PPI and are designed to avoid the operation of the Order or can be expected to have that effect.

³ It does not specifically address products offering long-term income protection, or permanent health insurance.

Structure of the document

- 12 The rest of this document is structured as follows:
- Annex 1 is a draft FSA product risk report on payment protection products within the FSA's jurisdiction.
 - Annex 2 is draft OFT guidance on the application of the CCA regime to payment protection products within the OFT's jurisdiction.
 - Annex 3 is a glossary of terms.
 - Annex 4 sets out how the FSA and the OFT will use information submitted in response to this consultation.

Status of the document

- 13 The FSA and the OFT are jointly consulting on the content of this document. In the case of the FSA, this is in line with statutory requirements under sections 155 and 157 of FSMA.
- 14 Annex 1 comprises material which, if made following consultation, would constitute guidance under section 157 of FSMA. This includes guidance on the application to payment protection products of the FSA's Principles for Businesses and certain rules in SYSC, MCOB and ICOBS (see glossary in Annex 3). The material builds on existing high-level guidance, namely the regulatory guide 'the Responsibilities of Providers and Distributors for the Fair Treatment of Customers' (RPPD). It is not, and does not seek to be, a complete exposition of all of a firm's responsibilities, nor does it alter, replace or substitute applicable Principles, rules, guidance or law. Further information on the status of FSA guidance can be found in the FSA's Enforcement Guide at EG 2.22G-2.27G.
- 15 Annex 2 comprises OFT guidance to licensees and applicants under section 25A of the CCA, in relation to fitness to hold a consumer credit licence. It also constitutes information pursuant to section 4 of the CCA on how the OFT interprets relevant provisions of the CCA in relation to payment protection products, having regard to decisions of the courts and other regulatory guidance, in particular the OFT's Irresponsible Lending Guidance.

Next steps

16 We would welcome comments on any aspect of this document, or the views expressed in it, or any comments or enquiries on the process generally. **Responses should be received by 13 January 2012.**

17 Please provide responses in writing (by email, or alternatively by letter) to:

Gareth Walton
Conduct Specialists Department
Financial Services Authority
25 The North Colonnade
London E14 5HS
Telephone: 0207 066 2706
Email: paymentprotectionproducts@fsa.gov.uk

18 The FSA will co-ordinate responses on behalf of both organisations, and will copy any responses received to the OFT.

19 Should respondents wish to address any queries directly to the OFT, please contact:

Martin Goulden
Credit Policy
Office of Fair Trading
Fleetbank House, 2-6 Salisbury Square
London EC4Y 8JX
Telephone: 020 7211 8702
Email: martin.goulden@oft.gsi.gov.uk

20 Please state whether you are responding as an individual or representing the views of an organisation. If the latter, please make clear who the organisation represents and, where applicable, how the views of members were collated.

21 If you wish to propose changes to any aspect of this document, we would welcome an explanation of the reason and any evidence that you are able to supply in support. If any response is intended to be completely or partially confidential, this should be clearly marked (see Annex 4).

Additional ways to become involved

- 22 To support the consultation process, we are considering holding a seminar to provide further clarification on the content of this document and to discuss any queries or initial comments. If you would like to participate in such a seminar, please contact Gareth Walton (details as above) by not later than 22 November. We are also prepared to meet individual firms and organisations during the consultation period if this may help to progress matters.

Following the consultation period

- 23 We will carefully consider any comments received, with a view to publishing final guidance, together with a summary of responses, in the first half of 2012.
- 24 We also plan to publish information to consumers about payment protection products, including PPI.
- 25 Going forward, both the FSA and the OFT are committed to ensuring that consumers are adequately protected when purchasing payment protection products. We will continue to monitor developments in the market, and will consider taking action under our respective powers where we identify that firms' products and/or practices risk causing detriment to consumers. We may also produce further guidance or (in the case of the FSA) make detailed rules. In addition, we will seek to identify further areas where joint working may be beneficial.

Annex 1: Product risk report on payment protection products within the FSA's jurisdiction

Introduction

- 1.1 This Annex sets out the FSA's position on payment protection products within the FSA's jurisdiction. We discuss the risks to consumers which may arise from the design of specific products or product features, and which may lead to poor consumer outcomes. We also discuss how firms should manage these product risks through the product life-cycle to deliver good consumer outcomes.⁴
- 1.2 We believe that issuing this report on payment protection products is a sensible approach, given that the market is in the early stages of development. The guidance (once finalised) will inform our supervision of firms that provide or distribute payment protection products, and we will consider taking action against firms where we identify breaches of the Principles or our other rules. We provide a mapping of the guidance in this report to relevant Handbook provisions in paragraph 1.43.

Terminology used in this report

- 1.3 There may be a number of ways in which firms can effectively manage the risks discussed in this report, and meet their obligations under the Principles and our other rules. We have reflected this in the terminology used in this report - in particular, we use the terms 'may' and 'should' in line with the terminology used in RPPD (see RPPD 1.10G).

Roles of providers and distributors

- 1.4 When designing or distributing payment protection products, individual firms' responsibilities flow from their roles or functions as providers or distributors.⁵
- An insurer may design a product and distribute it through its own channels.
 - A product may be developed by a vertically-integrated group containing: (i) an insurance company, which would underwrite the protection, and (ii) a retail banking company, which would sell the product and would carry the credit risk on any RMC which the payment protection product may protect. Either part of the group may lead the design of the product.

⁴ The FSA published its Discussion Paper (DP11/1) on Product Intervention in January 2011 and a Feedback Statement (FS11/3) in June 2011. The approach discussed in these papers reflects our consumer protection strategy, launched in March 2010 – in particular, the papers make clear our intention to do more to anticipate consumer detriment from poorly designed products or distribution strategies, and to take action to prevent detriment occurring. This product risk report is an example of intervention earlier in the product life-cycle.

⁵ See RPPD 1.14G and 1.15G

- An insurer may design a new product (e.g. STIP) and seek third-party distributors through which to sell it.
- A distributor (e.g. a bank) may specify the design of the protection. Depending on the nature of the protection, the distributor may tender among insurers for either the supply of the product (e.g. in the case of a STIP product) or a commercial insurance arrangement (to which the consumer is not a party).

1.5 We refer to the ‘provider’ as the firm which develops the specifications of the payment protection product. In practice, for a payment protection product this may refer to an insurer or to a commissioning distributor. For a vertically integrated firm or group, all aspects of this report will be relevant.

Product risks for payment protection products

1.6 Good product design is central to delivering good outcomes for consumers. Firms should be able to demonstrate that they are consistently delivering fair outcomes to consumers and that senior management are taking responsibility for that. Product risks for payment protection products can arise where:

- the firm does not identify the target market for the protection (or the needs of likely consumers);
- the events covered by the protection are misaligned with the needs of the target market;
- the benefit following a successful claim is unlikely to meet the needs of consumers in the target market; and
- the product features or pricing structures create undue barriers to comparing, exiting or switching cover.

1.7 Risks may also arise where detailed terms and conditions of the product are unfair. For further information please refer to our [information pages](#) on unfair contract terms.

Risk 1. The firm does not identify the target market for the protection (or the needs of likely consumers)

1.8 We have stated previously, in RPPD⁶, that firms should identify the target market, namely the types of customer for which the product is likely to be suitable (or not suitable).⁷ Our TCF Outcome 2 also sets

⁶ See RPPD 1.17G (1).

out our expectation that “Products and services marketed and sold in the retail market are designed to meet the needs of identified consumer groups and are targeted accordingly”.⁸

- 1.9 In the case of protection products, the definition of the target market should reflect the intended purpose of the protection (the benefit that consumers may receive from the product) and the eligibility criteria for the product. For example, a STIP product is inherently unlikely to meet the needs of consumers who do not have an income to protect or those who would have sufficient alternative sources of income if they were unable to work (for example, through existing insurance cover, or savings or pensions).
- 1.10 To identify the needs of consumers in the target market, firms may need to use sources such as consumer research, data from similar insurance products (e.g. data on complaints and/or declined claims), and/or official statistics.

Risk 2. The events covered by the protection are misaligned with the needs of the target market.

- 1.11 As firms develop products, and balance issues such as the price of the product against the scope of the protection, this can have a bearing on the types of customer for which the product is suitable and therefore the alignment between product design and the target market. We discuss two sources of this risk below.

Events covered by the protection

- 1.12 During the product design process, a provider might seek to widen the target market from that originally identified by increasing the events covered by the protection. One example is where a product was initially designed to include cover for accident, sickness and unemployment but, during the design process, the provider also chooses to include one or more secondary product features which are likely to represent only a small proportion of the value of claims expected to be paid out (such as hospitalisation benefit). Poor consumer outcomes are likely to arise if the provider includes in its target market consumers who could be persuaded to buy the product on the basis of the secondary features only.
- 1.13 Providers may reduce this risk by designing products which offer flexibility around the events covered – for example, where the consumer can choose separately whether to include cover for accident/sickness, unemployment and any secondary feature(s). This approach may enable a better fit with consumers’ demands and needs. Moreover, where the product design is flexible and so the

⁷ We note that firms may identify ‘target’ segments using other criteria – for example, customer segments who may be easiest to acquire or most profitable. However, for the purposes of this report, we focus on those criteria for identifying and defining the target market which support the management of the product risks.

⁸ See our information pages on TCF at www.fsa.gov.uk/pages/doing/regulated/tcf/

consumer makes active decisions about which elements of cover they want, this may also improve consumer engagement with the product features and so improve consumer outcomes.

Impact of product exclusions

- 1.14 While firms may use exclusions as a means of ensuring that the product is priced competitively, our view is that firms' discretion to limit the scope of the cover is constrained by the need to align the events covered by the protection with the needs of the target market. Examples of where Risk 2 may arise in this context include:
- a product excludes self-employed or contract workers even though such consumers fall within the identified target market; and
 - in the case of accident or sickness cover, the provider significantly restricts the definitions of certain illnesses or severities of illness or incapacity, or excludes some of the most common conditions, such as stress or back pain.
- 1.15 In the above examples, firms may mitigate these risks by avoiding such exclusions. Alternatively, firms may redefine the target market if such exclusions mean that the product will not meet the needs of a significant segment of consumers originally identified as falling within the target market.
- 1.16 We have said previously that providers should, as part of their product development, stress test the product to identify how it might perform in a range of market environments and how the consumer could be affected.⁹ This may include considering events which lead to significant increases in claims, such as a recession. These events can lead to poor consumer outcomes if, for example, firms were to tighten their claims acceptance standards in response to increasing claims volumes. If providers choose to manage the risk of a significant increase in claims during the product development stage (for example, through the use of exclusions around temporary workers or workers on fixed-term contracts) then they should review the definition of the target market to ensure it is still appropriate.
- 1.17 We discuss later in this annex the importance of product providers communicating the definition of the target market to distributors (see paragraph 1.31) and how firms' distribution strategy can support the management of the product risks.

Risk 3. The benefit following a successful claim is unlikely to meet the needs of consumers in the target market.

- 1.18 Firms should use relevant data (including consumer research, as well as other sources discussed in paragraph 1.10) when defining the level of benefits offered, to ensure that the product design

⁹ See RPPD 1.17G (2).

appropriately reflects consumers' likely needs and so supports positive consumer outcomes. Examples of where Risk 3 may arise include:

- caps on maximum benefits which mean that the level of protection risks being insufficient to meet target consumers' likely needs. For example:
 - if a firm designs a debt waiver feature of an RMC where the consumer is required to continue making monthly repayments of some amount (i.e. it does not enable the consumer to avoid monthly repayments in entirety) then this may not meet the needs of a target market which includes consumers with low savings and who do not have other means of continuing repayments in the event their income stops; or
 - for a STIP product that includes a cap on benefits expressed as a percentage of gross income, specific risks may arise for consumers with lower incomes. Non-discretionary spend by consumers with lower incomes forms a higher proportion of gross income than for other types of consumers. Therefore, risks may arise for these consumers where the cap on benefits is insufficient for their likely needs.
- limits on the duration of a debt waiver which are insufficient to meet target consumers' likely needs. For example, if a debt waiver on the monthly repayments of an RMC for unemployment cover does not reflect the time likely to be required either for consumers to return to work, or to reasonably make lifestyle changes to reflect loss of income.
- waiting periods (i.e. the period before a consumer receives a benefit after making a claim) which are out of line with target consumers' likely needs – for example, if a STIP or debt waiver has a long waiting period, but the target market includes consumers who have low savings and limited employment benefits, the protection may not meet the needs of the target market.

Risk 4. The product features or pricing structures create undue barriers to comparing, exiting or switching cover.

- 1.19 Good consumer outcomes are more likely to be achieved where consumers can compare products effectively. Also, as set out in our TCF Outcome 6, consumers should not face unreasonable post-sale barriers to change product or switch provider. These factors reduce the risk that consumers pay for protection where this does not meet their needs, or has ceased to meet their needs.
- 1.20 We note that the CC's remedies are designed to support this outcome for PPI and for STIP products. Therefore, we do not discuss here barriers to comparing, exiting or switching cover for these products. However, it is important that the markets for non-insurance payment protection products also deliver good consumer outcomes, and do not feature excessive barriers to comparing, exiting or switching cover – as such the discussion in this section focuses on non-insurance payment protection products within the FSA's jurisdiction.

Product features

- 1.21 For non-insurance payment protection products, barriers to exit or switching are most likely to arise where the consumer is unable to cancel a debt freeze or debt waiver after taking out the RMC unless they cancel the RMC at the same time (even if the protection feature was optional at point-of-sale). In this case the effective cost to the consumer of cancelling the debt waiver would be the early repayment charge on the RMC plus any new mortgage product fee. This creates a significant risk that consumers are deterred from exiting the protection where it no longer meets their needs, for example where their circumstances change during the life of the RMC, and so that consumers pay for protection that does not meet their needs. Firms should address this risk by structuring debt freeze or debt waiver features such that the consumer can exit the protection feature during the life of the RMC without exiting the underlying RMC.
- 1.22 Barriers to switching may also arise where debt freeze or debt waiver features contain long initial exclusion periods (during which a claim cannot be made) or extensive exclusions for pre-existing medical conditions (as discussed in the CC's final report on PPI¹⁰). These features may deter consumers from switching and so lead to consumers continuing to pay for cover where this no longer meets their needs.

Pricing structures

- 1.23 Pricing structures for non-insurance payment protection products may also create barriers to comparing, exiting or switching cover.
- 1.24 In particular, poor consumer outcomes may arise if the pricing structure for new non-insurance payment protection products for RMCs mirrors that of single premium PPI – which is prohibited by the CC. An example might be a debt waiver term within an RMC, where the consumer pays for the protection as a lump sum which is added to the mortgage at the point of sale. The CC found that single premium PPI resulted in high barriers to switching (where the refund terms offered on cancellation were insufficient for the consumer to purchase alternative cover) and also contributed to barriers to comparison. A pricing structure for a debt freeze or debt waiver that is similar to single premium PPI is therefore also likely to create an undue barrier to switching or comparison between debt waivers (and with other types of protection). In particular, it may create an undue barrier to switching where the refund in the event of cancellation is significantly less than pro rata.
- 1.25 Risks to consumers may also arise where there are charges for exiting the debt waiver/debt freeze feature of an RMC which are likely to deter consumers from doing so. In such cases consumers may continue to pay for cover when this no longer meets their needs, and may be deterred from switching to alternative cover which would meet their needs.

¹⁰ See www.competition-commission.org.uk/rep_pub/reports/2009/fulltext/542.pdf, paragraphs 5.61-5.62.

- 1.26 Our Discussion Paper on product intervention discussed several further actions we are considering around price. As our broader thinking on price develops, this may also have implications for our views in relation to payment protection products.

Managing product risks during the product life-cycle

- 1.27 Product risks should be managed in other stages of the product life-cycle, including:
- defining the distribution and marketing strategy for the product;
 - planning for post-launch activities; and
 - governance around product design and distribution and marketing strategies.

Distribution and marketing

- 1.28 Firms' distribution and marketing strategies play an important role in ensuring that consumers purchase protection products which meet their needs, and that consumers understand the product appropriately. We discuss below the main areas of firms' distribution and marketing strategies which are relevant to managing product risks.

Distribution chain and channels

- 1.29 Where the provider chooses to distribute the payment protection product through a third party, the third party selected should be aligned with the target market – that is, the distributor should have access to the types of consumers in the relevant target market. For example, there is an increased risk of poor outcomes if a provider (e.g. an insurer or a bank) provides a STIP product which assumes a certain level of savings (e.g. where the product has a long waiting period before a customer begins to receive a benefit), but distributes this through distributors whose customer base is unlikely to have this level of savings (such as sub-prime mortgage lenders).
- 1.30 Contractual arrangements between firms may also be relevant to managing the product risks. For example, a provider may prescribe minimum sales volumes or penetration rates for a distributor. Where the product has a restricted target market (for example, where it has extensive exclusions around pre-existing medical conditions or for self-employed or contract workers) firms should not prescribe minimum sales volumes or penetration rates which are unrealistic in comparison to the size of the target market.

Provision of information to distributors

- 1.31 Where the provider and distributor are different firms (e.g. an insurer selling a STIP product through a bank's branch network, or a product designed by a bank which is sold through an intermediary), the information supplied by the provider to the distributor is an important element of managing product risks and ensuring that products deliver appropriate consumer outcomes.¹¹ In particular, the provider should inform the distributor about the relevant target market for the product, to enable the distributor to align its marketing and sales/advice accordingly.¹²

Advised or non-advised distribution

- 1.32 We have said previously that, when defining the distribution strategy for payment protection products, providers should decide whether the product is one where customers would be wise to seek advice.¹³ Distributing the product on an advised basis may be most appropriate where the risks in the product may not be obvious to consumers, in particular where the product has a narrow target market. For example, where a debt freeze or debt waiver contains extensive exclusions and limitations, consumers are likely to have more difficulty understanding whether the product is likely to meet their needs, and the presence of a qualified advisor may help to mitigate the risks to consumers arising from the product design.

Reward

- 1.33 Distributors' remuneration strategies for rewarding salespeople are also important in managing the product risks for payment protection products. As we noted in the 2011 *Retail Conduct Risk Outlook*¹⁴, risks to consumers may arise where firms "either fail to identify the influence of incentive schemes on the behaviour of staff and hence the risks to the delivery of fair consumer outcomes, or [do] not put effective controls in place to mitigate these risks." Firms should ensure that salespeople do not have inappropriate incentives to sell the product outside of the target market, and that effective controls are in place to ensure that issues are identified where they arise, and appropriate action is taken. We are currently undertaking work looking at reward of in-house sales staff.

Financial promotions

- 1.34 Aligning financial promotions with the needs of the target market can also support effective management of the product risks. In particular, the content of financial promotions should reflect the needs of consumers in the target market – for example, the use of technical vocabulary in the

¹¹ We have previously given guidance in relation to the provision of information by providers to distributors; see RPPD 1.18G.

¹² RPPD1.17G (1) sets out that the provider should identify the target market for the product; this information is likely to be relevant under 1.18G (2). RPPD also includes further guidance to distributors on handling information received from the provider and providing information to other distributors – see in particular 1.23G.

¹³ See RPPD 1.20G (1).

¹⁴ Chapter B, section 3.6.

promotion should be aligned with the level of financial literacy of the likely audience for the promotion, taking into account the channel through which the financial promotion is distributed.

- 1.35 For further information on our requirements for financial promotions, we refer firms to our [information pages](#) on financial promotions.

Planning for post-launch activities

- 1.36 Our TCF Outcome 5 recognises the importance of consumers being provided with products that perform as firms have led them to expect, and the associated service being of an acceptable standard (and as consumers have been led to expect). Insufficient planning during product development for post-launch activities can lead to poor outcomes for consumers. Poor consumer outcomes can arise where firms do not have appropriate infrastructure (e.g. for setting up the cover, handling claims and dealing with complaints) and/or where firms do not have sufficient numbers of appropriately skilled staff in place. (We note that where the product design and distribution strategy support positive consumer outcomes, this is likely to reduce the number of complaints received, and so is likely to reduce the resource required in handling complaints.) Firms may reduce this risk by planning for post-launch activities at an appropriate stage during the product development, and by considering contingency plans (for example, in the context of stress-testing) in case the volumes of sales, cancellations, claims or complaints are higher than expected.

Governance

- 1.37 Effective governance is key to ensuring that products which firms design and distribute meet consumers' needs and lead to positive consumer outcomes. In this report, we use the term 'governance' to refer to a firm's internal arrangements (including relevant policies, practices, risk controls and oversight arrangements) for identifying, monitoring and mitigating the risks which the product may pose to consumers. This includes processes from the initial product design to ongoing product management after launch and, where applicable, the removal of the product from the market. This is applicable whether the product provider is an insurer or a commissioning distributor.
- 1.38 We have previously stated, in RPPD, that firms 'should have in place systems and controls to manage adequately the risks posed by product or service design'.¹⁵ Prior to the launch of the product, firms are unlikely to manage the risks in the product design effectively unless they have appropriate governance around:
- the design of the product, and how the product features are reflected in the drafting of the detailed terms and conditions;

¹⁵ RPPD 1.17G (3). See also SYSC 3.1.1R and 4.1.1R.

- the assessment of product risks, including through stress-testing how the products might perform in a range of market environments; and
- the distribution and marketing of the product.

1.39 A firm's control functions (e.g. risk management and compliance functions) should be involved in the firm's product design and oversight arrangements. Firms' governance arrangements should also ensure appropriate consideration of consumers' interests. This may involve, for example, nominating a TCF champion (who has sufficient power to influence the product development) or a 'consumer panel'. Firms should also ensure they have adequate processes for escalating and acting on risks identified during product development, and that they have effective gateways for senior management sign off and challenge.

1.40 Firms' governance arrangements should extend to the performance of the product after it has been launched. This includes providing regular management information (MI) to senior management which tracks the key product risks and appropriately escalates any issues which arise.

- Firms should capture MI relating to declined claims (the proportion of claims declined and the reasons for declined claims), cancellations and complaints.
- Firms may also capture feedback from distributors, or MI based on sales figures. Where relevant, firms may also collect MI designed to identify issues with specific distributors or distribution channels.
- The MI collected may also extend to claim and loss ratios, for example to identify situations where consumers (or specific types of consumer) may be purchasing the protection where this does not meet their needs.

1.41 Firms' governance arrangements should facilitate taking timely action to address any issues arising, such as changes to the design of the protection (and potentially the firm's product development process), and/or review of the firm's distribution strategy.

Equality and diversity considerations

1.42 We have considered the impact of our proposals on protected groups. We believe that our proposals will lead to improved outcomes for all types of consumer, including the most vulnerable groups. We recognise that our proposals may have some (though limited) disadvantages for certain protected groups – in particular, our proposals may lead some firms to increase the price of these products, and so may lead some lower-income consumers not to take out payment protection products. This may indirectly impact some of the protected groups. However, we believe that the benefits of our proposals outweigh the potential disadvantages for all consumer segments.

Mapping to Handbook provisions

- 1.43 Table 2 sets out the Handbook provisions to which the guidance contained in our report relates for payment protection products.

Table 2: Mapping to Handbook provisions

Section	Provides guidance on application of:	...and also builds on:
<i>Product risks</i>		
1. Identification of the target market	Principles 2, 3, 6	RPPD 1.17G(1)
2. Events covered by the protection	Principles 2, 3, 6	RPPD 1.17G(2)
3. Benefits following a successful claim	Principles 2, 3, 6	n/a
4. Barriers to comparing, exiting or switching cover	Principles 2, 3, 6	n/a
<i>Distribution and marketing</i>		
Distribution chains and channels	Principles 2, 3, 6, 7	RPPD 1.20G
Provision of information to distributors	Principles 2, 3	RPPD 1.18G
Advised or non-advised distribution	Principles 2, 3, 6, 7	RPPD 1.20G(1)
Reward	Principles 2, 3, 6	n/a
Financial promotions	Principles 2, 3, 6, 7 MCOB 2.2.6R ICOBS 2.2.2R	RPPD 1.18G, 1.19G, 1.22G
<i>Planning for post-launch activities</i>		
	Principles 2, 3, 6 SYSC 3.1.1R & 4.1.1R	RPPD 1.21G(4) & (5) RPPD 1.25G(3) & (4)
<i>Governance</i>		
	Principles 2, 3, 6 SYSC 3.1.1R & 4.1.1R	RPPD 1.17G(3)

Annex 2: Guidance on payment protection products within the OFT's jurisdiction

Introduction

- 2.1 This Annex sets out the OFT's views on the application of the CCA regime, including the licensing regime and the fitness test in section 25 of the CCA, in relation to payment protection products which:
- relate to credit agreements regulated under the CCA¹⁶, and
 - do not involve insurance (and so are not regulated by the FSA).
- 2.2 The guidance applies in particular to 'debt freeze' and 'debt waiver' as defined in Annex 3. However, it is not limited to such products. It also covers similar products, or products with similar features, where these are regulated under the CCA.
- 2.3 In addition, some of the principles in this guidance, relating to transparency of cost and service provision, may apply where a third party offers to procure that the creditor will accept (for a period) no or reduced payments, or will waive interest and charges, following the occurrence of specified events. This may involve debt adjusting or other ancillary credit services which are licensable activities under the CCA.¹⁷
- 2.4 Payment protection products may relate to unsecured credit agreements such as loans, credit cards, store cards or hire-purchase. They may also relate to second charge mortgages or consumer hire agreements.¹⁸

The legislation

- 2.5 The CCA and its subordinate legislation provide a framework to protect consumers when dealing with those engaged in consumer credit business and/or ancillary credit business. Such businesses are generally required to hold an appropriate consumer credit licence issued by the OFT. We aim to ensure that licences are only given to, and retained by, those who are fit to hold them.
- 2.6 Section 25 CCA provides that, in considering fitness to hold a consumer credit licence, the OFT shall have regard to any matters which appear to it to be relevant and in particular any evidence tending to show that an applicant or licensee, or any of their employees, agents or associates¹⁹, whether past or present, has:
- committed offences involving fraud or other dishonesty or violence;

¹⁶ See Annex 3 (Glossary of terms) and also paragraph 2.10 below in relation to unregulated agreements.

¹⁷ Debt adjusting' is defined in section 145 CCA as including negotiating with the creditor, on the debtor's behalf, terms for the discharge of a debt or any similar activity concerned with liquidation of a debt.

¹⁸ Insurance products and first charge mortgages (regulated under FSMA) are discussed in Annex 1.

¹⁹ Including business associates as referred to in section 25(3) CCA.

- failed to comply with the CCA or any other enactment regulating the provision of credit to individuals or other consumer protection legislation;
- failed to comply with FSMA requirements relating to the consumer credit jurisdiction operated by the Financial Ombudsman Service;
- practised discrimination in connection with the carrying on of a business; or
- engaged in business practices appearing to the OFT to be deceitful or oppressive, or otherwise unfair or improper, whether unlawful or not.

- 2.7 Section 25(2B) provides that the business practices which the OFT may consider to be deceitful or oppressive, or otherwise unfair or improper, include practices in the carrying on of a consumer credit business that appear to involve irresponsible lending. We have issued guidance on irresponsible lending, aspects of which are relevant to payment protection products.²⁰
- 2.8 Section 25(2) requires that in determining whether a person is fit to hold a licence, we shall have regard to the skills, knowledge and experience in relation to consumer credit business and/or ancillary credit business of that person and other persons who will participate in any business carried on by him under a licence, and any practices and procedures to be implemented in connection with any such business.
- 2.9 This therefore covers the person's competence in relation to credit activities, including the way in which he runs his business, governance arrangements, the design of products or services, and measures intended to ensure compliance.
- 2.10 We are not restricted to considering practices which relate to consumer credit business regulated under the CCA. We can also have regard to practices relating to unregulated credit business, or any other business activity, where carried out by a person who is licensed under the CCA or by an associate or business associate. In doing so, we would consult other regulators as appropriate.

The OFT's role

- 2.11 Section 25A CCA requires us to prepare and publish guidance in relation to how we determine, or propose to determine, whether persons are fit to hold a consumer credit licence. In addition, section 4 CCA requires us, where appropriate or expedient, to disseminate information and advice about the operation of the CCA, the credit facilities available to consumers and other matters within the scope of our functions.
- 2.12 The OFT, together with local authority Trading Standards Services (LATSS), has powers to enforce the CCA including under Part 8 of the Enterprise Act 2002 where there may be harm to the collective

²⁰ *Irresponsible lending – OFT guidance for creditors* (OFT1107), March 2010 (updated February 2011) – www.of.gov.uk/shared_of/business_leaflets/general/of1107.pdf

interest of consumers. In addition, action can be taken under the credit licensing regime which enables us to (amongst other things) impose requirements under section 33A CCA or to revoke a licence.

- 2.13 The OFT and LATSS also have enforcement powers under other consumer protection legislation such as the Unfair Terms in Consumer Contracts Regulations (UTCCRs) and the Consumer Protection from Unfair Trading Regulations (CPRs).

Structure of guidance

- 2.14 This guidance is concerned particularly with the situation where a credit agreement is offered with an option to elect for debt freeze or debt waiver, upon payment of a fee or other consideration, and where the effect of the exercise of the option is to modify the terms of the credit agreement so that different provisions as to repayment apply upon the occurrence of certain specified events than would otherwise be the case.
- 2.15 The application of the CCA in such cases may differ as between unsecured and secured lending. This is because the changes to the CCA arising from implementation of the Consumer Credit Directive (CCD) do not generally apply to loans secured on land.²¹ It should be noted, however, that if the creditor under a secured loan elects to provide pre-contractual information in accordance with the CCD regulations, the credit agreement must comply with relevant requirements as to the form and content of agreements and calculation of the annual percentage rate of charge (APR).
- 2.16 The following sections start by considering how the APR should be calculated for secured and unsecured credit. This is followed by a consideration of different CCA provisions as they relate to progressive stages of a credit transaction.
- 2.17 The concluding sections of the guidance set out illustrative examples of business practices which the OFT is likely to regard as unfair or improper, whether unlawful or not, for the purposes of the fitness test under the CCA licensing regime.

APR calculation

- 2.18 For **secured** credit, the Consumer Credit (Total Charge for Credit) Regulations 1980 provide that the total charge for credit (TCC) includes any charge at any time payable under the transaction by or on behalf of the debtor, subject to some limited exceptions.
- 2.19 The application of these provisions was considered by the Court of Appeal in the case of *Humberclyde Finance Ltd v Thompson*.²² This concerned a payment waiver option covering payments in the event of the consumer's death. The court concluded that the fee for the option was 'payable under the transaction' for the purposes of the 1980 regulations even though the facility was optional rather than mandatory.

²¹ See the BIS Guidance on the CCD implementing regulations (see Glossary of terms).

²² [1997] CCLR 23.

- 2.20 The 1980 regulations continue to apply to most secured credit and have not been amended in this regard. On the basis of the *Humberclyde* judgement, it appears to us that any fee for optional debt freeze/waiver must be included in the TCC (and hence APR) for a secured loan agreement even if the consumer does not exercise the option.
- 2.21 For **unsecured** credit²³, the 1980 regulations have been superseded by the Consumer Credit (Total Charge for Credit) Regulations 2010. These adopt a different approach to calculation of the TCC, which is stated to comprise all costs (other than notarial costs) which are known to the creditor and are required to be paid by or on behalf of the debtor or a relative in connection with the credit agreement, whether payable to the creditor or to any other person.
- 2.22 In our view, where debt freeze/waiver is offered as an option, the creditor is in effect offering two separate agreements – one with debt freeze/waiver terms and the other without. Any fee or other financial consideration payable in order for the consumer to obtain the debt freeze/waiver terms is, in our view, compulsory and therefore required to be paid; unless this fee is paid the terms would not be available. As a result, such fee should be included in the TCC and APR for that agreement.
- 2.23 A parallel may be drawn with the OFT's 2000 note on *Discounted APRs and PPI*.²⁴ This related to situations where loans were offered with or without PPI but where a reduced interest rate applied if the consumer opted for PPI. The note stated:

“Where a lender offers loans with or without PPI, and with an interest rate discount where PPI is taken out, there are in the Office’s view two separate agreements or classes of agreement, each of which falls to be considered separately for the purposes of the Regulations. The borrower remains free to decide whether or not to take out a loan with PPI – but the interest rate discount is available only if he does so. There is a clear link between the offer of PPI and the offer of credit on alternative terms and conditions (namely a lower rate of interest), and the fact that the terms and conditions of the credit offered are different in each case means that there are two different credit agreements. Under the agreement with the lower rate of interest, the PPI is in effect mandatory, and its cost therefore falls to be included in the total charge for credit”.

Advertising

- 2.24 For **secured** credit, the Consumer Credit (Advertisements) Regulations 2004 require an indication of the typical APR where triggered.²⁵ This must be an APR at or below which the advertiser reasonably expects that credit will be provided under at least 66% of agreements resulting from the advertisement.
- 2.25 As above, the *Humberclyde* judgment suggests that the cost of debt freeze/waiver must be included in the TCC and APR for a secured loan agreement even if it is optional. By the same token it must be factored into the typical APR in advertising.
- 2.26 For **unsecured** credit, the Consumer Credit (Advertisements) Regulations 2010 require a representative example where triggered, including a representative APR. This must be an APR at or

²³ References to ‘unsecured credit’ should be taken to include secured credit where the creditor has elected to comply with CCD requirements, see paragraph 2.15 above.

²⁴ *Discounted APRs and PPI* (28 February 2000).

²⁵ A typical APR (or representative APR) is triggered if the advertisement includes specified information.

below which the advertiser reasonably expects that credit will be provided under at least 51% of agreements resulting from the advertisement.

- 2.27 As above, we take the view that where debt freeze/waiver is offered as an option, the creditor is in effect offering two separate agreements, one with and one without debt freeze/waiver. In the former case, the cost of the facility will be included in the TCC and APR for the agreement. In determining the representative APR, therefore, the advertiser should take into account the proportion of agreements resulting from the advertisement which are expected to include debt freeze/waiver.
- 2.28 For example, if the advertiser expects 60% of consumers to opt for debt freeze/waiver, the cost of the facility must be included in the representative APR. On the other hand, if only 30% of consumers are expected to do so, the representative APR can be based on agreements without debt freeze/waiver (although the advertiser may show a higher APR if he wishes, for example if he is unsure as to the likely mix of business).
- 2.29 If the representative APR includes the cost of debt freeze/waiver, this should also be factored into the remainder of the representative example, including the nature and amount of TCC charges, the amounts of repayments and the total amount payable. The information must be clear and concise, using plain and intelligible language. Other information may also need to be included in the advertisement, to avoid misleading consumers contrary to the CPRs.²⁶
- 2.30 Breach of the Advertisements Regulations is a criminal offence, and may lead to enforcement action or the taking of 'fitness' action under the credit licensing regime.

Pre-contract information

- 2.31 For **secured** credit, the applicable regime depends upon whether the agreement is subject to section 58 CCA (opportunity for withdrawal from prospective land mortgage). If not, the agreement will be subject to the Financial Services (Distance Marketing) Regulations 2004 (distance sales) or the Consumer Credit (Disclosure of Information) Regulations 2004 (non-distance sales), unless the creditor chooses to operate under the regime applicable to unsecured credit.²⁷
- 2.32 Where the Disclosure Regulations apply, the prescribed information that must be provided includes the APR, the TCC with a list of its constituent parts, the total amount payable and the amounts of repayments. As above, these should include any fee for debt freeze/waiver given the *Humberclyde* judgment. Where the Distance Marketing Regulations apply, the prescribed information similarly includes the main characteristics of the credit and the total price to be paid by the consumer.
- 2.33 For **unsecured** credit, pre-contract disclosure is required under the Consumer Credit (Disclosure of Information) Regulations 2010. In most cases this involves provision of a Pre-contract Credit Information (PCI) form. This must be provided 'in good time' before the consumer enters into a relevant agreement, and the information must be clear and easily legible. The consumer must be able to take the form away so that he can consider the information and shop around if he wishes.

²⁶ See also *Consumer Protection from Unfair Trading Regulations 2008* (March 2008) – www.of.gov.uk/shared_of/business_leaflets/cpreqs/oft1008.pdf

²⁷ See paragraph 2.15 above.

- 2.34 As above, if a creditor is offering credit with and without debt freeze/waiver, we consider that this amounts to two separate agreements. A separate PCI form should, in our view, be provided in each case, unless the consumer has indicated clearly that he does (or does not) intend to opt for debt freeze/waiver. If he has, it will be sufficient to provide only one PCI form covering the agreement into which he wishes to enter. However, if he changes his mind subsequently, a PCI form covering the appropriate agreement should be provided in good time before the agreement is entered into.
- 2.35 The cost of debt freeze/waiver will be included in the TCC and APR, and in the total amount payable and the periodic repayments, stated in the PCI form relating to the agreement with the debt freeze/waiver. In our view, the PCI form should make clear that exercise of the option is necessary to obtain the credit terms in question. It may be necessary to elaborate on this, in a separate document, to avoid misleading the consumer contrary to the CPRs.
- 2.36 Breach of the Disclosure Regulations renders an agreement unenforceable without a court order, and may also lead to enforcement action by the OFT or LATSS. When considering whether to make an order, the court is required by section 127 CCA have regard to any prejudice caused to consumers by the contravention and the degree of culpability for it.

Adequate explanations

- 2.37 For **unsecured** credit, section 55A CCA requires the provision of a pre-contractual explanation before a credit agreement is entered into. This must be adequate in order to enable the consumer to assess whether the proposed agreement is adapted to his needs and his financial situation. There is no equivalent requirement in relation to credit agreements secured on land, but we would expect **all** creditors to highlight key risks and other key information to the consumer before a credit agreement is made.²⁸
- 2.38 An explanation under section 55A must cover:
- the features of the agreement which may make the credit unsuitable for particular types of use;
 - how much the consumer will have to pay periodically and, where the amount can be determined, in total under the agreement;
 - the effect of the exercise of any right of withdrawal and how and when this may be exercised;
 - the features of the agreement that may operate in a manner which would have a significant adverse effect on the consumer in a way which he is unlikely to foresee; and
 - the principal consequences for the consumer arising from a failure to make payments under the agreement at the times required by the agreement.

²⁸ See the text box at the beginning of chapter 3 of the Irresponsible Lending Guidance.

- 2.39 In addition, the consumer must be advised to consider the PCI and, where this is disclosed in person, that he can take it away, and how to ask the creditor for further information or explanation. The consumer should be given an opportunity to ask questions (and be given adequate answers) before entering into the agreement.
- 2.40 In certain circumstances, aspects of the explanation and advice must be given orally to the consumer (in other circumstances the creditor is free to decide whether to give the explanation orally and/or in writing). This applies where any of the matters in the first three bullets above is explained orally or in person to the consumer. In such cases, the fourth and fifth bullets must be explained orally, and in addition the consumer must be advised orally to consider the PCI and that he can take it away.²⁹
- 2.41 Where debt freeze/waiver is an option, we would expect this feature of the agreement to be stated as part of a pre-contractual explanation. This should include, in particular, the associated costs and how exercise of the option may impact on the operation of the agreement and the periodic repayments.
- 2.42 If debt freeze/waiver may operate in a way that the consumer might not reasonably expect, and to his disadvantage, this should be made clear. For example, there may be restrictive provisions regarding the scope of coverage or the triggering events, or regarding the extent of evidence required in support of a claim.
- 2.43 Failure to comply with section 55A or to have appropriate regard to the Irresponsible Lending Guidance may lead to enforcement action and could be taken into account in considering fitness to hold a credit licence.

Creditworthiness and affordability

- 2.44 For **unsecured** credit, section 55B CCA requires the creditor to undertake an assessment of creditworthiness before entering into a credit agreement or before increasing significantly the amount of credit.
- 2.45 In addition, the Irresponsible Lending Guidance sets out what we would expect from creditors with regard to assessing affordability – that is, the consumer’s ability to undertake a specific credit commitment in a sustainable manner and without incurring (further) financial difficulties and/or experiencing adverse consequences.³⁰ In our view, such an assessment should take into account any debt freeze/waiver charges.
- 2.46 Failure to undertake a proper assessment of affordability could be taken into account in considering fitness to hold a credit licence.

²⁹ See chapter 8 of the BIS Guidance and chapter 3 of the Irresponsible Lending Guidance.

³⁰ See chapter 4 of the Irresponsible Lending Guidance.

Credit agreement

- 2.47 For **secured** credit, the agreement must comply with the Consumer Credit (Agreements) Regulations 1983. As above, the cost of debt freeze/waiver will be included in the APR even if the consumer does not exercise the option.
- 2.48 For **unsecured** credit, the agreement must comply with the Consumer Credit (Agreements) Regulations 2010. These require certain information to be included in the credit agreement, and this must be clear and concise and easily legible. In such cases the position will depend upon whether the consumer exercises the debt freeze/waiver option at the time he enters into the agreement. If he does, the cost will be included in the TCC and APR and the total amount payable and other financial details.
- 2.49 Breach of the Agreements Regulations renders an agreement unenforceable without a court order, and may lead to enforcement or licensing action.

Unfair or improper business practices

- 2.50 The above sections set out the OFT's view with regard to the application of the CCA regime in relation to a typical debt freeze/waiver facility, or any arrangement between the creditor and the debtor to an equivalent effect.³¹
- 2.51 In addition, the following is a **non-exhaustive** list of practices that we would be likely to regard as unfair or improper in relation to debt freeze/waiver and so may impact on fitness to be licensed. These may also apply, where relevant, to other payment protection products or services, whether offered by the creditor or a third party. As noted above, some of the principles relating to transparency of cost and status may apply where, for example, a third party offers debt adjusting services.³²
- 2.52 The practices in question include:
- Misrepresenting the nature and extent of the facility, or the associated terms and costs, or failing to explain these adequately. For example, by giving undue prominence to the benefits as compared to the costs and any restrictions or limitations.
 - Pressurising the consumer to opt for the facility or offering undue incentives to do so. For example, by implying that the facility is mandatory (where this is not the case) or that opting for it will impact on the creditor's decision to offer credit.
 - Misrepresenting the position if the consumer does not opt for the facility. For example, by suggesting that debt recovery procedures will be initiated when this is unlikely to be the case, for example because the creditor has a policy of not pursuing debts in certain circumstances or has undertaken as part of an industry code or agreement to show forbearance in the event of payment difficulties.

³¹ Such an arrangement may involve a modification of the credit agreement within section 82(2) CCA.

³² See paragraph 2.3 above, and the OFT's Debt Management Guidance.

- Failing to make clear how the facility will operate and the associated procedures and implications, for example in relation to the triggering events and claims process.
- Failing to make clear any significant exclusions or limitations on eligibility or any restrictions on the benefits available to the consumer.
- Failing to have proper regard to the consumer's needs and circumstances, particularly where advice is offered.
- Imposing excessive or disproportionate requirements on the consumer, for example in relation to the evidence required in support of a claim.
- Unduly restricting the consumer's ability to draw down credit in the event of a claim (for example by suspending the right to use a credit card without good reason).
- Unduly restricting the consumer's ability to opt out of or cancel the facility, or to switch to an alternative product without such a facility, or imposing charges for doing so which are excessive or disproportionate.
- Inadequate procedures for enabling the consumer to ask questions or to obtain further information or explanation, or in relation to complaints handling.
- In cases where a third party is involved, failing to make clear any relationship between the parties which may impact on advice offered and/or the service provided.

2.53 In some cases such practices may also be actionable under other legislation, such as the CPRs or UTCCRs, or may give rise to or contribute to an unfair relationship within section 140A CCA.

Regulatory compliance

2.54 We will expect licensees to have regard to this guidance (once finalised), and all other relevant guidance, in any activities involving debt freeze/waiver or other payment protection products, and to comply fully with all relevant legislative requirements.

Annex 3: Glossary of terms

3.1 This Annex sets out the definitions of certain terms used in this document, and clarifies the scope of other terms where appropriate.

Term	Definition/Notes
Advertisements Regulations	The Consumer Credit (Advertisements) Regulations 2004 or the Consumer Credit (Advertisements) Regulations 2010, as applicable.
Agreements Regulations	The Consumer Credit (Agreements) Regulations 1983 or the Consumer Credit (Agreements) Regulations 2010, as applicable.
APR	Annual percentage rate of charge.
BIS	The Department for Business Innovation & Skills.
BIS Guidance	<i>Consumer Credit Regulations – Guidance on the regulations implementing the Consumer Credit Directive (August 2010) –</i> www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1053-consumer-credit-directive-guidance.pdf
CC	The Competition Commission.
CC's Order	<i>The Payment Protection Insurance Market Investigation Order 2011 –</i> www.competition-commission.org.uk/inquiries/ref2010/ppi_remittal/pdf/PPI_Market_Investigation_Order_(2011).pdf See also the <i>Explanatory Note to accompany the Payment Protection Insurance Market Investigation Order 2011</i> .
CCA	The Consumer Credit Act 1974 and associated regulations.
CCD	The Consumer Credit Directive – <i>Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.</i>
Consumer	In the case of a credit agreement, this includes an actual or prospective debtor (or the hirer under a hire-purchase or consumer hire agreement where applicable).
Cover	The risks against which the consumer is protected and/or the benefit offered by a payment protection product (whether insurance or non-insurance).
CPRs	The Consumer Protection from Unfair Trading Regulations 2008.
Credit agreement	An agreement which is regulated by the OFT under the CCA. This includes second charge mortgages and consumer hire agreements where applicable

Creditor	The person providing credit under a credit agreement or RMC or the person to whom the original creditor's rights or obligations have transferred. It includes the owner under a hire-purchase or consumer hire agreement where applicable.
Debt freeze	Any arrangement under which a creditor agrees to temporarily suspend all or part of the debtor's obligation to make payments under a credit agreement or RMC on the occurrence of specified events (e.g. sickness). This may be limited to interest and other charges or may extend to capital repayments. Interest may or may not continue to accrue during this period, and no part of the existing debt is cancelled – the debtor's obligation to make payments resumes upon expiry of the period, and the duration of the agreement is typically extended. The forbearance would typically be in return for some form of payment (such as a fee or a higher interest rate). Sometimes referred to as 'debt suspension'.
Debt Management Guidance	<i>Debt Management Guidance</i> (OFT366), September 2008, as proposed to be revised – see – www.of.gov.uk/OFTwork/consultations/closed-awaiting/debt-management-guidance/
Debt waiver	Any arrangement under which a creditor agrees to waive interest and/or charges for a period on the occurrence of specified events. In effect, the interest and charges are cancelled and do not become payable subsequently. Part of the existing debt may also be cancelled. As for debt freeze, some form of payment would typically be made. Sometimes referred to as 'debt cancellation'.
Debtor	The person receiving credit under a credit agreement or RMC or the person to whom his rights and duties have passed by assignment or operation of law.
Disclosure Regulations	The Consumer Credit (Disclosure of Information) Regulations 2004 or the Consumer Credit (Disclosure of Information) Regulations 2010, as applicable.
Distance Marketing Regulations	The Financial Services (Distance Marketing) Regulations 2004.
Firm	References to 'firms' include (for OFT-regulated firms) sole traders, partnerships and other unincorporated bodies where these are licensees or applicants for licences under the consumer credit licensing regime.
FSA	The Financial Services Authority.
FSMA	The Financial Services and Markets Act 2000.
Handbook	The FSA's Handbook of rules and guidance.
ICOBS	The <i>Insurance: Conduct of Business sourcebook</i> module of the Handbook.
Insurer	A firm with permission to effect or carry out contracts of insurance.

Irresponsible Lending Guidance	<i>Irresponsible Lending – OFT guidance for creditors</i> (OFT1107), March 2010 (updated February 2011) – www.of.gov.uk/shared_of/business_leaflets/general/of1107.pdf
LATSS	Local Authority Trading Standards Services.
MCOB	The <i>Mortgages and Home Finance: Conduct of Business sourcebook</i> module of the Handbook.
MI	Management information.
OFT	The Office of Fair Trading.
Payment protection products	Products or product features which are designed to offer consumers short-term protection in case of loss of income, by providing the means for them to meet their financial obligations under an RMC or credit agreement.
PCI	Pre-contract credit information.
Policyholder	The person who for the time being is the legal holder of an insurance policy, including any person to whom, under the policy, a sum is due, a periodic payment is payable or any other benefit is to be provided or to whom such a sum, payment or benefit is contingently due, payable or to be provided.
PPI	Payment protection insurance
Principles	The 11 Principles for Businesses set out in PRIN 2.1.1R.
RMC	Regulated mortgage contract – a first charge mortgage which is regulated by the FSA under FSMA.
Regulatory framework	Financial Services and Markets Act 2000 (FSMA) <u>or</u> the Consumer Credit Act 1974 (CCA).
RPPD	The FSA’s regulatory guide <i>The Responsibilities of Providers and Distributors for the Fair Treatment of Customers</i> .
STIP	Short-term income protection – A contract of insurance which provides a pre-agreed amount paid directly to the Policyholder or the Policyholder's nominee in the event the Policyholder experiences involuntary unemployment or incapacity as a result of accident or sickness and may be combined with other forms of insurance cover or include other benefits and which: <ul style="list-style-type: none"> (a) has a maximum time-limited benefit duration; (b) is written for a term which is less than 5 years and not predetermined by the term of any credit agreement or RMC; and (c) can be terminated by the Insurer.

	(This mirrors the CC's definition of STIP).
SYSC	The <i>Senior Management Arrangements, Systems and Controls</i> module of the Handbook.
TCC	Total charge for credit.
TCC Regulations	The Consumer Credit (Total Charge for Credit) Regulations 1980 or the Consumer Credit (Total Charge for Credit) Regulations 2010, as applicable.
TCF	The FSA's <i>Treating Customers Fairly</i> initiative.
UTCCRs	The Unfair Terms in Consumer Contracts Regulations 1999.

Annex 4: Data use statement

- 4.1 This Annex sets out the approach that the FSA and the OFT will take to handling information supplied in response to this consultation:
- 4.2 It is the policy of the FSA and the OFT to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. If you consider that your response, or any aspect of it, should be treated confidentially, the relevant information should be marked 'confidential information' and an explanation given as to why you consider it is confidential. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.
- 4.3 We will consider all such requests on their merits, and where appropriate, in accordance with Part 9 of the Enterprise Act 2002 or section 348 of FSMA. In particular, we will have regard to the need for excluding from publication, as far as that is practicable, any information relating to the private affairs of an individual or any commercial information relating to a business which, if published, would or might, in our opinion, significantly harm the individual's interests, or, as the case may be, the legitimate business interests of that business.
- 4.4 Please note however that information provided in response to this consultation, including personal information, may be the subject of requests from the public for information under the Freedom of Information Act 2000. In considering such requests for information we will take full account of any reasons provided by respondents in support of confidentiality.
- 4.5 Personal data received in the course of this consultation will be processed in accordance with the Data Protection Act 1998.