

## Guidance consultation

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

March 2012



### What this guidance is about

Firms should be undertaking an analysis of complaints about the previous sale of PPI policies. Where firms have identified that they may have mis-sold PPI policies, they may be contacting consumers to alert them and to advise that they may be entitled to some 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.<sup>1</sup>

In this guidance we refer to letters or other types of communications (made in a durable medium<sup>2</sup>) 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.

This guidance also sets out our view of how our rules on complaint handling and the time limits on a consumer making a complaint<sup>3</sup> are relevant to PPI CCLs. It also covers some other relevant obligations such as record keeping.

### Background to this Guidance

#### *Policy Statement 10/12 (August 2010)*

In August 2010, we adopted a package of measures in response to our serious concerns about widespread weaknesses in previous PPI selling practices and the detriment this was likely to have caused to a significant number of consumers. Part of this package was new Handbook guidance on the fair assessment and redress of

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<sup>1</sup> Firms should note that carrying out a customer contact exercise may not be the only appropriate approach. In some cases stronger actions may be more appropriate (for example moving directly to offers of redress to a specific set of non-complainants without a prior contact exercise and invitation to respond). PS10/12, p30.

<sup>2</sup> Such as a communication in a paper format or durable electronic format.

<sup>3</sup> 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).

complaints about PPI sales. However, we also had concerns about those consumers who may have been affected by these selling practices but have not complained (non-complainants). The new Handbook guidance also set out our expectations that:<sup>4</sup>

- a firm should analyse the ‘root causes’ of PPI complaints it receives;
- where such analysis suggests recurring or systemic problems in the firm’s sales practices, the firm should, in line with Principle 6 (Treating Customers Fairly), consider whether it should act where customers may have suffered detriment from such problems but not complained;<sup>5</sup> and
- the firm should consider, in particular, whether it is fair and reasonable to proactively undertake a redress or remediation exercise, which may include contacting customers who have not complained.

We set out our view<sup>6</sup> that the new guidance on root cause analysis was likely to result in a major customer contact exercise by some firms within the PPI sector. We considered that such contact exercises would make a substantial contribution (between £1.1bn and £3.2bn) to the total consumer redress that we estimated would result from our overall package of measures.

We said that we would not generally expect firms to commence any such exercises for at least six months after the publication of that guidance (ie in Q2 2011). This was to give firms time to prioritise the fair handling of PPI complaints.

### Subsequent events

The subsequent legal challenge to our guidance by the British Bankers’ Association delayed this timetable, with many firms only starting significant work on improving their PPI complaint handling once the High Court dismissed the challenge in April 2011.

Firms have had adequate time since then to improve their PPI complaint handling and to progress root cause analysis for at least some of their past PPI products and sales channels. So we now expect to see targeted customer contact exercises (or other fair and appropriate actions) getting underway.

We have become aware that a number of firms, having started their PPI root cause analysis, will soon begin contacting some of their PPI customers who have not complained. As a result we think it is appropriate to produce this guidance to ensure that firms send PPI CCLs that are clear, fair and not misleading.

Some firms have also asked us whether the content of their PPI CCLs would limit the time that a consumer has to make a PPI complaint and have its merits considered by both the firm and the Financial Ombudsman

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<sup>4</sup> See DISP Appendix 3, section 3.4 – the guidance is further to DISP 1.3.3R and to Principle 6 (Customers’ interests)).

<sup>5</sup> Limitations on our powers concerning most PPI sales made before 14 January 2005 mean we cannot necessarily expect most firms to consider the position of non-complainants who were sold PPI before that date and may have been affected by recurrent sales failings on the part of the firm.

<sup>6</sup> PS 10/12, Annex 1, Cost-benefit analysis, para 6 CBA.

Service (FOS). Our rules concerning complaint time limits<sup>7</sup> 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*.

These are important questions for consumers and firms. For consumers, it is vital that they receive information that is clear and fair about the:

- potential PPI mis-sale that may have affected them; and
- steps they may need to take for the firm to remedy this.

Firms have a legitimate interest in being able to plan for the potential scale and duration of their future liabilities from PPI mis-sales.

We believe it is important for us to issue guidance to clarify our expectations in these areas. This will help firms to promptly undertake effective customer contact exercises and help ensure customers are given a proper opportunity to obtain redress.

We will review the fairness and effectiveness of firms' actions and communications in due course.<sup>8</sup>

### Cost benefit analysis

We expect no material compliance costs to firms from implementing our proposed guidance because many already intend<sup>9</sup> to send customer contact letters. Issuing guidance as to the content of those letters is not expected to cause any material additional costs for such firms.

Ensuring clarity for firms and consumers about when the time limit for bringing a complaint may start, will allow firms (and the FOS) to plan more effectively and mitigate the need for firms to make provision for contingent liabilities. While this is a benefit to firms, it is not expected to significantly affect consumers' ability to obtain appropriate redress. At the same time, the clarity and content of the customer contact letters are likely to benefit consumers. We do not expect any material additional costs to non-PPI firms as a result of our proposed guidance.

A small number of firms have already sent PPI CCLs on a pilot basis. But we do not expect there would have been a substantial number of PPI CCLs already sent. Given this, we expect the costs to the industry as a whole, of following this guidance, to be immaterial. We welcome feedback on this issue at the consultation stage.

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<sup>7</sup> DISP 1.8R and 2.8.2R

<sup>8</sup> Policy Statement PS10/12, (at para 4.6)

<sup>9</sup> In light of our previous guidance at 3.4 of DISP App 3

Firms should also consider whether, in line with their obligations under Principle 6, it would be appropriate for them to send one or more reminder letters to customers who have not responded within a reasonable time of sending the PPI CCL. This is consistent with our existing expectations about customer contact letters and exercises more generally (for example in relation to other Past Business Reviews about matters other than PPI). Therefore, we expect no additional material compliance costs to firms as a result of the proposed guidance.

We consider this guidance is proportionate and balances appropriately the interests of consumers and firms.

### DRAFT GUIDANCE

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 complaint<sup>10</sup> 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 complaints<sup>11</sup> should set out a clear and fair explanation of the following matters:<sup>12</sup>

**(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.

If the firm has specific information available about the sale which may help the customer assess whether they have been affected by the failing, this should also be set out clearly in the letter (for

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<sup>10</sup> 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).

<sup>11</sup> Which should include consideration of the matters set out in DISP App 3.4.1G.

<sup>12</sup> 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).

example a copy of the key features of the PPI policy in question or other key point of sale documents relating to its sale).

**(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) a broad explanation, 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 and include sufficient warning that the amount of loss (and, accordingly, the potential redress) resulting from a potential mis-sale is unlikely to be 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.

**(f) The consequences of the customer *not* taking the invited action promptly.** The PPI CCL 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 and that if they do not, the time limit for them to bring a complaint may have started to run.

**(g) 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.

**(h) 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.

#### **Time limits for complaining**

2. Our rules concerning complaint time limits<sup>13</sup> 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.*
3. 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.
4. 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.
5. 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

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<sup>13</sup> DISP 1.8R and 2.8.2R

- 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.
6. 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).
7. 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.
8. Where a firm decides it can appropriately reject the individual complaint as out of time, the firm must comply with its obligation<sup>14</sup> 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**

9. In our view, it is likely that 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 likely to be a complaint for the purpose of firms' complaint-handling obligations under our rules (DISP).

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<sup>14</sup> See DISP 1.8.1R.



10. However, if a firm's PPI CCL invites consumer responses that are not 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:

- 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**

11. Firms will wish (and we would expect them, in line with their obligations under Principles 6 and 7 and SYSC<sup>15</sup>) 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; any response made by the customer; and the subsequent actions taken by the firm.

12. 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.

13. In our view, firms should, in line with Principle 6, consider whether it would be appropriate for them to send one or more reminder letters to those customers who have not responded within a reasonable time of sending the PPI CCL.

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<sup>15</sup> 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).