Financial Conduct Authority

Policy Statement

PS17/3

Payment protection insurance complaints: feedback on CP16/20 and final rules and guidance

March 2017

Contents

In this Policy Statement we report on the main issues arising from the further consultation in Consultation Paper 16/20 *(Rules and guidance on payment protection insurance complaints)* and publish final rules and guidance.

Please send any comments or enquiries to:

Sian Dvorkin and Julian Watts
Specialist Supervision Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Email: cp16-20@fca.org.uk

We have carried out this work in the context of the existing UK and EU regulatory framework. We will keep it under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

All our publications are available to download from www.fca.org.uk. If you would like to receive this paper in an alternative format, please call 020 7066 0790 or email publications_graphics@fca.org.uk or write to: Editorial and Digital team, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.

Abbreviations in this paper

ADR	alternative dispute resolution
CBA	cost benefit analysis
CC	Competition Commission
CCA	Consumer Credit Act 1974
CMC	claims management company
CMR	Claims Management Regulator
DSAR	data subject access request
DISP	Dispute resolution: Complaints sourcebook
EIA	equality impact assessment
FCA	Financial Conduct Authority
FEES	Fees manual
FSA	Financial Services Authority (the regulatory body preceding the FCA and Prudential Regulatory Authority)
FSCS	Financial Services Compensation Scheme
FSMA	Financial Services and Markets Act 2000
GCL	Goss Consulting Ltd
ICO	Information Commissioner's Office
ICOB	Insurance: Conduct of Business sourcebook
ICOBS	Insurance: New Conduct of Business sourcebook
IPT	insurance premium tax
KPI	key performance indicator
MoJ	Ministry of Justice
Plevin	Supreme Court judgment in *Plevin v Paragon Personal Finance Ltd* [2014] UKSC 61
PPI	payment protection insurance
Principles	FCA's Principles for Businesses

s.140A	section 140A of the CCA, which came into force in 2007
s.140B	section 140B of the CCA, which came into force in 2007
s.140C	section 140C of the CCA, which came into force in 2007
s.404	section 404 of FSMA, which, as revised, came into force in 2010

1. Foreword

1.1 Payment protection insurance (PPI) developed into the biggest issue of financial mis-selling in recent years and has significantly damaged trust in financial institutions. Ensuring that firms put things right by handling PPI complaints fairly is vital to rebuilding public confidence.

1.2 The current rules and guidance about PPI complaint handling have been in place since December 2010. They have been supported by an intensive project of data gathering, supervisory monitoring and assessment, and enforcement actions. This work has led to significant improvements in firms' handling of PPI complaints, with firms currently upholding around 80%.[1] Firms have also sent over 5.5m letters to customers they had identified as being at high risk of having suffered a past mis-sale but who had not complained, inviting them to do so. Overall, since 2011, firms have handled over 18.4 million PPI complaints and paid over £26 billion in redress.

1.3 However, some consumer bodies asked for more to be done to help consumers to understand the potential issues and complain if dissatisfied. And some firms raised concerns that the redress exercise was being accompanied by less positive trends. Also, some uncertainty was created by the Supreme Court judgment in *Plevin v Paragon Personal Finance Limited*[2] *(Plevin)*.

1.4 These matters led us to consider whether further FCA intervention in the PPI issue was required. Having gathered considerable evidence from consumers and firms, we concluded that it was. We proposed a package of measures comprising a deadline for new PPI complaints, an FCA-led consumer communications campaign, a campaign fee rule, and new rules and guidance on handling PPI complaints in light of *Plevin*.

1.5 We have been consulting on this package since November 2015. Throughout this process, our proposals have elicited strong and polarised views. Many responses from consumer bodies and claims management companies (CMCs) do not agree there should be any deadline and suggest that any campaign should be more extensive and include letter-writing to consumers. Responses from industry mostly support a deadline, but some suggest it should start sooner and be shorter, and some say the campaign is unnecessarily ambitious and expensive. Similarly, many responses from industry said our approach to *Plevin* is too generous to consumers in its scope and approach to redress, whereas most responses from consumer bodies and CMCs said our approach is unfair to consumers and gives too little redress.

1 It also led a number of firms to reassess various sets of PPI complaints which they rejected in earlier periods when their approach to PPI complaint handling was not as robust and well controlled.

2 The Supreme Court issued its decision in November 2014. It ruled that the failure by the lender to disclose to Mrs Plevin the large commissions payable out of her PPI premium made its relationship with her unfair under section 140A of the Consumer Credit Act 1974 (s.140A).

1.6 We have carefully considered all these views and have made some changes in light of them, to better achieve our objectives. For example, in our final rules and guidance, we now require firms to write to all previously rejected PPI complainants who may be able to make a further complaint in light of *Plevin*. This will help consumers who may have disengaged from the PPI issue, because they were rejected in the past, to re-engage and consider complaining again.

1.7 We have not, however, seen convincing arguments which mean we should change our approach fundamentally. Confidence and certainty are key to ensuring markets work well and we still believe that the deadline and campaign will help ensure this for both consumers and firms. Our research found that the perceived open-ended nature of the PPI redress exercise does not incentivise consumers to check if they had PPI or consider whether to make a complaint. Our campaign and deadline will prompt many into action, resulting in some of those consumers potentially getting redress sooner, and giving some of them the opportunity to pay off more costly debt. This intervention will also mitigate and limit the less positive trends we identified, including the growing proportions of complaints that were about older PPI sales, or from consumers who had never been sold PPI, or made via CMCs.

1.8 The *Plevin* decision introduced a significant new uncertainty into an already uncertain landscape, where the long tail of PPI complaints looked set to continue. So we have used our regulatory judgement to create a framework that we believe will reduce uncertainty and enable firms to take a fair and consistent approach to handling PPI complaints. This will help ensure the best outcomes for consumers at the earliest stage in the complaint process, and will make it easier for us to act if we become concerned that firms are not handling complaints appropriately.

1.9 We believe that this final package of measures will bring the PPI issue to an orderly conclusion and help bring finality and certainty in a way that is compatible with our strategic objective of making markets work well, and advances our operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

1.10 We will continue to monitor and challenge firms to ensure they deliver the further improvements to the PPI customer complaints journey they have committed to and deal fairly and promptly with all PPI complaints made in time. We will take action where firms fail to act fairly.

2.
Overview

Purpose of this policy statement

2.1 This Policy Statement completes the PPI consultation process we began in CP15/39[3] (November 2015) and continued in CP16/20[4] (August 2016). We received 119 responses in total to the two consultations. Having carefully considered all this feedback, we set out here our definitive way forward, including final rules and guidance (see the legal instrument at Appendix 1), as follows:

- a new rule that sets a deadline by which consumers will need to make their PPI complaints or lose their right to have them assessed by firms or by the Financial Ombudsman Service; this rule will come into force on 29 August 2017, with the deadline falling on 29 August 2019
- an FCA-led communications campaign designed to inform consumers of the deadline, which will start when the deadline rule comes into force on 29 August 2017
- a new fee rule on 18 firms to fund this consumer communications campaign, which will come into force on 31 March 2017, with the first half of the fee collected one month later
- new rules and guidance on the handling of PPI complaints in light of the Supreme Court's decision in *Plevin*: these come into force on 29 August 2017, giving more time than we had originally proposed for firms to prepare to implement our approach, particularly concerning profit share, which we have included, and for us to commence relevant supervisory work

2.2 The main changes we have made, relative to our proposals in CP16/20, are to:

- require firms that sold PPI to write to previously rejected mis-selling complainants who are eligible to complain again in light of *Plevin*, in order to explain this to them[5]
- not apply the deadline to future complaints which concern a rejected claim on a live PPI policy, if the claim was rejected for reasons connected to the sale, such as ineligibility, exclusions or limitations

2.3 Chapters 3 and 4 discuss in detail the feedback to CP16/20 on the proposed deadline, fee and campaign, and *Plevin* rules and guidance, respectively. Chapter 5 discusses next steps.

3 www.fca.org.uk/publication/consultation/cp15-39.pdf
4 www.fca.org.uk/publication/consultation/cp16-20.pdf
5 Note that the deadline will still apply to these consumers whether or not they are meant to receive such a letter or do so

Who should read this document?

2.4 This policy statement will be of interest to:

- consumers who were - or may have been - sold PPI
- consumer organisations and CMCs or other paid advocates who take forward complaints about PPI on behalf of consumers or otherwise help them
- firms that sold PPI and/or provided credit agreements which PPI covered
- anyone interested in the FCA's performance and accountability

What this means for consumers

2.5 Consumers who are unsure whether they had or have PPI should act now and check their paperwork or contact their provider without delay.

2.6 Consumers who are unhappy about the PPI they were sold should act now and complain to the firms concerned as soon as possible. They have until 29 August 2019 at the *latest* to do so.

2.7 But some consumers may run out of time sooner. There are time limits under our existing rules which have already started to run or passed for some consumers who had or have PPI.[6]

2.8 For example, consumers who received a letter from their provider about potential mis-selling, or had a claim on the policy rejected, had 3 years from then to complain about mis-selling.

2.9 If they are not satisfied with firms' responses to their complaints, consumers should complain without delay to the Financial Ombudsman Service, which is a free service for them.

2.10 Consumers can make their complaints for free to firms and the Financial Ombudsman Service, unless they choose to use a CMC or other paid advocate, who will charge fees and/or take a share of any redress.

2.11 Information on PPI and how to complain is available currently on our website[7] and that of the Financial Ombudsman Service.[8]

2.12 Consumers should look out for our adverts when the campaign starts at the end of August. Our helpline and expanded information and functionality on our PPI website will also become available then, providing further information to help consumers check for PPI and decide whether to make a complaint.

2.13 Consumers who previously made complaints but were judged by firms or the Financial Ombudsman Service not to have been mis-sold, should receive by the end of 2017, if their PPI is in the scope of our new rules, a letter from the firm that sold them PPI explaining they can make a further complaint, in light of *Plevin*, about undisclosed commission.

6 In section 2.8 of the Dispute resolution: complaints module of our Handbook (DISP). Under these existing rules, consumers have 6 years from the event that dissatisfied them (eg a sale) to complain about it or, if it gives them longer, 3 years from the date, if any, at which they become aware, or reasonably ought to have become aware, that they had potential grounds to complain.

7 https://www.fca.org.uk/consumers/payment-protection-insurance/claim-mis-sold-ppi

8 http://www.financial-ombudsman.org.uk

What this means for firms

2.14 Until the final rules and guidance on PPI complaints and *Plevin* come into force, firms will still be able (under our existing complaint-handling rules) to explain to a complainant that they cannot yet provide a final response for complaints that could be affected.[9] When these rules and guidance do come into force, we will expect firms to provide fair and prompt final responses to complaints they had put on hold. We encourage firms to work with the Financial Ombudsman Service as they continue to progress cases relating to *Plevin,* to ensure that the outcomes they reach are consistent with the views of the Financial Ombudsman Service on what is fair and reasonable in all the circumstances of the case.

2.15 In the periods before and after our package of measures comes into force, we will take forward robust proactive supervisory engagement with firms, including continuing to monitor and challenge them to ensure that they deal fairly and promptly with PPI complaints, and cooperate with the Financial Ombudsman Service, until all complaints made in time have been appropriately assessed and responded to. We will take action where firms fail to act fairly.

2.16 We will provide further information about the campaign, to allow firms time to make operational preparations, ahead of the campaign launch in August 2017. We will be monitoring the campaign for its duration and will publish data on a regular basis. We will publish an interim report after one year, including an assessment of achievement against our measures and an update on supervisory activity, and a final report after the deadline. We will also track and monitor firm data on the numbers of complaints and enquiries, to give us a better understanding of the relationship between these and campaign activity.

Background on our consultation process and package of measures

2.17 In CP15/39 (November 2015)[10], we proposed the need for further intervention in the PPI issue and an appropriate package of measures.

2.18 The evidence we had collected over 2015, and which we set out in CP15/39, indicated that:

- a high and growing proportion of PPI complaints are about older PPI sales
- a significant proportion of PPI complaints turn out not to have involved a PPI sale at all
- a high and growing proportion of PPI complaints are made through CMCs, who charge complainants significant fees if redress is obtained

2.19 Our evidence also indicated that the perceived open-ended nature of PPI contributes to a significant degree of consumer inertia. We surveyed over 20,000 consumers and found that three quarters (74%) had heard of PPI as a product, and that most (77%) who had heard of PPI were also aware of issues or problems with it. However, many who told us that they intended to check whether they had PPI or complain also said that they had not got around to doing so.

9 DISP 1.6.2R(2). Firms should still deal with the mis-selling parts of a complaint without delay, because if this is upheld, then *Plevin* considerations in any case fall away and a final response can be sent to the complainant without delay.

10 www.fca.org.uk/your-fca/documents/consultation-papers/cp1539-payment-protection-insurance-complaints-rules-and-guidance. This followed our earlier announcements in January 2015, when we said we would gather evidence and assess whether the current approach to redressing PPI mis-selling was continuing to meet our objectives or whether further interventions by us were needed (*The Financial Conduct Authority to gather evidence on how the PPI complaints process is working)*, and in May 2015, when we said we would also consider the implications for PPI complaint handling of the Supreme Court judgment in *Plevin (Statement on Plevin v Paragon Personal Finance Ltd)*, and in October 2015, when we announced we would shortly be consulting on a package of measures.

2.20 We asked for feedback on these proposals by 26 February 2016. We received 71 responses, many of them detailed, from firms, trade bodies, consumer organisations, CMCs and individuals.

2.21 We considered all this feedback and also factored in:

- our further preparatory work on the proposed consumer communications campaign[11]
- the results of our further work on the potential impact of our proposals on consumers with protected characteristics[12] or who are vulnerable, to ensure the proposed communications campaign could also reach them effectively
- our discussions with firms and consumer organisations about specific improvements in PPI complaint-related customer service and processes

2.22 Following this assessment, we still considered that our proposed package of measures was necessary and appropriate.

2.23 However, we also concluded that we should change certain specific aspects of the rules and guidance on PPI complaint handling and *Plevin*, so as to:

- include profit share[13] sums in our approach, as well as commission
- clarify how our approach should work where commission rates, and profit share sums, *vary* during the life of the PPI policy
- state that sums rebated to a consumer when they cancelled a single premium PPI policy early can be partly included in, and so reduce, any redress due

2.24 Given the importance of the issues raised in our original and amended package of proposals, we decided to issue CP16/20 (August 2016) and consult further on the whole amended package of measures, to allow us to further test and debate our proposed approach.

2.25 We asked for comments on the new aspects of our proposals and for new comments on the aspects that were not new. We also asked respondents to indicate the extent, if any, to which they maintained their previous comments to us.

Responses to our proposals in CP16/20

2.26 We received 48 responses to our further consultation:

- Most responses from industry maintained their broad support for our rationale for a deadline and campaign. However, some called for a much shorter deadline and campaign and their earlier commencement, particularly in light of the time that had elapsed since our first consultation, and in expectation of increased CMC activity before the campaign begins. Some reiterated concerns about the financial and operational impact of high volumes of

11 As we explained in CP15/39, we undertook this work during the consultation so we would be ready to begin the campaign promptly if we decided, following the consultation, to introduce the deadline and launch the campaign

12 As defined in the Equality Act 2010

13 Which we described as: Arrangements (often including contractual entitlements) that firms typically have to receive back some of any PPI premium money which had initially gone to the insurer, for example to cover potential claims on policies, but which remained unspent after a fixed period, for example because actual claims did not exceed certain levels

complaints and enquiries before the deadline, particularly complaints where no PPI was present. Some maintained that the proposed past complaints-volume basis for the fee allocation is unfair to firms that made early proactive mailings that encouraged complaints, or firms that handled complaints well.

- Most responses from consumer bodies and CMCs maintained that the deadline is wrong in principle and would leave too much mis-selling un-redressed. Some of these responses said that the campaign is unlikely to be effective as it has a small budget and is flawed in design. They also maintained that the package is against the interests of consumers, particularly vulnerable consumers, and intended to help firms instead, and that our stated rationale for intervening is speculative and un-evidenced and our cost benefit analysis (CBA) weak. Some also expressed concern about the quality of current PPI complaint handling, and said that a deadline should not be introduced while this remained poor.

- We also received a number of detailed responses on the consumer communications campaign, its design, budget and potential effectiveness, as well as arguments for alternative approaches. There were helpful practical suggestions about how to maximise the campaign's effectiveness, many of which we are already taking into account. Some continued to argue that we should ask firms to proactively contact all PPI customers.

2.27 On our proposed rules and guidance on PPI complaints and *Plevin*:

- Most industry responses still felt that we were right to intervene but that regular premium PPI should be excluded from scope. They also made a number of in principle and practical arguments against including profit share, and some still felt our proposed approach to redress was over-generous to complainants due to our approach to historic interest (including account reconstruction) and simple interest.

- Most responses from consumer bodies and CMCs agreed with our rationale for intervening and the inclusion of profit share. However, they maintained that our proposed approach was unfair to consumers because the presumptive tipping point (for assessing unfairness) of 50% (of what the consumer paid) was too high, and the proposed approach to redress (the excess over 50%) too low.

Our assessment of feedback

2.28 Overall, having carefully considered all the feedback we received, we still believe we should intervene further in PPI, with broadly the package of measures we proposed. We have seen no convincing evidence that contradicts the problematic complaints trends we identified, or the need for consumers to be prompted, or the need for uncertainty in light of *Plevin* to be resolved.

2.29 In coming to this view, we have considered all the further consultation feedback and factored in our own further work since August 2016 on:

- preparations for the proposed consumer communications campaign

- our ongoing Equality Impact Assessment (EIA) of the potential impact on consumers with protected characteristics or who are vulnerable, which we have taken particular care to consider. Some vulnerable consumers may be less able to make a decision about PPI, and we concluded that the deadline and campaign could present a greater risk of poor outcomes to some vulnerable consumers. We set out at length in our EIA (see Annex 2) our considerations and the actions we will take to mitigate the risk of poor outcomes, which also takes into account the views of expert equality and diversity consultants.

- the specific improvements in PPI complaint-related customer service and processes we have asked larger firms to commit to delivering

2.30 Our rationale for implementing this package of measures remains that it:

- **Would prompt many consumers who want to complain, or to check whether they had PPI, but have not yet done so, into action.** This would result in those consumers potentially getting redress sooner, giving some of them the opportunity to pay off more costly debt. An FCA-led communications campaign may also reach consumers who are not engaged with current PPI communications, and this may result in some consumers who would not otherwise complain now doing so.

- **May lead to more redress being paid directly to consumers.** An FCA-led communications campaign may empower consumers and encourage more of them to complain directly to the firms concerned, rather than using CMCs or other paid advocates, and therefore benefit in full from the redress paid out.

- **May increase the efficiency of PPI complaints handling by firms.** This would benefit consumers (because their complaints may be dealt with more quickly) and firms (because it will reduce their administrative costs). Introducing a deadline and running a consumer communications campaign would potentially achieve this by, for example, limiting the scope for further widening of the time gap between sale and complaint and the associated difficulties in gathering and checking evidence, and limiting the scope for future growth of 'No PPI' cases.

- **Would bring the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector.** Confidence and certainty are key to ensuring markets work well. But although PPI has not been widely sold for many years, the long tail of complaints has looked set to continue, with the consequent negative effect on confidence. Uncertainty for firms about long-term PPI liabilities also potentially 'overhangs' their operational and financial planning. So bringing the PPI issue to an orderly conclusion will reduce uncertainty for firms and help promote market confidence, including public trust in the integrity of the retail financial sector, particularly given the firms mainly concerned are multi-product firms at the heart of most retail financial markets. The finality and certainty of closure may also indirectly support other potential benefits by:

  - assisting consumers to reacquire appetite for any improved, fairly priced and fairly sold PPI or post-PPI debt protection products (if firms were to provide these and potentially meet consumers' needs); and

  - stimulating innovation and the supply of improved PPI or post-PPI debt protection, and corporate restructuring in the retail banking sector (the main likely distributor of protection products).

- **Helps bring an orderly response to *Plevin*.** The *Plevin* judgment strengthens the rationale for a deadline and consumer communications campaign. This is because it introduces a significant new uncertainty for firms about the size and duration of their potential future PPI liabilities, with the unhelpful side effects of uncertainty noted above. In turn, the potential prompting effects of the *Plevin* judgment (and our rules and guidance about it) are likely to encourage some consumers to complain (or complain again) who would not otherwise have done so, and some potential complainants to complain sooner than otherwise.

- **Overall brings the PPI issue to an orderly conclusion** and help bring finality and certainty in a way that is compatible with our strategic objective of making markets work well and advances our operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.

Looking ahead

2.31 Given the scale of the PPI issue, it is unsurprising that there has been a high degree of public interest in, and some critical scrutiny of, our PPI work and its progress. Although we think that the exercise overall has been successful, we have learned lessons from it. As we said in the consultation on our future Mission published last year[14], we will be clearer with stakeholders in the future about the scope and duration of redress exercises and our role, if any, in them.

14 Our future Mission (October 2016) www.fca.org.uk/publications/corporate-documents/our-future-mission

3. Feedback on our package of measures as a whole and its rationale

Introduction

3.1 In CP16/20, we discussed and responded to the feedback we received on CP15/39 about our reasons for proposing a complaints deadline and consumer communications campaign[15], fee rule[16], and rules and guidance on PPI complaints and *Plevin.*[17]

3.2 As part of our further consultation, we asked:

> ***Q22: Do you consider that, taken as a whole, our proposed package of measures – the proposed deadline rule, proposed consumer communication campaign, proposed fee rule, and proposed rules and guidance (as amended) concerning PPI complaint handling and Plevin – is a justified, appropriate and proportionate response to past PPI mis-selling and present trends in PPI complaints handling?***

3.3 In this chapter, we discuss the feedback we received in response to this question.

The rationale for a PPI complaints deadline and consumer communications campaign

3.4 Most responses from industry maintained their broad support for our rationale for a deadline and consumer communications campaign.[18] However, some also repeated their concerns about the financial and operational impact of high volumes of complaints and enquiries before the deadline, and of speculative complaints or data subject access requests (DSARs) in particular.[19]

3.5 Some responses from consumer bodies and CMCs also maintained or newly expressed broad support.[20] However, some added that the deadline needed to be accompanied by a guarantee from firms that they would improve their processes and increase their complaint handling capacity ahead of time.

15 See Chapter 2 of CP16/20
16 See Chapter 4 of CP16/20
17 See paragraphs 5.2 to 5.10 of CP16/20
18 See paragraph 2.6 of CP16/20
19 See paragraphs 2.7-2.8 of CP16/20
20 See paragraph 2.10 of CP16/20

3.6 Most responses from consumer groups and CMCs repeated previous concerns[21] that:

- the majority of PPI detriment remains un-complained about and un-redressed; the high uphold rate for those that do complain suggests most PPI sales were unfair
- the deadline will thus cut off most redress prematurely and, in combination with an ineffective campaign, support firms' interests against consumers' rights
- it will not help, and will harm, the many consumers who do not know they had PPI, or have complex financial affairs, or are otherwise vulnerable
- our stated rationale is flawed because we have:
  - provided no evidence or reasonable grounds to think that consumers will be better off with a deadline than with the status quo
  - pursued a biased agenda against CMCs who in fact are helping consumers, particularly vulnerable consumers, to get redress
  - made claims that the deadline will increase market integrity and restore consumer confidence which are un-evidenced and not plausible
  - ignored evidence of firms' unfair handling of complaints
  - presented a poor CBA which makes clear our lack of evidence and weak rationale, and gives no consideration to better alternatives (e.g. a proactive redress scheme) that would have limited CMC involvement and costs for consumers and firms

3.7 Additional points provided by some of these responses were that:

- firms' responses to PPI enquiries and DSARs can be inaccurate and there should be no deadline until firms have proactively re-issued accurate responses to all past enquiries
- we are ignoring evidence of systemic weaknesses in the approach of the Financial Ombudsman Service
- the mis-selling of PPI was equivalent to fraud, which has no time bar in the criminal justice system
- the large redress payments to consumers have flowed into the real economy, and ending these just as the UK leaves the European Union will harm growth and confidence

21 See paragraphs 2.12-2.21 of CP16/20

Our response

We have carefully considered all the feedback. However, we see no convincing reasons to change our previously stated views about our rationale for a deadline and consumer communications campaign. As previously stated, we have carefully assessed a wide range of facts, trends and considerations from the perspectives of both our consumer protection and market integrity objectives.

Timeliness of deadline
We think that firms will face further considerable redress and administration costs during the communications campaign and in the period up to the deadline. By the deadline, firms will have been handling significant numbers of PPI complaints for a decade. Therefore, we do not see that it is reasonable to say that we are bringing the issue to a premature close or inappropriately rewarding firms for poor conduct.

We still do not agree that, because the majority of PPI policies have not been complained about, the deadline is premature or that continuing the complaints-led approach through our campaign is inadequate. This feedback rests on a view that all PPI policies were flawed, that all sales were mis-sales, that the redress process is a kind of product recall, and that anything less than all PPI consumers receiving redress is a failure of our approach. We do not share this view or consider it accurate.

The PPI market was large, long-established and diverse in its products and their benefits and limitations, costs and value for money, and the channels and ways in which it was sold. Given this diversity, we remain of the view that not all PPI was mis-sold and that, properly sold, PPI could meet some consumers' genuine credit protection needs. Also, as our existing rules and guidance make clear, not all failings in sales processes or practices made sales substantially flawed. Further, even in the case of substantially flawed sales, they do not require redress where the consumer would have bought the PPI in any case. Many consumers have successfully claimed on their PPI policies and thus benefited from them.

We continue to think, therefore, that in the circumstances it is fair and proportionate for us to pursue an approach that mainly relies on complaints made by consumers who are dissatisfied with their PPI policy. Complaints made by consumers have already led to substantial sums of redress. We still believe that, overall, it has provided a fair and effective solution to redressing PPI mis-selling.

Consumer impact
We undertook large scale quantitative research with over 20,000 consumers to gather information about PPI. We consider that the data provided a robust source to inform our decision making on whether to intervene further. We have also undertaken large scale qualitative research with over 200 consumers via focus groups and face-to-face interviews, which has influenced our rationale for the communications campaign.

A prolonged decline of PPI complaint volumes may be natural, but this does not necessarily mean it is helpful for consumers or advances our objectives. We still think that it creates the potential disadvantages to consumers and firms that we previously highlighted.

In particular, we do not see we can be harming consumers who do not think they had PPI, or have not engaged with the issue, by giving them strong prompting through a deadline and communications campaign to engage, check, and if appropriate, complain.

We have always acknowledged that some consumers may prefer to pay for the assistance of a CMC in making their complaint and we include information about using CMCs on our website. We have not pursued a biased agenda against CMCs. However, it is important to note the availability of the Financial Ombudsman Service, which is free to consumers.

Market integrity
We have been careful not to overstate points or go beyond what the evidence would support. We continue to think it is reasonable for us to see:

a. Confidence and certainty as key to ensuring markets work well.

b. The potential long tail of PPI complaints as creating uncertainty that overhangs firms' planning and negatively affects confidence.

c. Our intervention as bringing an orderly conclusion to the PPI issue that would reduce this uncertainty and help promote market confidence. Given the firms mainly involved are multi-product firms at the centre of most retail financial markets, this includes supporting public trust in the integrity of the retail financial sector.

We said that the finality and certainty of closure may also indirectly support other potential benefits by helping consumers to once again consider any improved debt protection products, or by stimulating innovation and the supply of these products or corporate restructuring in the retail banking sector (their main likely distributor). We said in CP15/39[22] that, based on the evidence we had seen and given the complex past and present dynamics in this market, bringing the PPI issue to a close may encourage both the supply and demand sides to move on from the problematic history of PPI, and may even be necessary for a healthier protection market to develop – though may not be sufficient on its own to achieve this.

We have considered the benefits of our intervention through the lens of our statutory objectives, and believe that the UK's decision to exit the European Union has no bearing on that consideration. In any case, we do not consider that the benefits of an orderly closure of the PPI issue are undermined or otherwise altered by the UK's decision to exit the European Union.

CBA
We still consider that no amount of data or effort could give us reasonably precise and meaningful numbers on the future path of PPI complaints if we did not intervene. As a result, we cannot construct a benchmark against which to quantify the effects of our package of interventions and cannot reasonably estimate the aggregate costs and benefits flowing from the change in the level of complaints and redress (see our CBA in Annex 3 for details). Overall, however,

22 See paragraphs 2.42-2.45 of CP15/39

we continue to think that the dynamics we identified and set out previously[23] and in Annex 3 (paragraphs 10-53) are valid, and that they provide us with a reasonable basis for expecting that our interventions will deliver a net benefit for consumers and other potential benefits, although we recognise this overall conclusion is not guaranteed, given the uncertainties involved.

Fraud
We do not agree that mis-selling of PPI generally was equivalent to criminal fraud. We do not consider, therefore, that the lack of a limitation period for criminal fraud is a reason not to impose a deadline for PPI complaint handling. Our deadline will not prevent a consumer who considers themselves the victim of criminal fraud in the sale of their PPI from taking action, for example by raising the matter with the Police.

Complaint handling
We collect data from firms responsible for over 90% of all PPI complaints. These firms are currently upholding, on average, around 80% of PPI complaints in cases where the consumer held PPI. Comparable figures for earlier periods show that firms' uphold rates are increasing and, therefore, the quality of their complaint handling, as measured by those complaints upheld in favour of the customer, appears to be improving. Firms are, accordingly, upholding the vast majority of complaints in favour of the consumer, and all consumers have the option of referring their case to the Financial Ombudsman Service.

The last set of data published by the Financial Ombudsman Service, for the quarter to December 2016, showed that it upheld 44% of PPI cases referred to it in favour of the consumer.[24] While the Financial Ombudsman Service's published uphold rate for PPI remains higher than for other products[25], and is very high for some individual firms, there are a number of factors that influence these headline rates, including the impact of *Plevin*.

The Financial Ombudsman Service has a growing number of cases waiting for our rules and guidance on *Plevin,* which it would want to consider before making final decisions. Without the consideration of *Plevin,* some of these cases may not have been upheld in favour of the consumer. In addition, there have been (and remain) instances where firms have settled a number of complaints referred to the Financial Ombudsman Service following individual ombudsman decisions on other cases involving similar issues and fact patterns. These factors are contributing to making the published uphold rate unrepresentative of firms' *current* PPI complaint handling practices.

That is not to say that we believe that all complaints have been handled correctly by firms, and we noted in CP16/20 that some firms still needed to improve their complaint handling performance. But we do not agree that there is widespread mis-handling of PPI complaints at firms.

We have seen no evidence that the Financial Ombudsman Service determines cases referred to it inappropriately, and we have seen no evidence to support the allegations of systemic weaknesses in its decision-making.

23 In CP15/39 Annex 2, section 3; and in CP16/20 Annex 4 paragraph 23
24 www.financial-ombudsman.org.uk/publications/ombudsman-news/139/issue139.pdf
25 The average rate of complaints upheld by it in favour of the consumer across other products in the same period is 37%.

Handling of PPI enquiries
We do not believe that there is a widespread or systemic problem with firms' handling of PPI information requests or DSARs. Therefore, we do not think it would be proportionate for us to ask firms to reissue responses to these enquiries.

The right to subject access is set out in the Data Protection Act (1998), compliance with which is overseen by the Information Commissioner's Office (ICO). Where individuals are concerned with the outcome of any DSAR, they should raise these concerns with the ICO.

The informal PPI information request process was set up by firms to reduce the number of complaints where it was subsequently found that the complainant did not hold a PPI policy. Firms agreed to check their records, to determine whether the customer held a PPI policy before they make a complaint. This process was designed to be quicker than a DSAR, focussing only on obtaining information relevant to making a PPI complaint. Whilst the FCA does not impose any requirements on such checks, we have secured commitments from firms on the robustness of their PPI information request and DSAR processes, with the aim of ensuring that firms can accurately respond to such requests in a timely manner in the run-up to the deadline (as explained in paragraph 3.15 below).

The FCA-led consumer communications campaign

3.8 Most responses from industry maintained agreement with the aims of the campaign. Some maintained, or added, that:

- the deadline period and campaign should only be one year[26], especially given the delays in our policy process
- we had too lightly disregarded the behavioural research previously provided in support of a one-year deadline period
- the proposed 6 month interval between our making a deadline rule, and commencing it and the campaign, would create a 'narrative gap' which CMCs would fill, pre-empting the campaign and undercutting its impact
- the campaign budget is too large[27]
- we need to clarify what we expect firms to communicate to support the campaign
- CMC practices remain a concern[28] and the fee cap and other reforms proposed by the Ministry of Justice's Claims Management Regulator (CMR) should be introduced in time for the campaign[29]

3.9 Responses from most consumer bodies and CMCs maintain their views that our claim that the campaign will be 'high impact' and effective is not credible, as:

26 See paragraphs 3.27-3.28 of CP16/20
27 See paragraph 3.24 of CP16/20
28 See paragraphs 2.8 and 5.5 of CP16/20
29 See paragraph 2.11 of CP16/20

- the budget is too small and spread too widely, including on enhanced support for vulnerable customers and protected groups[30]
- the advertising methods repeat those of CMCs, and there is no evidence the FCA brand is sufficiently known or high-profile enough to make a difference[31]
- adverts will not help the large number of consumers who don't think they had PPI or cannot remember who sold it to them[32]
- we discuss monitoring the success of the campaign, but leave out the key test of how many people complain[33]
- we have not provided enough information about the campaign to allow respondents to properly consider whether it will be effective

3.10 Some of these responses expanded their arguments about our proposal not to require firms to write letters to consumers[34], saying this omission was irrational because:

- we have rejected a proven approach in favour of an untested one
- we have not demonstrated that our campaign alone will provide a more effective prompt, and have not explained what we consider success to be
- letter-writing is better at communicating complex messages and:
  - it is illogical to say that matters too complicated to be communicated in a letter are better communicated in a campaign
  - just because the PPI issue is not like the mortgage endowment issue does not mean a PPI letter could not be a good warning letter, as mortgage endowment letters were
- our statement that we cannot share detailed information on the campaign concepts, as it would undermine their impact, is insupportable
- we accepted self-serving statements by firms about the practical difficulties and costs, and did not appear to assess alleged data gaps or how many customers *could* be sent letters
- even if insurmountable difficulties prevent firms writing to some customers, this is no reason not to write to others
- missing records are just as relevant to the campaign, as PPI will not then be found by any means following some complaints prompted by the campaign

3.11 Some responses from consumer bodies and CMCs also suggested that we should:

- provide balanced information about CMCs, to reassure and direct vulnerable consumers and others who may need assistance to complain

30 See paragraph 3.23 of CP16/20
31 See paragraphs 3.17-3.18 of CP16/20
32 See paragraphs 3.14-3.15 of CP16/20
33 See paragraphs 3.31-3.35 of CP16/20
34 See paragraphs 3.19-3.22 and 3.40-3.41 of CP16/20

- provide stronger warnings about using CMCs, in particular, for vulnerable consumers
- say and do more to warn about PPI-related scams and fraud
- give as much focus in the campaign to checking for PPI as complaining
- carefully manage consumers' expectations of complaint outcomes and redress
- require CMCs to obtain copies of loan agreements and statements of account for every client, in order that they can properly verify the firm's response and redress offer, and inform their clients if *Plevin* considerations apply to them

Our response

Campaign and concept
In CP16/20[35], we described in detail why we thought it was reasonable for us to consider that an FCA-led consumer communications campaign would be effective. This included information about our target audience, our proposed advertising concept, channels and testing, public relations activity (PR), scope of the PPI campaign website and helpline, partnerships, and our work on mapping the customer journey. Our campaign approach and design has been informed by extensive consumer research.[36]

We have not been able to share details of the concept or channel plan. We have had to balance the need to sufficiently prepare a campaign concept with value for money considerations. As such, the concept requires further development and refinement. However, we have thoroughly tested the concept directly with our target audiences, bound by confidentiality agreements. Our testing results so far give us confidence that the advertising will deliver on our objectives. We will continue to refine and test to ensure a wide range of audiences find the campaign meaningful.

Also, our research highlighted that consumers have 'switched off' to messages about PPI, and that overcoming this barrier would be key to the success of the campaign. Our specialist communications agencies support our view that the campaign will more effectively cut through the existing marketing noise and engage consumers if it is 'new news'.

Although we have not taken this approach before, many multi-channel behaviour change campaigns have been run by government departments and other public authorities. We have reviewed some of these examples and drawn on internal and external communications expertise, as well as media industry planning tools, to set our advertising budget. We are comfortable that the budget we have set allows us to effectively deliver our campaign objectives, and that it will achieve the reach and frequency we need.

35 See paragraph 3.15 of CP16/20

36 Pre-CP15/39 - Study 1: July 2015, quantitative on-line survey of 20,000 respondents. Study 2: April 2015, qualitative focus groups and interviews with over 200 participants. Pre-CP16/20 - Study 3: February 2016, quantitative online media targeting survey of 5,000 respondents. Study 4: Three phases, conducted April-August 2016, of qualitative creative testing research with over 300 participants. Study 1 and 2 research reports and details on the methodology were set out alongside CP15/39: https://www.fca.org.uk/publications/consultation-papers/cp15-39-rules-and-guidance-payment-protection-insurance-complaints.

Overall, we continue to believe that the campaign will be an effective means of achieving our objectives, and we see no convincing reason to change our approach. We will take into account some of the practical suggestions made by industry, consumer groups and CMCs about the campaign's design and execution, particularly in the development of the messaging. We will include messaging about typical complaint handling times, to manage consumers' expectations. Messaging about checking for PPI is already a key feature of the campaign.

Campaign evaluation
Our campaign evaluation is designed to demonstrate how well the campaign is delivering on our objectives. It will also measure the effectiveness of individual campaign components, and inform our ongoing review of the campaign's performance. The key performance indicators (KPIs) we set out in CP16/20[37] reflect our proposed objectives and are focused on awareness and understanding.

To inform our KPIs, we will capture and collate data every month from sources including our consumer tracking research, website analytics and FCA helpline management information. Although not a success measure, we will also track and monitor firm data on the numbers of complaints and enquiries to give us a better understanding of the relationship between these and campaign activity.

We are not yet able to set a target on deadline awareness. We will consider this once we have data to indicate an awareness baseline and the potential trend. To report on progress against our objectives, we will publish an interim report after one year, and a final report after the deadline. These will cover achievement against our measures, as well as other information, including an update on supervisory activity. We will make further data public on a more regular basis.

Campaign signposting
The campaign will run across multiple channels, including advertising, partnerships and PR activity, as set out in detail in CP16/20.[38] All our communications will signpost consumers initially to the FCA's PPI website or to the FCA's PPI helpline. The PPI website and helpline will offer consumers all the information they need to make a decision on whether to check or make a complaint about PPI. It will also signpost them to the relevant party (for example, firms, the Financial Ombudsman Service, the Financial Services Compensation Scheme (FSCS) and partner organisations).

We are using the findings of our consumer research and consumer journey mapping to help design the PPI website and helpline service. We are making good progress in all areas, and have been working closely with firms and the Financial Ombudsman Service to map consumer journeys. We have also begun discussions with consumer groups and will use their expertise where we can to develop our approach further, and to learn from their experience.

37 See paragraph 3.35 of CP16/20
38 See paragraph 3.15 of CP16/20

Those who don't know if they had PPI
One of the identified audiences of our campaign is those who are unsure about whether they had or have PPI . This has been built into our media planning, and so our campaign will deliver messages targeted at this audience – for example, explicitly identifying products that might have had PPI associated with them. We included consumers who did not think they had PPI in our testing of the advertising concepts and we have evidence that our advertising will engage these consumers, who in turn will check for PPI if they wish to do so.

PPI website
We expect that consumers will hear or see the campaign through advertising, partnership activity or PR and will be prompted to visit the PPI website. We will undertake consumer testing of the website and its content to ensure it is clear, and will make any necessary changes and amendments as a result.

We will develop content to meet the needs of a wide range of audiences, including those we have identified as vulnerable. Content will be clear, easy to follow and include a range of formats, including video. Our key development principles are clarity of information, ease of user experience and regular signposting to further help, such as the helpline.

We outlined the content likely to be available on the PPI website in CP16/20 [39], but following further work we can confirm it will include, but not be limited to:

- an explanation of what PPI is, what mis-selling is and what types of credit product PPI was sold with
- information on who the FCA is, as well as clarification of our role and that of the Financial Ombudsman Service and FSCS in PPI complaints
- information about *Plevin* and undisclosed high commission
- information on how a consumer can check if they had PPI
- information on how a consumer can make a complaint to their firm, including an easy to use 'look-up' function to enable consumers to find the contact details and web links for larger firms
- a template complaint form
- a password-protected area for third sector partners[40] to download promotional material to help them deliver campaign messages
- information about CMCs and a link to the register of authorised CMCs maintained by the CMR

We will develop and test the PPI website to the 'AA' level of accessibility in the Web Content Accessibility Guidelines (WCAG) 2.0, in line with the main FCA website.

39 See paragraph 3.15 of CP16/20
40 Partnerships are discussed in more detail on page 28

Helpline
The helpline will be a freephone number and a source of information about PPI. The helpline will have core operating hours of 8am-6pm on Monday-Friday and 9am-1pm on Saturdays, with a 24-hour callback service. As we continue to plan and monitor the service, we will assess whether and when we may need to extend its hours. We also intend to offer a webchat function.

For those who do not know whether they had PPI, we will explain what PPI is, the products it could be associated with, how a consumer might check if they had it, how to complain and what to do if a complaint has been rejected. If consumers know they want to complain and which firm they want to complain to, then the helpline will walk them through the process, which may include directing them to the PPI website or providing a firm's contact details.

Our helpline staff will be trained to identify the additional support required by vulnerable consumers, and will contact these consumers 48 hours after each call to see if they require any further assistance. We will use this data in our monitoring of the treatment of and impact on vulnerable consumers, as set out in the EIA. Adapted communications will also be available for mail-outs to consumers who need them. This will include information in alternative languages, braille and adapted fonts.

Further letter writing
Our experience of redress letter-writing exercises and previous research by our Chief Economist's Department[41] indicates that generic letters to consumers are unlikely to be effective prompts to action for most recipients. While it is not possible to link a response rate directly to one factor, we have found that it tends to vary depending on a number of factors, including:

- *individual product or policy details or details about the sale and failings* – more detail generally increases responses
- *whether the sale was recent* – letters concerning more recent sales generally get a higher response, either because the consumer has better recall or because the firm has better contact details or sales records
- *average redress figure* – examples with higher average redress figures tend to have better response rates, although this is not always the case
- *clear and simple explanation of what the consumer should do next*

However, for the remaining population of PPI customers who have not complained or been proactively contacted, firms could not send such specific letters and could only send generic letters at best. With reference to the features listed above:

- specifics about the sale and failings – not all PPI was mis-sold, and where it was there were a range of sales failings. Unless firms now proactively review all past sales, or carry out further root cause analysis, they cannot tell an

41 Occasional Paper No.2 - Encouraging consumers to claim redress: evidence from a field trial (April 2013) https://www.fca.org.uk/publication/occasional-papers/occasional-paper-2.pdf
Occasional Paper 23 – Full disclosure: a round-up of FCA experimental research into giving information (November 2016) https://www.fca.org.uk/publication/occasional-papers/op16-23.pdf

individual whether they have been mis-sold or even what sales failings were more likely to have impacted them. Such a review exercise would require the use of a s.404 scheme, but we do not think it is appropriate at this advanced stage in the PPI issue to require such an exercise and scheme. In any case, we could not impose a requirement on firms to conduct such reviews and write such specific letters in relation to pre-2005 PPI sales, which are two thirds of the total and form the vast majority of the remaining PPI population who have not already complained or been written to by firms

- average redress – the types of PPI policies and premiums varied greatly, and this, combined with variations in the time since the sale (and thus the impact of interest) means that redress figures vary greatly, so letters to consumers could only include very broad redress averages

- age of sales – two thirds of PPI sales took place before 2005, many of them in the 1990s or earlier

So, although we acknowledge that in some contexts letters with certain features may be effective prompts to consumers, such letters cannot be sent to the remaining population of PPI customers. The only message that could be included in letters to identified consumers (where firms' records allow) would be a generic list of common sales failings, which have already long been on our website and carried in messaging from consumer bodies and CMCs, and very broad redress averages, which would not give consumers a clear indication of their own potential redress figure, if any.

It was noted in some responses that letters might be of particular use to those consumers who do not know, or who have forgotten, that they had PPI. We agree that letters that merely confirm that a consumer had PPI might, in principle, provide some value to this group of consumers. However, our evidence suggests that these consumers are a minority[42] and, in any case, by their nature they cannot be identified or targeted by firms. It would thus seem disproportionate to require a blanket mailing of letters to all consumers for whom firms still have records in order to reach this sub-group (many of whom may not be written to in any case, due to the gaps in firms' records[43]).

In CP16/20, we noted that PPI is not analogous to the mortgage endowment issue and its 'red letters'. This is largely because, for endowments, there was something specific that needed to be conveyed to customers to inform their decisions and actions about their mortgage, namely, the predicted high risk of shortfall against the target sum.[44] There is no similar message to indicate a potential problem with an individual PPI policy, unless, as noted above, the firm has reviewed it or, at least, sales like it. Where there was such a message, as for the 5.5m PPI customers identified by firms' root cause analysis as being at high risk of detriment, letters could be sent and were.

While there is no simple specific message concerning an individual PPI policy of the kind that would be likely to prompt consumers to act via a letter, the overarching message in relation to the PPI deadline is relatively simple. Our

42 In our quantitative online survey of 20,000 respondents, conducted in July 2015, only 11% were unsure whether they have or had PPI; 67% said they have never had PPI, although there may be some who are wrong about this

43 See points a-c in our response on page 39 of CP16/20

44 See paragraphs 3.40-3.41 of CP16/20

research indicates that our proposed campaign messaging about whether to complain or check can be effectively communicated through a media campaign. Our testing confirmed that consumers understood the advertising call-to-action and had the correct expectation that more complicated information to help them make a decision would be delivered elsewhere (i.e. on the PPI website and helpline).

We previously asked firms for details of the potential costs of sending generic letters and we set out a summary of this information in CP16/20[45]. The costs are estimates provided by firms, and reflect both the large number and age of policies and data gaps in firms' records (due to the age of policies, out-of-date contact details, the use of legacy systems, and the fact that some records have been lost or discarded by third parties). While cost is not a key factor in our considerations, the data challenges are. Firms will not have current contact details for many of these consumers, and the need for data cleansing and checking means it would likely take firms several years to complete even to the limited extent that their records allow, such that firms could not send most letters until well into, or after, the two-year period. And as we noted in CP16/20, a significant minority of some firms' backbooks could not be written to at all, due to substantial and irretrievable data gaps.

It is true that data gaps do remain a factor in PPI complaint handling. So we have sought commitments from firms on the robustness of their PPI checking processes, including their treatment of consumers for whom they no longer hold records, and we will be monitoring this carefully.

Having carefully re-examined our thinking in light of the feedback, we still believe that our position on letter-writing is fair and appropriate. We continue to think that our campaign will be an effective and efficient means of raising awareness about the deadline and prompting people to engage and consider whether they want to make a complaint, and we have sufficient evidence to support the view that letters are not required for the campaign to be effective.

This does not mean that firms will not engage in communicating the PPI deadline. Larger firms have provided commitments to support our campaign through their own channels (see paragraph 3.17 below).

Also, we are now requiring letters to be sent to 1.2m previously rejected complainants who are eligible to make a further complaint in light of *Plevin*.

45 See paragraph 3.22 of CP16/20

Length of campaign and deadline period
We still consider that two years is fair and appropriate and is the optimal period in which to deliver the proposed aims of the campaign. Two years allows us to deliver an effective consumer communications campaign that strikes a fair balance between giving consumers enough of a 'prompt' against inertia but also enough time to check or complain. It also gives us enough time to monitor and amend the campaign if necessary and to refine and evolve our partnership activity. Two years also gives enough time for consumers to respond to the new *Plevin* issue, and gives us the opportunity to check firms' handling of these complaints and to use our supervisory tools, and other powers, if necessary.

Pre-campaign period
The campaign will start when the deadline rule commences on 29 August 2017. As we said in CP16/20, the time between the making of rules and the start of the campaign is necessary to ensure we make the significant expenditure needed for the campaign only after we made the rules. We consider this is a responsible use of our resources.

We are, however, planning for the pre-campaign period, when we expect there to be an increased level of interest in the PPI section of the FCA website. To support this, we will be updating the content of existing pages, ensuring our existing contact centre is set up to handle an increased number of calls, and investing in a paid search service, which will mean consumers can find the relevant pages more quickly on a search engine.

We are unable to comment on the proposed CMC fee cap, as that is a matter for the CMR. However, we have spoken with the CMR and have passed on the concerns raised in feedback about the potential activity of CMCs in this period, and suggestions for additional CMC guidance. We and the CMR will work closely together to monitor ongoing activity.

Protected groups and vulnerable consumers

3.12 Responses from industry agreed with our assessment of the potential impact and mitigations set out in the EIA, noting that it was a comprehensive assessment and that valuable additional work had been carried out.

3.13 Some firms made additional practical suggestions (for example, around user testing of the PPI website) or suggested that we should harness the expertise of partner organisations in developing the campaign. Some said that the detail of *Plevin* and profit share would be difficult to explain.

3.14 Most responses from consumer groups and CMCs disagreed with our assessment and mitigations, either in full or in part. Most maintained or added to their views, variously, that:

- our proposed mitigations are vague and do not go far enough[46]

46 See paragraph 7 of Annex 3 in CP16/20

- vulnerable consumers may be more likely to fall into the category of consumers that are not aware they had PPI, or who need to be told who sold it to them
- we had not given enough consideration to face-to-face support
- we had not given proper consideration to people in or discharged from bankruptcy
- vulnerable consumers should be exempt from the deadline

Our response

Our EIA (at Annex 2) sets out our detailed consideration of the potential impact on vulnerable and protected groups, and our mitigating actions. We have considered the responses and have updated the EIA to include amended or new mitigating actions to take into account new feedback, including consideration of bankruptcy and personal insolvency. We have also progressed the actions we had already identified. We have considered the responses about those people who are unaware or unsure if they had PPI, and we have included our response on how we will target this audience at p23 above.

Partnerships
We set out our partnerships strategy in CP16/20.[47] The objective of this is to ensure that one of the ways the campaign reaches and engages protected groups and vulnerable consumers is through a trusted source, as well as reaching those who do not engage with mainstream channels[48].

We have so far secured 19 agreements in principle from partners who have agreed to support the campaign and communicate our messages to their service users.[49] This support is based on these partners' current projections of resource and priorities. They have already given us an indication of the channels they will use to communicate our campaign messages, as well as the types of adapted communications they require. We will work with our partners over the next six months to confirm the specifics of their support, which will then be set out in a Memorandum of Understanding between the FCA and respective partners.

We have also begun working with consumer groups in mapping out consumer journeys, and will continue to discuss and develop our campaign materials and messaging with these organisations during the pre-campaign period.

Face-to-face support
In CP16/20, we said that our helpline already has a range of very effective partnerships with organisations that support consumers who are vulnerable, and that we were exploring how we could continue this service during the campaign period[50]. We have been refining our requirements for such a service and intend to put in place enhanced support arrangements for vulnerable

47 See paragraph 3.15 of CP16/20

48 The groups identified by our EIA for inclusion within the partnerships strategy are: older people, disabled people, BAME communities, vulnerable consumers on low incomes with low financial confidence, and carers

49 These partners are: Action for Communities in Rural England, Action for Hearing Loss, Advice UK, Age UK, British Deaf Association, British Dyslexia Association, British Institute of Learning Disabilities, Capability Scotland, Carers Trust, Christians Against Poverty, Disability Rights UK, Gingerbread, Learning Disability England, Mind, Money Advice Trust, Parkinsons UK, Scope, Shelter, and Visionary

50 See paragraph 3.15 of CP16/20

consumers contacting the FCA. In the light of feedback, we have increased the budget available for this enhanced service, which will include provision for face-to-face support for those consumers we identify as needing it. We will procure a suitable supplier, with the contract and supplier to be in place before the campaign begins.

We have asked firms for information about their own vulnerability policies, in particular, how they identify and support vulnerable consumers through the PPI checking and complaint processes. We are comfortable that all of the largest firms, which represent the vast majority of PPI complaints, have appropriate processes and procedures in place, with reasonable adjustments and specialists available where needed (for example, specialist teams or training for those dealing with a recent bereavement). We will also monitor the treatment of vulnerable consumers through our supervisory activity.

There may be occasions where our PPI helpline staff do not feel that it is appropriate to transfer a vulnerable person to a firm, for example, because the firm does not offer reasonable adjustments or the necessary support, as may be the case with some smaller firms. To deal with those cases, we will put them in touch with the Financial Ombudsman Service helpline, who can help consumers in circumstances like this to make their complaint, if they have decided to do so.

In response to feedback, we have considered whether we have made enough provision for consumers who may need additional support but who may not approach the FCA directly. We have decided to monitor, through feedback from our partners and other nationwide organisations, whether any gap develops in the existing provision for such people, who may need more help when making this kind of financial decision, for example, through face-to-face support. If we see or receive evidence that a gap is developing, we will consider what additional action might be needed.

Monitoring

We have considered further how we will discharge our duty to monitor the impact of our interventions on protected groups and vulnerable consumers on an ongoing basis. We have taken this into account in the design of the campaign KPIs, consumer tracking research and in the information we will request from firms. We also intend to develop our relationships with consumer groups and third sector bodies to ensure we have access to useful and timely feedback from organisations with most experience in this area.

Over the course of the deadline and campaign period, we will monitor and report on the impact of the deadline and campaign on the vulnerable consumers and protected groups identified as being at greater risk of being disadvantaged. We will do this in line with the frequency and timing of evaluation of the mainstream audience. We will make amendments to the campaign and/or consider alternative options if evidence suggests that our mitigating actions are not effective.

Update on industry commitments and supervision

3.15 To support the campaign and to ensure that consumers are experiencing as few barriers as possible once they have decided to act, we have secured a number of commitments and improvements from the firms within the scope of our fee rule.[51] They have all committed to:

- provide an option for consumers to submit their complaint online
- review the language of their complaint forms and guidance, to ensure that it is as simple as possible for consumers and does not create barriers or put consumers off complaining
- provide a simplified process for new *Plevin* complaints from previously rejected complainants, which will require only minimal personal information and confirmation of the relevant policy or product and that the consumer wants to make a new complaint about undisclosed commission
- provide appropriate support for vulnerable consumers including, where necessary, updating web pages, improving accessibility and signposting of accessibility options, and offering reasonable adjustments
- provide robust, timely and free-to-use PPI checking processes, with appropriate search scope, clear signposting, and provision of information in a format that is easy to understand

3.16 We will keep under review how firms are meeting these commitments as part of our supervisory strategy.

3.17 In feedback to CP16/20, some industry responses asked us to clarify our statement that firms had indicated they were keen to support the proposed campaign by issuing communications to raise awareness of the deadline[52]. We have since followed up with firms. In particular, they will provide reassurance to their customers that they will support them through the process and that checking or complaining about PPI will not negatively affect customers' relationships with their firms. These communications will not necessarily be co-branded with the FCA, but will come directly from firms and will help address a key concern and potential barrier to complaining that was identified in our consumer research.

3.18 We have also been clear with firms that we have high expectations of their operational resilience. Many firms have already provided detailed information about their planning and, overall, the industry appears prepared for increased volumes of both complaints and enquiries. We will keep this under review as part of our supervisory strategy.

The fee rule to pay for the consumer communications campaign

3.19 Most responses did not comment on the fee rule.

3.20 Some responses from consumer bodies and CMCs and from industry maintained their support for the proposed fee rule.[53]

51 See paragraphs 3.30 of CP16/20
52 See paragraph 3.13 of CP16/20
53 See paragraphs 4.6-4.7 and 4.9-4.10 of CP16/20

3.21 Some responses from industry maintained their views that the proposed 'polluter pays' basis of allocating the fee according to past complaints volumes is unfair and should instead reflect firms' previous complaint handling experience, extent of proactive mailings or rates of complaints upheld in favour of the consumer at the Financial Ombudsman Service.[54]

Our response

We have carefully considered all the feedback. However, we see no convincing reasons to change our previously stated views.[55] While we accept that there is no perfect method for this fee allocation, the alternatives suggested are not more appropriate or more practical, including in terms of the data needed, than our original proposal and do not have any other clear advantages over it.

The rationale for rules and guidance on PPI complaints and *Plevin*

3.22 The majority of responses from industry maintained their view that we should propose rules and guidance on PPI complaints and *Plevin* and their agreement with our rationale for doing so.[56] Some felt our intervention would reduce the flow of relevant cases to the courts and that, as sector regulator, our approach would be given some weight by the courts.

3.23 However, some responses from industry maintained their views[57] that:

- the value of our intervention would largely depend in practice on the final rules and guidance being clear enough to ensure consistent application, and on the Financial Ombudsman Service reaching decisions on individual cases that give outcomes which are broadly in line with our approach
- we should widen our intervention to incorporate rules and guidance for the appropriate involvement of CMCs in making complaints about *Plevin*
- relevant case law continues to evolve in the courts, so our intervention might not deter consumers from continuing to use *Plevin* as a basis for action in the courts
- our intervention should be seen as an exceptional response to the particular circumstances of *Plevin* and the PPI issue, not as the start of regular regulatory responses to new court decisions

3.24 Some responses from industry added that:

- the body of case law building up is not all entirely consistent with the proposed approach, and precedents which mean a customer could get a better outcome in court would give a poor customer journey and prolong the otherwise unnecessary involvement of CMCs

54 See paragraph 4.8 of CP16/20
55 See paragraphs 4.3-4.14 in CP15/39 and our response under 4.10 in CP16/20
56 See paragraphs 5.1-5.12 of CP15/39 and paragraph 5.2 of CP16/20
57 See paragraph 5.5 of CP16/20

- the role of s.140A CCA[58] and the courts should be reviewed as part of regulatory and statutory reform, to avoid future undue influence on the credit industry from single judgments lacking full details of historic products and services

3.25 Some industry responses maintained more fundamental concerns about the nature of our proposed intervention, arguing that we would:

- inappropriately transform the discretionary power that s.140A gives the courts to review the fairness of a credit relationship, based on the specific and individual facts of a case, into generally applicable principles which do not allow the specific circumstances of each customer's case to be examined

- create a retrospective obligation of commission disclosure, with significant liabilities following automatically and inflexibly if that disclosure was not made

- prompt increased volumes of fruitless complaints to firms that did not sell PPI which covered credit agreements within the scope of s.140A-B[59], or did so only with low commission, and who did not generally mis-sell PPI

3.26 Some responses from consumer bodies and CMCs maintained their view that we should not intervene because creating a rigid complaint assessment process would usurp the function of the courts when applying the provisions of s.140A-B, which are much broader in scope and do not relate to hard and fast regulatory duties.[60]

3.27 Most responses from consumer bodies and CMCs maintained their views that:

- in principle, we should intervene

- in practice, our key proposals were so wrong[61] that our intervention would be unfair to consumers and not bring certainty because large numbers of consumers would take claims to the small claims courts instead, undermining our aims of consistent complaint handling and orderly closure of the PPI issue[62]

Our response

We consider the feedback on the specific elements and details of our proposed approach to PPI complaint handling and *Plevin* in Chapter 4.

We recognise that disclosure of commission to consumers was not required by our insurance conduct of business rules (ICOB/ICOBS), so firms' failure to disclose was not in breach of those rules at the time (or the industry codes which preceded them), and is unlikely in and of itself to have been a breach of our Principles.

58 Section 140A of the Consumer Credit Act, which came into force in 2007, which concerns unfair relationships between creditors and debtors

59 Section 140B of the Consumer Credit Act, which came into force in 2007, which concerns powers of court in relation to unfair relationships

60 See paragraph 5.9 of CP16/20

61 See, for example, paragraphs 5.65-5.67 and 5.92-5.93 of CP16/20

62 Some of these responses further suggested that a claims portal, similar to the current Road Traffic Accident claims portal, and endorsed by the FCA, could be established.

However, the *Plevin* decision is in the public domain. Following the *Plevin* judgment, some complaints have already been made to firms and to the Financial Ombudsman Service about lack of commission disclosure in PPI sales. CMCs are well aware of the *Plevin* judgment and PPI complaints referencing *Plevin* and undisclosed commission are being made in growing volumes.

Given that firms are required to assess complaints fairly, including taking into account relevant decisions from the Financial Ombudsman Service, and that the Financial Ombudsman Service is required to take into account the general law when deciding complaints in accordance with its fair and reasonable remit, *Plevin* cannot be ignored. But firms are uncertain how they should take the judgment into account in the context of PPI complaints made to them and their interpretation of *Plevin* varies. So, the issue is how best to address the judgment.

We carefully considered whether the availability of the Financial Ombudsman Service alone is enough or whether there should be regulatory intervention. Overall, we continue to think that the rationale for us exercising our regulatory judgement about appropriate assessment and, where appropriate, redress of relevant PPI complaints in light of s.140A-B, taking account of *Plevin,* and making rules and guidance now for firms to follow, is stronger, because:

- **Firms will then take a fair and consistent approach to handling *Plevin* complaints.** Otherwise, given the variety of industry views of *Plevin's* significance, it is likely that individual firms would adopt different approaches to handling these complaints. This would create inconsistency in PPI complaints handling and be likely to increase demands on the Financial Ombudsman Service. Additionally, many consumers might not complain to the Financial Ombudsman Service, to their potential detriment.

- **Our ability to take future action is improved.** By giving firms a clear idea of how we expect relevant complaints to be dealt with in light of *Plevin,* it will be easier for us to ensure that firms act fairly and consistently.

- **It is more appropriate for us, as a policy making body, to set out a framework approach in rules and guidance.** The FCA has the power to make rules and guidance to help ensure firms reach fair and consistent outcomes for complainants on cases with common issues and similar facts. This helps to ensure the best outcomes for consumers when making complaints to firms at the earliest stage in the complaint process. The Financial Ombudsman Service focuses on individual cases and will continue to take our rules and guidance, among other things, into account when determining cases on a fair and reasonable basis in light of all the circumstances.

As for the various concerns we received in feedback about our intervention, we maintain our previous views, as set out in CP15/39, CP16/20[63] and as follows.

By proposing rules and guidance on PPI complaints in light of *Plevin* we do not in any way seek to usurp the prerogative or discretion of the courts under s.140A-B.

63 See paragraph 5.12 of CP15/39, and paragraphs 5.2-5.10 of CP16/20

We do not consider that carving PPI complaints where s.140A is relevant out of our complaint handling rules or out of the Financial Ombudsman Service jurisdiction, for example in favour of a claims portal, would assist orderly and consistent outcomes or be fair to consumers or firms. The Alternative Dispute Resolution (ADR) Directive requires ADR systems to be fair, and this is of course an outcome we would seek to achieve in any event. We do not believe that excluding undisclosed commission or other s.140A issues, and the potentially many PPI complaints where s.140A is relevant, from the Financial Ombudsman Service's jurisdiction and consideration, would be compatible with this Directive.

We are not asserting that the Supreme Court created a set of binding rules that can be applied strictly across to all PPI complaints where non-disclosure of commission is relevant. Instead, we are exercising our regulatory judgement about appropriate assessment and, where appropriate, redress of relevant PPI complaints in light of s.140A-B, taking account of *Plevin*.

We are not proposing a mechanical test or mandatory redress. Our provisions all take the form of either guidance or evidential provisions. Additionally, the provisions explicitly direct that individual case circumstances ('all relevant matters') should be taken into account, explicitly highlight the scope for rebuttal of the presumption of an unfair relationship, and include specific examples of circumstances where rebuttal might be appropriate or where firms should consider paying more redress than the excess over 50% (see 4.121 below).

While not rigidly confining ourselves to *Plevin,* we are taking it into account when exercising our regulatory judgement about appropriate assessment and, where relevant, redress of relevant PPI complaints. We consider that our purpose, of ensuring fair and consistent complaint handling in this area, would not be served if we provided rules and guidance that depart too far from the approach set out in the *Plevin* judgment and open up obvious gaps with potential claims and decisions in the courts.

Our aim is to provide consistency of interpretation and outcome to relevant PPI complaints in light of *Plevin* while also ensuring there is flexibility for firms to take into account the circumstances of every case. We think this approach is consistent with the aim of the Civil Procedure Rules which is to encourage alternative methods of dispute resolution.

Consumers will remain free to go to the courts, including if they desire the kind of assessment a judge would undertake. However, having the fair alternative of our rules and guidance may help avoid an increased flow of cases to the courts, with all of the challenges and costs that might involve for consumers and firms. Our intervention will help to ensure that, in the particular context of PPI complaints where *Plevin* is relevant, the framework of our complaint handling rules for firms and the availability of the Financial Ombudsman Service continues to provide its usual simpler, more informal and free-to-the-consumer route to an assessment and potential redress of relevant expressions of dissatisfaction.

We agree that the courts themselves are likely to give some weight to what we, as the sector regulator, set out as our approach.

We do not have concerns about consistency between our approach and the approach of the Financial Ombudsman Service to deciding individual cases. Although the rules and guidance are for firms, the Financial Ombudsman Service will take them into account – with all other relevant considerations and circumstances – and give due weight to them when deciding what is fair and reasonable in all the circumstances of individual cases. As always, firms will have the opportunity to understand the Financial Ombudsman Service's approach from its individual decisions, which are published, and, where appropriate, through the parties discussing with the Financial Ombudsman Service its approach as shown by past decisions. These opportunities will help firms' understanding and help achieve consistency.

Our package of measures does not create new obligations and liabilities for relevant firms in terms of levels of potential redress in individual cases. After all, as we have noted, s.140A already applies to firms and their credit agreements and the *Plevin* judgment is well known, certainly among CMCs, and is already giving rise to complaints to firms and claims in court. Our approach is designed to provide a common framework within which firms should approach these complaints, to reduce uncertainty and enable firms to take a fair and consistent approach to handling them.

We accept that our package of measures as a whole may increase the number of complaints in the period before the deadline, including those where *Plevin* is relevant. However, providing certainty about which complaints firms must consider in light of *Plevin,* and how they should consider them, will reduce the relative administrative cost of handling each complaint, compared to a scenario where we did not intervene in this way and firms remained uncertain.

We have only intervened in the particular circumstances of the large ongoing PPI redress issue and the Supreme Court judgment in *Plevin* that seemed directly relevant to it. We do not consider that our intervention sets any precedent. We will continue to consider future issues and case law, in whatever areas they may arise, on a case by case basis in light of our statutory objectives and regulatory priorities.

To the extent that a PPI complaint raises matters that may be of relevance to s.140A-B but does not involve undisclosed commission, those matters would lie outside the scope of our new rules and guidance on *Plevin*. However, firms would still need to consider them fairly, at Step 1 (assessing mis-selling) if the firm was the seller, and/or within the framework of our existing higher level (non-PPI specific) complaint rules (as we propose for PPI complaints that raise breaches of fiduciary duty – see Chapter 4 paragraph 4.66 below).

We do not yet regulate CMCs and so cannot intervene to set rules and guidance for them about their involvement in PPI complaints. We do engage with the Financial Ombudsman Service, CMR and CMC trade bodies about PPI complaints, CMC conduct and CMCs' experiences with firms, and will continue to do so following our intervention.

We always strive to make our rules and guidance as clear as possible to ensure consistent application and reduce disputes, while also achieving an appropriate balance between prescription and flexibility.

We will be reviewing the retained provisions of the CCA, including s.140A, and are required to report to the Treasury by April 2019.[64]

Proactive measures concerning *Plevin*

3.28 Most responses from consumer bodies and CMCs maintained their view that our intervention did not go far enough because we should require firms (perhaps under a s.404 scheme) to proactively contact:

- all consumers eligible to make a complaint under our new rules and guidance, or
- at least, those consumers who are eligible but had previously complained about mis-selling but been rejected, since they are less likely to engage with our campaign messaging or re-engage with PPI and complain[65]

3.29 Some of these responses also noted our argument that it would be inappropriate to require proactive measures because we had not required commission disclosure in our conduct of business rules. They said it was unfair for consumers to be penalised because of our failure to regulate the market effectively and despite long-standing calls for commission disclosure to have been made compulsory in retail insurance sales.

3.30 Responses from industry maintained their agreement that we should not require or expect firms to take proactive measures towards PPI consumers in respect of *Plevin.*[66]

Our response

Having carefully considered this feedback, we remain of the view that our proposed approach is fair and proportionate:

- We do not regard our predecessor the FSA's past decision to not require commission disclosure for retail customers in the insurance conduct of business rules as a regulatory failure or an error that our approach today needs to make good.[67]
- Given that we did not require commission disclosure in our ICOB/ICOBS rules, it would be inappropriate to require (e.g. under a s.404 scheme) or otherwise

64 We published a Call for Input in February 2016: www.fca.org.uk/news/news-stories/call-input-review-retained-provisions-consumer-credit-act

65 See paragraphs 5.127-5.128 of CP16/20

66 See paragraphs 5.82-5.86 of CP15/39 and paragraph 5.125-5.126 of CP16/20

67 In 2007, the FSA commissioned research on the effectiveness of the disclosure by intermediaries of their commission and claims ratios in insurance markets, using PPI-like products as examples. The results were published later that year. At the time, the FSA stated that the costs of mandating commission disclosure appeared to outweigh the benefits, although this conclusion was to be kept under review. The paper also found potential unintended consequences: that the consumer might see the intermediary as having greater credibility and so be more susceptible to persuasion; and that insurers or lenders might inefficiently restructure their distribution arrangements to avoid having to disclose high levels of commission.

expect firms to proactively review, or take other proactive actions in respect of (e.g. making targeted contact with relevant customers) all past PPI policies and sales which fall within the scope of s.140A-B CCA.

- Instead, we think it is reasonable in the circumstances for us to continue to rely on a complaints-led approach, as we have mainly done so far for redressing PPI mis-selling generally. We do not consider that this is too difficult or onerous for consumers. As set out above, our campaign will provide information to consumers about the *Plevin* issue and encourage them to engage with it and consider their own position. And we would expect relevant firms to assess new complaints at Step 2 even where these do not expressly raise the issue, or provide few details about it, or show little understanding of it.

- In any event, a s.404 scheme could not apply to PPI sales made before 2005 or to credit agreements from lenders that did not carry out insurance mediation before 1 April 2014, because of the requirement under s.404 for there to have been a regulated activity.

- We should not require (or otherwise expect) firms to proactively review previously rejected PPI complaints about credit agreements falling under s.140A-B CCA against our new rules and guidance. This is because the non-disclosure of high commission has not breached our rules, and is unlikely in and of itself to have been a breach of our Principles, so we do not consider the firm's failure to have included this aspect when previously assessing the PPI complaint to have been unfair complaint handling.

- Equally, if a consumer previously complained explicitly about the non-disclosure of commission on their PPI policy, and the firm considered this but did not uphold the complaint, we think it would be retrospective and wrong for us to require the firm to re-open that complaint.

However, we have given further thought to the potential communications needs of those specific consumers who have previously made complaints about PPI mis-selling that were rejected, but who may be eligible to make a further complaint in light of *Plevin*:

- On the one hand, our campaign, from its outset, will include messaging on *Plevin* and information aimed at people who have previously complained and been rejected.[68] This will alert them that they may now be entitled to redress due to undisclosed high commission. This messaging will be carried in our online advertising, PR activity, in leaflets and through our partners. Once consumers are engaged, we will be signposting them to more detailed information about *Plevin* and the potential for further complaints through our website and PPI contact centre.[69]

68 We will not, however, include *Plevin* messaging in our initial TV or outdoor advertising, as we determined that the addition of messages about *Plevin* through those channels would add a layer of complexity that may cause consumers confusion and muddy the effectiveness and cut-through of the core messages.

69 A clear message will be displayed on the landing page of the PPI website for people who have previously made a PPI complaint. The website will include messaging around *Plevin*, in particular for those who have been previously rejected. The contact centre team will be trained to be able to explain *Plevin*, reflecting the content housed on the website.

- On the other hand, we do see a risk that some of these previously rejected complainants may not engage with the campaign, because they may be de-sensitised to it by their previous unsuccessful complaints experience and think it was not relevant to them, and therefore potentially miss out on the opportunity to seek redress in light of *Plevin*.

We have therefore concluded that:

- letters to these particular consumers, explaining their situation in appropriate detail, would be a good supplementary way to convey the message to them and be likely to resonate with them about their particular circumstances

- we should add to our finalised package of measures a rule requiring firms that sold PPI to write, to those of their previously rejected mis-selling complainants who are in scope of s.140A CCA, with appropriate messaging about the right of these consumers to complain again in light of *Plevin*

We estimate that around 1.2m consumers will be in the scope of this mailing. We consider that identifying such previously rejected in scope complainants should be reasonably straightforward for larger firms who were both the PPI seller and CCA lender. Smaller firms that did both roles may find such review of scope somewhat more time consuming and costly. And the task is likely to be more challenging for that minority of cases where the firm was only the PPI seller, not the lender, as these firms may not necessarily be able to identify from their own records whether the credit agreement the PPI covered was in scope of s.140A. In this case, they would need to take reasonable steps to seek relevant information from relevant lenders. If that proves fruitless, they would need to approach us with a request to be able to mail all their previously rejected complainants, even if an unknown proportion of these would be out of scope.

We accept that there may be some consumers who cannot be contacted. As noted, the deadline will still apply to these consumers regardless.

We consider that this additional requirement is proportionate and that its costs are outweighed by the benefits to consumers. (See Annex 3 paragraphs 11-17.)

The new rule specifies that a consumer should be included in the mailing where they:

- have or had a PPI policy where the credit agreement is in the scope of s.140A

and, in respect of this policy, as at 29 August 2017[70], they had:

- made a complaint about mis-selling but the firm had rejected this[71], and

- either (i) not referred the complaint to the Financial Ombudsman Service or (ii) referred the matter to it but the Financial Ombudsman Service had rejected it, and

70 ie at the start of the two year deadline period

71 'Rejected' in the specific sense of the new rule, DISP App 3.11.1R(2), in that the firm did not offer the complainant the redress they would have been offered had the firm concluded that, but for identified sales failings, the complainant would not have bought the PPI they bought

- not previously made a complaint about undisclosed commission that the firm or, where applicable, the Financial Ombudsman Service had previously considered or otherwise indicated in writing that it would consider.[72]

We also set out in the Handbook text the main content we expect the letters to convey, including:

- an explanation that they can make a further complaint, if they wish to, in relation to a failure to disclose commission
- a reference to the deadline and the identity of the CCA lender (where this is known to the seller or can be identified by them following reasonable steps)
- reference to the availability of further information about arrangements for making a further complaint on the FCA's PPI website, or by contacting the FCA's PPI contact centre

We may also in due course invite firms to enclose any relevant new FCA pamphlet.

As noted, the deadline will still apply to these consumers regardless of whether they are meant to receive such a letter or actually do so.

The details of the proposed deadline

3.31 Most industry responses maintained support for our proposal to include within the scope of the deadline PPI complaints about:

- undisclosed commission in light of *Plevin*[73]
- commission and fiduciary duty in light of *McWilliam*[74]
- claims on policies that were rejected because of ineligibility or exclusions or limitations, which we considered to be matters relating to the sale[75]

3.32 In contrast, most consumer bodies maintained their views that we should not include these kinds of complaints in the scope of the deadline[76] because:

- undisclosed commission is a new and complex concept which requires consumers to (re)engage with the complaints system, creating the risk that many will not act in time and miss out on redress, while firms and the Financial Ombudsman Service also need time to adjust to the new *Plevin* rules and guidance

72 This recognises the factual position that some firms and the Financial Ombudsman Service have a growing number of cases waiting for our rules and guidance on *Plevin*, which they would want to consider before making final decisions.

73 See paragraph 5.126 of CP16/20

74 See paragraph 5.132 in CP16/20. In March 2015, the Court of Appeal held that a fiduciary relationship existed between Mr and Mrs McWilliam and Norton Finance. Norton, an independent credit broker, had not disclosed the amount of commission it received on the sale of a PPI policy, and was found to be in breach of its fiduciary duty by failing to obtain Mr and Mrs McWilliam's informed consent for this; see paragraph 5.130 of CP16/20

75 See paragraph 3.18 of CP15/39

76 See paragraphs 3.45, 5.129 and 5.134 (second bullet) of CP16/20

- *McWilliam*-type complaints are still passing through the judicial process, with important issues still being considered in the courts
- rejected claims on policies could leave the consumer facing significant financial hardship, including potentially losing their homes in the case of mortgage PPI; such complaints would be limited in number, so excluding them would not undermine the aim of orderly closure of the PPI issue

Our response

Having carefully considered all the feedback, we still believe that our proposal to include in the scope of the deadline complaints about undisclosed commission in light of *Plevin,* and commission and fiduciary duty in light of *McWilliam,* is fair and proportionate. Consumers who may have been affected by undisclosed high commission will be adequately prompted to act before the deadline by our consumer communications campaign and partnership activity. The communications campaign would prompt consumers to consider their position, and they would have a significant period of time before the deadline in which to complain about mis-selling, undisclosed commission, or *McWilliam*-type issues. And after the deadline, they would remain able to raise these issues in claims in court. We think that excluding complaints involving undisclosed commission or *McWilliam*-type issues from the scope of the deadline would materially affect our successfully achieving our objectives. In particular, such exclusion would undermine the certainty and orderly conclusion which the proposed deadline and campaign would bring.

However, having considered the feedback, we now consider that although consumers will have had opportunity to check with, or complain to firms about the terms of their policy and any potential mis-selling, it would be unreasonable for us to necessarily expect consumers to have complained about sales failings that could cause a rejection (by the insurer) of a claim on the policy before that claim had been made and rejected. Expecting this, and applying the deadline to such a complaint and in such circumstances, would leave policyholders in this position without further opportunity to seek redress under our rules and guidance from the firm that sold them PPI (which under our existing rules could be equivalent to, or more than, the rejected claim). In consequence, they may then be unable to maintain their mortgage payments (or rent payments on a credit card). As such, these consumers would have less rights than policyholders of other types of insurance whose claims were rejected for reasons connected to the sale, who are generally able to complain about this for three years after the rejection.[77]

There were around 16,000 claims on PPI in the last 12 month period, of which no more than 20% were rejected for reasons relating to the sale, such as ineligibility for the cover. This relatively low number reflects the improvements that many firms have made in existing policies' terms and conditions and their handling of relevant claims, which they often administer on behalf of the insurers.

77 Under our existing time limit rules in DISP 2.8

Therefore, we have decided to amend our final rules and guidance so as to not apply the deadline to sales complaints made after 29 August 2019 which:

- concern a rejection of a claim on a live policy on or after 29 August 2017, and
- where that rejection was due to reasons connected with eligibility under, or exclusions or limitations in, the policy

This means that most PPI policyholders whose claim is rejected for such reasons will have at least two years from the rejection to complain about it to the seller.[78]

We consider that this very narrow carve out from the deadline of these specific future potential complaints is the most effective, targeted and proportionate mitigation of this potential detriment to this small potential group of consumers and that it will not materially undermine the certainty and orderly conclusion we believe the deadline and communications campaign would bring.

We note that if a complaint made after 29 August 2019 meets these narrow criteria and so is not caught by the deadline, and is not otherwise out of time, then the firm would need to consider only whether the reasons for the rejection of the claim reflected a significant flaw in the sale and whether, but for those flaws in the sale, the consumer would not have bought the PPI they bought.

Other sales failings that may have occurred, but did not cause the rejection of the claim, would not need to be considered or assessed as flaws, because they remain caught by the deadline and so remain out of time.

For the same reason, undisclosed commission does not need to be considered by the firm in such circumstances, even in those cases where it both sold the policy and was the lender.

3.33 Concerning potential exceptions to the deadline where failure to complain in time was a result of exceptional circumstances[79]:

- Some responses from consumer bodies and CMCs maintained their view that all consumers in vulnerable circumstances should be treated as exceptions to the deadline.[80]
- Some responses from industry maintained their concerns that our proposed approach created too much uncertainty, would lead to inconsistency, and would prompt CMCs to argue that whole categories of consumers were exceptions. They asked us to prescribe in detail which circumstances we and the Financial Ombudsman Service were likely to consider exceptional, as we did in the compensation scheme for sales of card or identity protection policies through Card Protection Plan (CPP).[81]

78 Two years because complaints about claims rejections that were communicated before 29 August 2017 will be subject to the deadline. Exceptions would be if the reasons for the rejection were out of time under our existing 6 year and 3 year time limit rules, for example, because the consumer had received a proactive contact letter from a firm more than three years before the rejection of their claim which had warned them of potential ineligibility or relevant exclusions or limitations.

79 See paragraph 3.37 in CP16/20

80 See paragraph 3.48 of CP16/20

81 See paragraph 3.47 of CP16/20

Our response

Having carefully considered all the feedback, we remain of the view that:

- Whether exceptional circumstances apply in an individual case is a decision, in the end, for the Financial Ombudsman Service, which already provides helpful examples of exceptional circumstances on its website, and already applies exceptional circumstances, narrowly and reasonably, in cases where our various existing time limits in DISP are relevant.

- We do not need to make specific provisions concerning our deadline for PPI complaints.

- The specific provisions on exceptional circumstances in the CPP scheme reflected its particular nature as a Scheme of Arrangement that had to be clear in its rules so affected consumers could vote on accepting it and a court could approve it. Also, the timely response required by consumers in that Scheme was very simple – they merely had to indicate whether they wished to opt in to it.

- We do not consider that it would be compatible with the principle of 'exceptional circumstances' to extend it to cover whole categories of consumers. We have described in this chapter and the EIA the steps we are taking to ensure that the campaign does work effectively for various identified vulnerable consumers and protected groups.

Conclusion

3.34 We have carefully considered all the feedback we received on the details of the proposed campaign. In light of this, our further creative work and programme of testing, the additional mailing of 1.2m previously rejected complainants, and our good progress in securing firms' commitments to improving PPI complaint-related customer service and processes in order to remove barriers to consumers acting, we consider that the campaign will be effective in clarifying and raising awareness of the PPI issue and prompting consumers to consider their position and, if they decide to complain, act before the deadline.

3.35 In particular, we consider that the potential disadvantages for certain protected groups and vulnerable customers set out in the EIA will be eliminated, or, where not eliminated entirely, minimised to a level where we can be confident that it is reasonable and justified to proceed, if we take the mitigating actions that we have identified. This conclusion takes into account the views of our diversity experts, Goss Consultancy Limited (GCL), and our other professional consultants. As such, we consider that we are justified in proceeding with our proposals, taking into account the need to achieve the objectives set out in CP15/39 and CP16/20 and the fact that we do not think we could reasonably and proportionately achieve the same objectives using alternative means.

3.36 Overall, having carefully considered all the feedback received on our rationale for intervening, and our updated EIA, we consider that we should intervene further in PPI, with this package of measures, for the reasons we set out at paragraph 2.30 above.

4. Feedback on the detail of our proposed rules and guidance on PPI complaints and *Plevin*

Introduction

4.1 In paragraphs 5.11 to 5.134 of Chapter 5 of CP16/20, we discussed the feedback we received to CP15/39 on the details of our proposed rules and guidance on PPI complaints and *Plevin*. We proposed modifying our approach to include profit share[82], as well as commission, because:

- Although profit share sums were usually not guaranteed, in practice, in many of the years when PPI was sold (including the years it was sold in greatest volume), claims rates were stable in the short to medium term. So it is reasonable to conclude that firms could reasonably foresee that they would receive material profit share sums under their agreements or arrangements with insurers.
- Profit share sums were larger, relative to commission, than we had estimated.[83]
- Disclosure of profit share would generally have been likely to impact the consumer's thinking alongside any commission (or, in some cases, alone). So including it would run with the grain of *Plevin* and be fairer to the consumer.
- Including profit share reduces the likelihood of large arbitrary differences in the outcome of complaints between firms which could reasonably have foreseen receiving the same broad economic benefit from PPI but via different proportions of commission and profit share.

4.2 We also clarified how our approach to assessing merits and to providing redress should work where commission, and now profit share, *vary* during the life of the PPI policy.

4.3 So, in our revised draft provisions, we said (of relevant PPI complaints) that (in summary):

- The firm should presume that failure to disclose commission gave rise to an unfair relationship under section 140A of the CCA if the anticipated profit share, plus the commission that was known or reasonably foreseeable at the time of the sale, was more than 50%[84] of the total amount paid in respect of the PPI policy […]

82 Which we described in CP16/20 as: Arrangements (including contractual) that firms have to potentially receive back some of the amount paid in relation to a PPI policy which had initially gone to the insurer. For example, such arrangements might include amounts paid to cover potential claims on policies, but which remain unspent after a fixed period, for example because actual claims did not exceed certain levels.

83 In CP15/39, at paragraph 5.54, we had described the average commission on PPI for the 12 largest distributors in 2002-2006 as 67% of premium, according to the CC's figures, when in fact that figure was commission *and* profit share. In CP16/20, we estimated, based on information we received during the consultation on CP15/39, that, typically, commission accounted for around three quarters of distributors' revenue from PPI, and profit share around a quarter. That is, many firms on average received around £1 of profit share per £3 of commission.

84 In this chapter, for brevity we refer simply to the '50% tipping point'. However, we note that 50% is only the *presumptive* tipping point for an unfair relationship, and that our approach allows for the rebuttal in some circumstances of the presumption that higher rates are unfair and that lower rates are not.

- Where the firm concludes [...] that the non-disclosure has given rise to an unfair relationship [...], the firm should […] pay to the complainant a sum equal to:

  1. the commission actually paid in respect of the PPI policy; plus
  2. an amount representing the actual value of any payment(s) made in respect of the PPI under profit share arrangements; minus
  3. 50% of the total amount paid in respect of the PPI policy

  [and] also […] historic interest on that sum (plus simple interest)

4.4 Concerning our amended proposals, we asked:

> ***Q19:*** ***Do you agree with our proposed modifications of incorporating anticipated profit share sums within our approach to assessing fairness and actual profit share sums within our approach to redress? Do you perceive any particular practical or operational difficulties with this modified approach?***

> ***Q20:*** ***Do you agree with our proposed clarifications that firms should presume that the failure to disclose gave rise to an unfair relationship where the anticipated profit share plus the commission reasonably foreseeable at the time of the sale were more than 50%, but then calculate redress on the basis only of those periods where the actual level of commission and profit share together was more than 50%?***

4.5 In this chapter, we first review and respond to the feedback on these new aspects of our proposals[85], and then discuss new comments on the previous aspects. However, the issues raised by the *Plevin* judgment are complex, as were the consultation responses on them, and this is an unavoidably detailed chapter. So, for convenience, we begin with a summary of the main points.

Summary

4.6 We have carefully considered the various in principle and practical arguments that most responses from industry made against our proposed inclusion of profit share in our approach. However, we have concluded that:

- the profit share element was reasonably foreseeable by lenders, at least over the near to medium term (see paragraphs 4.19-4.20)
- although there are differences in the nature of commission and profit share, lenders overstate these (see paragraphs 4.21-4.25) and also the difficulties of disclosing profit share

85 We also made other smaller amendments to the proposed rules and guidance in CP16/20 that were primarily minor consequential changes or changes for clarity or Handbook simplification purposes.

to consumers at point of sale, and underestimate the informational value to consumers of doing so and the adverse impact on them of not doing so (see paragraph 4.26)

- including profit share in our approach runs with the grain of the *Plevin* judgment and of other cases in the lower courts (see paragraph 4.27)
- the genuine practical challenges and administrative costs for firms in including profit share do not undermine the correctness and fairness of doing so (see paragraphs 4.29-4.35)

4.7 But we also recognise, and have made clear in our responses below (see paragraphs 4.39-4.45) or revised Handbook text, that:

- most firms did not record profit share in terms of individual policies, so implementing our approach will generally require a broad-brush approach
- specifically, firms must in general seek to make reasonable estimates of the profit share (actual or anticipated, as relevant) from a book of policies in a year that can be *notionally attributed* to the policy in the complaint, with such allocation to be made in proportion to that policy's (actual or anticipated) contribution to that book's total premiums in the year
- firms will thus face some practical challenges, and so we need to ensure that they and complainants understand our intentions and that firms implement them as fairly and consistently as possible, but also administratively proportionately
- we should proceed in a manner consistent with our rationale for intervention, namely, that we think it appropriate concerning the *Plevin* issue that we take the lead in setting out an approach to handling relevant complaints
- firms will face particular challenges where they have gaps in their past data, and should make reasonable efforts to obtain information from third parties where relevant

4.8 Accordingly, we have decided that:

- We will bring the rules and guidance into force 6 months after their making, not 3 months – ie on 29 August 2017, to give firms sufficient time to prepare for implementation.
- Before and after that, we will conduct appropriate and robust supervisory work with the larger firms (who together receive the majority of PPI complaints).
- This work will look at, and where appropriate challenge, the commission rates and profit share sums firms are using for different products and periods featuring in complaints, the reasonableness of these and the assumptions underpinning them, including where the firm has data gaps to overcome. Our work will help ensure that such estimates are broadly consistent and made on a reasonable basis.
- We will help with queries about implementation from other firms.
- During our supervisory work, we will consider whether publishing worked examples of profit share estimates and calculations would be helpful.

4.9 Firms, if they feel confident in the fairness and robustness of their intended approach, may choose to apply our final rules and guidance before these come into force and before (for larger firms) we have conducted supervisory work with them. But clearly, we would expect firms to revisit and correct any problems, should it later transpire that their approach was not fair.

4.10 We have also carefully considered the various arguments that most responses from consumer bodies and CMCs made against our proposed:

- 50% (of what the consumer paid) 'tipping point' for presuming that undisclosed foreseeable commission and anticipated profit share beyond this in any period created an unfair relationship, and
- approach to redress, which centres on returning the actual commission and actual profit share over 50% in any period (plus return of historic interest on that excess, and also simple interest where appropriate)

4.11 We have concluded that:

- Basing our approach around a single 50% tipping point for presuming unfairness, albeit rebuttably, is fair and appropriate, a reasonable exercise of our regulatory judgement, and not remote from the approach the courts would take.
- Our approach to redress has to be viewed in the round, as a package. Responses from CMCs and consumer bodies have focused on the level of the tipping point. But responses from industry have focused on aspects which they believe depart from *Plevin* and give overly generous redress, such as the return of historic interest on the excess commission and profit share (usually based on full account reconstruction for credit card PPI) and additional interest at 8% where appropriate. So overall, we consider our approach is balanced and will give redress, in aggregate and to individuals, that is fair and proportionate in light of the potential detriment identified and described by the Supreme Court's judgment.

4.12 We have, however, amended our final approach to redress in light of feedback to CP16/20. Now, any decision by the seller (at Step 1) to pay redress (on the basis that, but for the sales failings, the complainant would not have bought the PPI they bought) extinguishes any claim for redress the consumer may have at Step 2 (concerning undisclosed commission). This is so, regardless of whether the Step 1 redress paid was less than the full return of premium (because, for example, it was alternative redress or reduced because of a previous successful claim on the policy). It is also the case whether the seller and lender are different firms or the same.[86]

4.13 Also, and as proposed in CP16/20, sums rebated to a consumer when, for example, they cancelled a single premium PPI policy early, can be partly included in, and so reduce, any redress due at Step 2.

4.14 We note that throughout our consultations, responses have been mainly polarised on the issues and the elements of our proposed approach. Responses from CMCs and consumer bodies have focused on aspects which they believe depart from *Plevin* or are ungenerous to complainants, such as the lack of proactive measures towards consumers potentially impacted by *Plevin* considerations. Responses from industry have focused on aspects which they believe depart from *Plevin* and are overly generous to complainants, such as the inclusion of regular premium PPI in scope (including long time dormant policies), and the inclusion of profit share in our approach to merits and redress.

86 However, firms should take care not to pay partial redress at Step 1 in order to avoid higher redress fairly due at Step 2

4.15 These polarised views of the issues, and the admitted but unavoidable elements of complexity in our approach, do not undermine our rationale for intervening in relation to PPI complaints handling in light of *Plevin*, but strongly confirm us in our view that such intervention is necessary, in order to ensure fair and consistent outcomes and the orderly closure of this particular strand within the wider PPI issue. Overall, we remain of the view that our approach is balanced, fair and proportionate in light of the issues identified and described by the Supreme Court's judgment.

4.16 We will continue to monitor and challenge firms to ensure that they deal fairly and promptly with PPI complaints impacted by *Plevin*, and cooperate with the Financial Ombudsman Service. We will take action where firms fail to act fairly.

Feedback on the proposed inclusion of profit share

4.17 Responses from consumer bodies and CMCs welcomed our proposal to now include profit share in our approach. Some responses from industry also agreed that we should include it.

4.18 However, most responses from industry made detailed arguments in principle and practice against doing so. We consider these in turn.

Profit share was not reasonably foreseeable or accurately predictable

4.19 Responses from industry argued that, unlike commission, profit share was not foreseeable or predictable, because:

- it was not in lenders' gift or control, but rather in that of the insurers
- it depended on unknowable future events (claims experience, macro-economy, public health issues)
- its unpredictability was compounded where policy terms were long or open ended, and by agreements where claims rates and profit share calculations were combined across several PPI books and even non-PPI books
- the availability of historic profit share data at the time a policy was sold does not mean future profit share was foreseeable or would resemble the past, as:
  - data would have been up to 15 months old at the time of sale, and so already outdated for current views of future claims and reserving
  - data would concern a book that included many policies underwritten years earlier which could have very different risk and claims profiles and provide no reliable guide to potential profit share from the new sale and its cohort
  - data from previous years could still see ongoing adjustment in light of late claims and settlement payments
- periods of profit share stability, seen in hindsight, do not mean it was predictable at the time

Our response

Where the lender's commission is a lower proportion of the price to the consumer, the lender is essentially agreeing to take on more of the revenue risk to the insurer from higher than expected future claims rates. The lender does this in return for getting such 'buffer' money back as profit share if that risk does not materialise.

We consider that lenders' portrayal of the insurer's independence is not accurate, at least for major distributors with significant market power. They would have negotiated hard with the insurer over the net premium rate, level of commission, proportion of profit share (ie what proportion the distributor gets of any claims surplus) and how much of the revenue risk they and the insurer are each bearing.

The lender also still has the option (at least for regular premium policies) to ask the insurer in due course to increase the premium (and thus price) to consumers if the lender feels it is not getting enough in profit share income.

In any case, it does not follow from the fact that the lender may not be able to *control* the insurance rate or claims decisions, that it could not *anticipate* what the resulting profit share was likely to be.

Our view is that (for national scale lenders at least) PPI profit share was largely the return of the unused buffer which the distributor had provided to the insurer (by forgoing higher commission) in respect of more or less 'black swan' events that were too rare or unpredictable for the insurer to price into its net premium rate. It is unsurprising, therefore, that in most years such buffers were not drawn on by the insurer and significant profit share was returned.

There might be some slightly greater volatility in long term claims experience for larger fixed credit PPI because, for example, policyholders are more likely to make a claim if there is a trigger event. However, our understanding is that this does not feature much in lenders' expectations for profit share, which are more confined to the medium term covered by the typical 3 to 5 year length of agreements with insurers.

Our understanding is that arrangements which pool and offset losses across different types of PPI, or even against other general insurance, were not common. However, even where they existed, the pooling and offset would generally have taken place only late on in the analysis, after the separate book-types' respective claims and numbers had been calculated. So firms should generally be able to disaggregate the profit share attributable to each book-type and consider the foreseeability of each.

We accept that the existence of historic data about past claims rates and profit share does not make potential future profit share sums certain or precisely predictable. However, we do not think that such issues of timing, adjustment and portfolio composition undermine our view. Based on industry data we have seen, we consider that profit share levels were broadly stable and predictable for most of the period of PPI sales and that at the point of sale the lender could have reasonably foreseen that some likely sum of profit share would result from that sale and other similar ones at that time. Nor do we think our view is undermined by the largely philosophical argument that stability is not the same as predictability.

Our proposal concerning anticipated profit share is inconsistent with our proposal concerning variable commission

4.20 Some respondents argued that:

- concerning what firms could reasonably have disclosed, we correctly distinguish[87] commission rate changes that were reasonably foreseeable because they 'would' occur, such as contractually specified 'ratchets', from those that 'might' happen, for example, because of the possibility of future renegotiated agreements with the same or other insurers
- but profit share, being unpredictable, could never meet that 'would' hurdle, and could only ever be 'might' - so including it would be inconsistent

Our response

We accept that a reasonable estimate of the profit share sum that was reasonably foreseeable from a policy sale is not as certain as the contractually specified commission the lender would take. It cannot be said for certain that the profit share would definitely accrue. However, we consider that, from the perspective of the point of sale and the kind of potential disclosure discussed in *Plevin*, the broad profit share anticipated for the policy is sufficiently predictable to be relevant. Such anticipated profit share is, in our view, more foreseeable than the entirely future and unknown commission levels that depend on future, as yet unknown, (re)negotiations of (new) commission agreements with the (same or a new) insurer. So our proposals are not mutually inconsistent.

Profit share inclusion is unwarranted retrospective regulation of profits

4.21 Some respondents said that it is not usual FCA policy to regulate profitability or commercial arrangements, require disclosure of profit margin or to act retrospectively.

Our response

We are not requiring the disclosure of the lender's profit margin. Nor are we saying that any particular margin is unfairly high. We accept that the lender's commission and profit share do not *equate* to its profit or margin, as it would also have had costs to cover from these sums. What we are doing is setting out a framework for fair and consistent handling of PPI complaints in light of *Plevin*. That judgment did not concern itself with profit margin or costs. That is why we have also not allowed the deduction of reasonable costs from commission or consideration of the tipping point – see our response on page 67 below. (However, as we have previously noted[88], the 50% tipping point in our approach gives significant headroom above the 16% identified by the Competition Commission as reasonable costs and profit for PPI distribution.)

87 See our response under paragraph 5.104 of CP16/20.

88 See paragraph 5.56 in CP15/39 and our response under paragraph 5.64 in CP16/20.

Including profit share would have perverse outcomes for good firms

4.22 Some respondents argued that:

- some lenders used receipt of profit share in successive years to cut their own commission and/or prompt renegotiation with the insurer to cut the net premium, reducing the price for consumers
- so profit share may increase as a proportion of the reduced premium and may now be over 50%, despite the consumer paying less overall
- more broadly, any firm that charged a lower upfront commission, relative to profit share, and so kept the overall price to the customer down, will be penalised, even though the PPI was cheaper for the customer in absolute terms

Our response

This argument for profit share makes the same point that some firms have made about commission and the tipping point.[89] This argument is that a customer may have paid a higher commission percentage within a lower cost (or smaller premium) policy, and so paid less commission in absolute terms than someone paying a lower commission on a more expensive (or larger premium) policy.

Our response, as for commission, is that we are designing an approach that reflects *Plevin.* The Supreme Court judgment focused on the percentage of commission, not its absolute level.

In any case, in this scenario, the effect of profit share flows from earlier years should only be temporary, and soon the reduced net premium rate should translate into lower profit share and potentially bring the policy back under the 50% tipping point.

4.23 Some respondents further argue that including profit share will not bring consistent consumer outcomes because it does not address other disparities between consumers and firms. For example:

- Hypothetically, there could be two customers with the same personal claims experience, at two lenders who use exactly the same profit share formulas with their insurers and who have identical premiums and book size. These two customers would *still* probably have different profit share sums attributed to them, because of the different claims and profitability profiles of the other policyholders in their respective cohorts.
- This is because the policyholder whose lender had a stricter underwriting process for loans is likely to belong to a cohort that experiences fewer PPI claims than the firm with less stringent underwriting practices. This means the more prudent firm will potentially make more profit share and, on our approach, pay more redress than the less prudent firm. This is not consistent or fair for the consumers or the firms.

89 See paragraph 5.64 in CP16/20.

Our response

We said only that our proposed inclusion of profit share would, in our view, reduce the likelihood of large arbitrary differences in complaint outcomes between firms that could reasonably foresee receiving the same broad economic benefit from PPI policies via different proportions of commission and profit share. We did not claim our approach would provide outcomes that were in some sense identical or perfectly reflected all aspects of the consumer's experience or firm's commercial approach or revenue.

We also doubt that the example necessarily conveys the point it aims for. We might equally suggest that the 'prudent firm' may have gained higher profit share by selling PPI to borrowers who had relatively less need of it (being better loan risks) than the customers of the less prudent firm. This is not to say that the prudent firm necessarily mis-sold the PPI. However, it does suggest that, had it been disclosed, the higher (anticipated) profit share of the prudent firm would, from the perspective of the *Plevin* judgment, have been informative to the customer when considering the value of the PPI. So, it is not clear this disclosure would lead to inconsistent outcomes that were unfair to one firm compared to the other, or to their respective customers.

Profit share inclusion would have disproportionate outcomes for mortgage PPI

4.24 Some respondents argued that including profit share would have an unfair and disproportionate impact on mortgage PPI because:

- much mortgage PPI commission was typically under the proposed tipping point, but the inclusion of profit share would likely tip some over it, leading to redress
- mortgage PPI provided much better value than other PPI, costing £5 per £100 of cover, compared to £12 for credit card PPI and £18 for (single premium) loan PPI

Our response

We have said previously that we are using our regulatory judgement to propose rules and guidance that broadly reflect the principles raised in *Plevin*. The *Plevin* judgment focused on the unfair relationship and detriment potentially caused to the consumer because non-disclosure of commission above the tipping point had not given them full opportunity to consider the value of the product. The judgment did not consider questions or levels of value per se. It focused on the percentage of commission, not its absolute level, and did not take into account the price of the policy or its cost compared to others.

It makes no sense to talk of profit share 'in respect of the PPI policy'

4.25 Some respondents argued that attributing actual or anticipated profit share to an individual policy would be so notional that it would be meaningless, making it a weak basis for our revised approach. This is because:

- Profit share calculations were made and operated at book level. They were never intended to be attributable to individual customer accounts and never documented in that way.

- Any notional allocation could only be done by averaging crudely across a whole mix of live policies (and their associated mix of credits)[90] and would also average across policies that have successfully made a claim and those that have not. So the notional allocation would bear no real relationship to the policy's performance or any profit made on it.

- The artificiality of the calculation would be especially great where the firm only has data about profit share on a 'year of payment' basis, rather than by underwriting year. This is because the profit share paid in a year will reflect an even more fragmented mixture of rates, reserve releases, off-setting and contractual terms from the run-off of several prior insurance periods.

- Consequently, any notional allocation from book to policy would be inaccurate and rely on assumptions that would be poorly understood and non-transparent.

Our response

We accept that most firms will not have assessed or recorded profit share in terms of individual accounts.

We therefore accept that our approach will generally require a broad-brush notional allocation of the anticipated or actual book-level profit share to a policy, in proportion to that policy's anticipated or actual contribution to the book's total premiums.

We also accept that with such notional allocation:

- there will only be a loose connection between the figure notionally allocated to the policy and its 'contribution' to the book level profit share as a whole

- some policyholders will, in some sense, be allocated slightly more profit share than, strictly, their policies' performances warrant, and others slightly less

Nonetheless, we believe that such approximation is reasonable and fair, and compatible with the broad remedies for unfair relationships intended in s140A of the CCA.

Profit share disclosure would not have been meaningful to consumers

4.26 Some respondents argued that:

- Commission is a certainty and it is possible to be specific about how much it is and its direct link to the consumer's individual policy premium(s). Therefore, commission can be clearly and easily communicated to consumers at the point of sale.

- By contrast, profit share is uncertain, not known at the point of sale, and not directly linked to or taken from the policy, as it is calculated later and at book level only.

90 For example, these responses note that even a book about a single type of PPI will usually have been composed of, and thus received notional profit share contributions from, a wide range of sub-product policies with different pricing and benefits, which may be of differing contractual durations, covering loans (which may also vary in duration) that were written over many years, with potentially differing lending criteria and thus potentially varied likely claims experience.

- So the firm could, at most, have disclosed to the customer the broad range of recent levels of profit share across the portfolio, but with heavy caveats that future events and figures may well not resemble the past.

- We had not said why or how disclosure of such broad, uncertain and heavily caveated information would be understood by consumers and help them in their assessment of value.

- Disclosure of information about profit share would not have made the consumer question the value of the PPI in the same way as commission may have done, as:

  - Behavioural evidence shows that consumers discount even large costs that are far in the future, compared to smaller ones that will happen sooner. So the large upfront commission will dominate their thinking, compared to any smaller far-off profit share sum.

  - Disclosing upfront commission would have given the customer a strong idea of the possible profit if no claims on the policy were made. There is no meaningful difference from the consumer's perspective between all of that potential profit sitting with the insurer or it being shared with the lender – it is still the amount left over after any claims have been met.

- Typical customers do not expect to be told about firms' margin or profit.

- Overall, therefore, given that information about profit share is unlikely to be useful to consumers, it would:

  - be unduly harsh for us to find firms were acting unfairly when failing to tell customers about profit share at point of sale

  - be inappropriate to suggest, in the context of s140A, that a firm's non-disclosure of profit share deprived the consumer of the opportunity to make an informed decision

  - go well beyond what is necessary to ensure an appropriate degree of protection for consumers to include profit share when considering PPI complaints in light of *Plevin*

Our response

Although there are genuine differences between commission and profit share, we consider that lenders' responses overstate these and the difficulties of disclosing profit share to consumers, while underestimating the informational value to the consumer of doing so.

In our view, the *Plevin* judgment focuses on the firm not disclosing to the consumer the significant imbalance in the allocation of the premium between the insurer on the one hand, and lender (and other parties in the value chain) on the other. It also focuses on how this non-disclosure created an unfair relationship by denying the consumer the chance to consider the implications of that relative allocation for the value of the policy.

We still believe that the profit share that the firm could reasonably foresee at the point of sale was an important part of that allocation and of its non-disclosure and adverse consequence for the consumer. That is still the case, even if the anticipated profit share sum that could have been disclosed was necessarily broad, approximate and caveated. Firms' responses are focusing on a possible detailed disclosure that draws a distinction between commission and profit share. But we query whether that would have been required to avoid a finding of an unfair relationship under s.140A. Given the unfairness identified by the court in *Plevin* was the non-disclosure of the high level of commission – how much of the money (in % terms) the consumer thought went to the insurer was actually retained by the lender and the broker by way of commission - a firm could, in our view, simply have told a customer that it was likely to retain around, say, 80% of the amount paid (e.g. 60% commission and 20% anticipated profit share).[91]

Even if it were true that disclosing the commission might generally have weighed more on the consumer's assessment of value than disclosing the profit share (if separately disclosed), we do not think this means the profit share element would have been irrelevant or without any potential influence if disclosed.

It was also argued that because it doesn't change the price they pay, the consumer would be indifferent whether profit from lower than expected claims was retained exclusively by the insurer or shared with the lender. But we think this view contradicts *Plevin's* explicit focus on the undisclosed allocation of premium between insurer and lender (or other parties).

Similarly, the argument that typical customers do not generally expect to be told about firms' margin or profit is moot, because this argument could just as well be made against the disclosure of (high) commission, which the Supreme Court has declared *is* of interest to consumers, and because disclosure of profit share (and commission) does not, in any case, reveal margin or profit (as the firm's costs are not disclosed).

Profit share inclusion lacks any basis in *Plevin* or authority from *Brookman*

4.27 Some respondents argued that:

- *Plevin* contained no reference to profit share and related solely to standard 'upfront' commission, so suggesting that non-disclosure of profit share can contribute to creating an unfair relationship departs too far from *Plevin.*
- Including it is not 'running with the grain' of *Plevin* as the FCA suggests, but a significant and unsafe leap beyond.
- Our proposal gains no authority from *Brookman* or *Verrin & Winkett*[92], as although they mention profit share:
  - they were county court decisions and not binding
  - in neither were full arguments made in respect of profit share

91 The content of the disclosure would, of course, differ if, between the consumer and the lender, there was an intermediate broker who received commission. In the vast majority of cases, the lender and seller were the same firm.

92 Decision of the Plymouth County Court dated 27 May 2016 (Claim No: 1PL00517)

– the profit share arrangements in *Brookman* were different in nature to those of most others and contained an atypical element of predictability[93]

- Overall, our proposal is entering into an important legal and public policy area that has not yet been properly considered by the courts.

Our response

We have carefully considered these arguments. But despite some differences between commission and profit share, we still think that including profit share in our approach runs with the grain of the Supreme Court judgment, and supports our aim of fair and consistent handling of PPI complaints in light of *Plevin*.

In making our proposal, we have not relied on the county court decisions in *Brookman* or *Verrin & Winkett* as authoritative, but we have taken account of them, and the former did, as we have said, prompt us to conduct further work on the profit share issue following CP15/39.

We do not consider that the somewhat unusual arrangements in *Brookman* raise significant differences in principle from the more common arrangements, and we said that our proposal should embrace both (and other) types. After all, our understanding is that the insurer could claw back advance payments if subsequent events had warranted that. Likewise, claims-based profit share arrangements generally involve flows of payments that are 'advance' (in the sense of pre-empting the final definitive claims experience on a book) and give scope for claw-back of these (or netting off against subsequent sums due) in light of later experience.

We consider it is reasonable for us to use our regulatory judgement to include profit share in our approach, despite no higher court direction on this point. We have carefully considered the legal and public policy issues implied by our proposal. Public policy issues may not necessarily be considered by a higher court in a dispute about the fairness of an individual commercial relationship under s.140A.

It is entirely appropriate for complainants whose firms have different proportions of commission versus profit share to have different outcomes

4.28 Some respondents argue that it is appropriate because they are quite different things, the commission being certain, the profit share not.

Our response

This re-states assertions that profit share, unlike commission, is not predictable and so not meaningfully communicable to consumers. Hence, it should not be regarded as a disclosure the firm failed to make. We do not agree, as set out in our response on pages 53-54 above.

93 The 'equalisation fund' put aside 20% of premium (of 48% available for profit share) which operated as 'an advance payment on its anticipated profit share'

Profit share exists in other insurance distribution arrangements and so the FCA needs to consider more carefully the wider ramifications of its proposal.

4.29 Lenders argue that we should give more careful thought to the public policy issues, saying:

- Disclosing commission and profit share levels into the public domain via complaints decisions is a cause for concern, as it may lead to unintended consequences.
- It could undermine company confidentiality and lead to distortions in the market, for example, from knowing the profit share buffer and risk appetite which firms, including insurers, operate with, or their benefits in kind.

Our response

Firms are concerned about the risk of unintended consequences, but it is not obvious that our proposal to include profit share increases the risks compared to an approach focused on commission alone. While profit share arguably links insurers more closely to these PPI complaints, it is not clear the disclosure is necessarily adverse to insurers or their reputations, given large profit share sums obviously suggest their own profits from PPI were limited.

Given the limited state of the current PPI market, it seems unlikely there will be significant ramifications for it, or that including profit share would be an obstacle to the development of a new and healthier protection market (one of the elements in our rationale for a deadline on PPI complaints).

Our proposals do not concern PPI policies outside the scope of s.140A CCA, or other types of general insurance or other financial products or services. If there are any ramifications for other sectors, in financial services or elsewhere, this is likely to stem directly from the Supreme Court judgment itself, and subsequent claims and case law, not from our rules and guidance.

4.30 Most responses from industry also raised practical concerns which they said undermined their ability to implement the proposal and counselled against it.

Firms did not make estimates of, or set budgets for, anticipated profit share

4.31 Some argued that firms did not make estimates of, or set budgets for, possible profit share, and that such estimates would have to be created in hindsight, which is artificial, unreliable and burdensome.

Our response

Firms may have varied in the extent to which they did or did not budget for profit share. But we understand that they would generally have had sufficient information at the time to do so. Therefore, we do not consider it unfeasible or burdensome for firms to determine the profit share that was reasonably foreseeable when they sold the PPI policy.

However, we accept that estimating this previously anticipated profit share would present a significant practical challenge to implementing our approach consistently. This recognition has influenced our development of an appropriate supervisory strategy (see paragraph 4.8). See also our response under 4.42.

The notional allocation of actual profit share to individual policies would be administratively burdensome

4.32 Some industry respondents argued that the notional attribution of profit share to a policy is not only artificial but will be prone to inaccuracy. They said it would also be operationally complex and disproportionately administratively expensive, as the calculations would involve the labour-intensive identification and allocation of profit share across many full and partial annual periods. This would be particularly burdensome for credit card PPI and mortgage PPI. This is because the firm would need to work out the notional profit share attribution for each of the many years the policies were live, and then feed any excesses over 50% into the relevant year of the customer's premium payments.

Our response

We recognise that calculating such notional allocations will involve significant work for firms. However, we do not consider that these consequent administrative costs will be disproportionate to the redress sums that result, and these implications do not cause us to change our mind about proceeding with our approach. We are developing a supervisory strategy to assist firms to implement our approach not only fairly but in a way that is administratively proportionate.

We also recognise that there is likely to be a knock-on effect on insurers, whom some lenders are likely to contact to seek old agreements and financial data, causing these insurers work and costs. However, given that insurers entered into the profit share arrangements and underwrote the PPI policies that were distributed, we do not think it is unreasonable for insurers to provide relevant information about these arrangements in response to reasonable requests.

Artificiality and burdensomeness will be compounded by a lack of records of profit share for some past years or products or brands

4.33 Firms say they would need a mass of contractual documentation and financial data and that they often do not have these, at least for some past periods or brands. These gaps are due to:

- many insurers/distributors disposing of records under business as usual records management
- some books having had multiple different underwriting arrangements over time

- distributors buying loan books in run off from other lenders: the purchasers of these books will not know the profit share previously paid, and the seller is unlikely to have kept the records (for long)

4.34 More generally, profit share data, being fluid and frequently adjusted, is much less readily available or linked to a particular date in time than commission, which is a fixed percentage and can be ascertained from historic contracts (where available).

4.35 Even where older profit share data is available, it is often in the form of complex spreadsheets, with those who prepared them now unavailable to interpret them (firms having long shed much of their PPI expertise when the market dwindled).

Our response

Such gaps are not unique to profit share: we have also encountered similar issues in PPI mis-selling complaints, where firms have sometimes struggled to find the records needed, for example to reconstruct an old credit card balance.

However, we accept that the existence of some data gaps concerning profit share will present a significant practical challenge to implementing our approach consistently. This recognition has influenced our supervisory strategy.

Complaints outcomes would be inconsistent and prompt CMC challenge

4.36 Industry respondents argued that including profit share makes our approach more complex and vague. This will bring inconsistency and uncertainty for complainants, firms and the Financial Ombudsman Service, prevent orderly complaint handling, bring a significant risk of subsequent systematic re-work, and preclude timely closure of the PPI issue.

Our response

We accept that there are genuine practical challenges to implementing our approach consistently, and this recognition has influenced our development of an appropriately supportive supervisory strategy.

Further clarifications and requested guidance about profit share

4.37 Most responses from firms said that if we do include profit share, then to ensure a consistent approach we will need to assist their implementation by providing:

- extensive additional prescriptive guidance on a methodology and how to apply this fairly where there are data gaps
- general or individual guidance on certain specific aspects
- individual tailored solutions, given firms' different approaches and circumstances, including their potential data gaps

- proactive engagement with firms and the Financial Ombudsman Service, whose approach to these complaints, taking into account our rules and guidance, is seen as vital

4.38 Some responses from firms added that the practical challenges around including profit share meant that implementing 3 months after the rules were made, as we had proposed, was too soon for firms to prepare properly. But others said we should implement sooner, so they could press on with handling relevant complaints, including currently stayed cases.

Our response

We agree that there are aspects of our approach where we should add further guidance. These aspects are discussed in detail at paragraphs 4.39-4.45 below.

However, we do not think that we should attempt to use additional Handbook guidance to address issues around data gaps (such as, for example, whether and when it would be reasonable for a firm to read and interpolate figures backwards, or forwards, or rely on analogy with other similar brands and books, or use averages or directional trends). The nature and extent of such gaps will vary idiosyncratically across firms, so it would be very difficult to frame guidance about fair solutions or workarounds that was both helpful and of general application.

As set out at paragraph 4.8 above, we are now giving firms 6 months to prepare for implementation, and will conduct supervisory work with larger firms in that period and after.

How to define profit share, including the types or arrangements caught

4.39 Some respondents said that profit share arrangements with advance payments should not be treated more severely, provided the advances remained subject to a reconciliation process at the end of the relevant underwriting period and to potential clawback.

4.40 Some respondents agreed that rebate-based profit share arrangements like those in *Brookman* should also be included in our approach, to avoid arbitrary differences, but said that profit share arrangements on tax benefits or income from investment (of premiums) should *not* be included, because they concern new money not originating from the consumer and cannot give rise to any disclosure issues or unfairness at point of sale.

Our response

We remain of the view that although we have focused on claims based profit share arrangements, the same considerations apply to other profit share arrangements, for example as in *Brookman*, where the variable factor was the value of rebates paid, rather than claims. Excluding rebate-based profit share arrangements would create arbitrary differences in complaint outcomes between firms that paid rebates themselves out of commission, and those that sent sums to insurers to cover rebates but entered into profit share arrangements about those sums.

We have added guidance to the final Handbook text as follows: *"profit share arrangements" means arrangements (including contractual) that firms have to potentially receive back some of the total amount paid in relation to a payment protection contract which had initially gone to the insurer. For example, these arrangements might include amounts paid to cover potential claims on policies, but which remain unspent after a fixed period, for example because actual claims did not exceed certain levels. Other arrangements might take account of variable factors other than claims, including, for example, the value of rebates paid upon early cancellations of payment protection contracts.*

We have included profit share arrangements regardless of whether or not they involved advanced payments (for example of the kind seen in *Brookman*).

If unsure about their own arrangements, firms may wish to discuss these with us.

How to allocate actual profit share to individual customers

4.41 Some responses said variously that:

- Contrary to our suggestion in CP16/20, most firms do not have data that allow them to relate revenue, claims rates and profit share to a cohort of policies sold in the same year (ie they do not account, in general, or for profit share, by year of inception).
- It is preferable, where possible, to assess actual profit share on the basis of year of claims attribution (also known as 'accident year'), as, regardless of when a claim was settled and paid, this reflects the profit from a particular year's claims experience. Assessing actual profit share on a 'year paid' basis introduces a wider range of distorting variables such as underwriting prudence, timing of claims reserve releases, offset for losses in other years and delays in payment.
- We should allow actual profit share to be aggregated/netted over the life of the policy, with redress to be the excess of this net or aggregate figure over 50%. This would more accurately reflect the profit share as a proportion of what the consumer paid in total, and better reflect the intentions in the *Plevin* judgment. Otherwise, a firm that had an actual net or aggregate level of profit share plus commission on the policy of less than 50% would still be required to pay redress for any particular years when 50% was exceeded.
- We should clarify whether, if there was a claw-back of previously paid profit share in a year, it would be reasonable to apportion this sum over a number of prior years or just to the year before the claw-back.
- We should specify that an individual policyholder that has done one of the following will receive less or no consideration of actual profit share in step 2 redress:
  - claimed successfully on the policy
  - complained successfully about mis-selling
  - fallen into arrears with their repayment and premium (or enjoyed a write-off)
  - lain dormant in their account use for an extended period

This is because they will have made a negative contribution to the book's profitability and thus to profit share.

Our response

We accept that most firms will not have assessed or recorded actual profit share in terms of individual policies or accounts. So we have added Handbook guidance that "actual profit share" means a reasonable estimate of the profit share that was paid under profit share arrangements that is *notionally attributable* to the PPI policy.

In our view, such estimate should take into account all relevant matters, but should generally be based on the notional allocation to a policy of the profit share paid in respect of the relevant book of similar policies in the relevant period, with such allocation to be made in proportion to that policy's contribution to that book's total premiums in that same relevant period. We accept that most firms probably cannot sub-divide their book of policies and book level profit share in terms of a group of policies incepted in the same year.

We agree that, where their data allows, firms should generally seek to base their estimate of actual profit share on 'accident year', as this smooths out some aspects of payment timing, late claim payments and subsequent corrections. However, if this is not possible, then firms can reasonably base their estimate of actual profit share on the year it was paid.

We consider that for regular premium PPI, the estimate and notional allocation of actual profit share from book level to policy should generally be done in terms of individual years, not longer periods.

In our view, for regular premium PPI, firms should not, as a general approach, aggregate, net or average actual profit share across years. This is because profit share is generally accounted for annually, and because such averaging would not fit with our approach to redress, which is to focus on periods where actuals exceeded 50%, and for which, ideally, we need a profit share figure in each year of the policy to add to the commission rate in that year. We do not consider this approach leads to unfair redress costs for the firm. There is already a significant inherent element of smoothing and adjustment across years in the way profit share arrangements work and sums are calculated, and these are not precluded by our comments on averaging, provided they were or are undertaken in accordance with accepted actuarial practice and any relevant legal or regulatory requirements. This is true also of any profit share sums that were subsequently clawed back.

However, we accept that there may be circumstances, for example where profit share percentages become artificially high because a book is in run off and incoming premiums reduce, where some averaging or smoothing over a short span of years would be necessary and fair. Where firms seek to take this approach, as opposed to the annual approach, it will be for them to show why this is fair.

We recognise that for single premium PPI, actual profit share will need to be aggregated across the period in which the policy remained live and added to the actual commission that was paid at inception, for the purposes of redress.

We do not favour reducing the notional allocation of actual profit share to a policy because of a previous successful claim on that policy. The logic behind our approach to redress is putting the consumer in the position they would have been in if commission and profit share were never over 50%, thus correcting the non-disclosure of foreseeable sums over this at point of sale. At that point, the firm did not know whether there would be a future claim on the policy, so a subsequent claim on the policy by the individual is not relevant to the original non-disclosure or its remedy. In practice, adjusting profit share in this way would also introduce additional significant administrative complexity, not least because it would imply, to be fair, that the notional allocation to policies in the book that had not claimed should be raised commensurately (if they figured in a complaint assessed at Step 2).

In any case, we note that the impact of a claim is indirectly reflected in our approach because: a) in Step 2 redress, periods during a successful claim would be periods when payments by the complainant of any actual commission or amounts that contributed to profit share were zero, and b) under our revised final approach, no redress would be due at Step 2 if the complainant had been mis-sold but received or was owed only partial redress at Step 1 because of a previous successful claim (see paragraphs 4.117-4.120).

We also consider that no adjustment to profit share is necessary for periods of arrears or for write-offs. These periods generally only involved delays in paying premium, since if they did not resume, the policy was cancelled by the firm. So such periods did not reduce the profit share earned by the book. In any case, periods of arrears in regular premium PPI would be reflected in the redress calculation at step 2, to the extent this involves account reconstruction (see paragraphs 4.93-4.104 below).

We consider that no adjustment is necessary for a policy that was dormant, as it will have contributed neither premiums nor claims costs to the book, so the effect of the dormancy would have been largely neutral. Anyway, periods of dormancy in regular premium PPI would be reflected in the redress calculation at step 2, to the extent this involves account reconstruction.

We do not agree that a book-level adjustment to actual profit share should be made in respect of mis-selling redress (and administrative) costs. Those costs were not known and were not foreseeable at point of sale and anyway are irrelevant to the transaction which the lender entered into with the consumer. (But arrears and write-offs would need to be taken into account in redress calculations in relevant cases.)

We have added guidance to the Handbook text saying that for the purposes of making a reasonable estimate of actual profit share, reasonable efforts should be made by the lender to obtain information from third parties where relevant.

How to estimate and allocate the profit share anticipated at point of sale

4.42 Some responses said, variously, that we should clarify:

- how our foreseeability test for anticipated profit share should apply to policies of indeterminate length, which is a particular issue for credit card PPI but also for single premium policies, given policyholders could cancel

- whether firms need to estimate the profit share anticipated as at the week, month, quarter, half or year of sale

- the potential use, in estimates of anticipated profit share, of 'buffers' to reflect future volatility and uncertainty: some responses strongly favour such buffers, and said we should discuss the merits of agreeing bespoke buffers for individual firms or specifying standard buffers that could be applied across the industry

- that we recognise that profit share would be more predictable and foreseeable in some arrangements than in others: for example, a more keenly priced PPI policy sold to borrowers by a lender with aggressive loan underwriting was likely to give rise to a book that was more sensitive to adverse economic trends and whose profit share was thus potentially more volatile

Our response

We accept that most firms will not have assessed or recorded anticipated profit share in terms of individual policies or accounts. So we have added Handbook guidance that "anticipated profit share" means a reasonable estimate of the profit share which it was reasonably foreseeable at the time of sale would be paid, over the relevant period or periods, under profit share arrangements and that would be notionally attributable to the PPI policy.

In our view, such estimate should take into account all relevant matters, but should generally be based on the notional allocation to a policy of the profit share that is anticipated to be paid in respect of the relevant book of similar policies in a period, with such allocation to be made in proportion to that policy's estimated contribution to that book's future estimated premiums in the period.

As we acknowledged in CP16/20[94], for the purposes of this approach, a firm that lacks information on what profit share it was anticipating at the time because it was never created (or has been lost), may need, in broad terms, to:

- identify, recreate or infer an appropriate remuneration model for that type of PPI policy sold at that time (for example, by referring to the agreement with the insurer at the time, or on the basis of reasonable assumptions in light of profit share sums received from the insurer for the same products in other years)

- apply this remuneration model to the PPI policy to determine the profit share anticipated in respect of it at the time of sale

94 See our response on pages 79-80 in CP16/20.

After considering the responses received, we further think that firms should, in general:

- Infer a model and make an estimate in terms of what was reasonably foreseeable as at the year of sale.

- Seek to ground their model and estimate, where possible, in relevant records (for example, of the claims loss rates and actual profit share) from a reasonable number of years before the year of sale. Generally, 3 years of such records before the sale will be a reasonable number, because this is likely to provide sufficient past experience for the firm to make an informed estimate. However, the firm may also factor into its estimate, where appropriate, matters that were known, or reasonably could have been known, to it at the time and which would have led it reasonably to expect different profit share sums (whether higher or lower) going forward than in that previous 3 year period.

Concerning how far into the future the firm should estimate anticipated profit share, we consider that:

- the average actual lives of types of policies are likely to have been substantially 'priced in' to the net premium rates, commission and profit share agreements entered into between lender and insurer

- a relevant consideration for the appropriate horizon of estimate of anticipated profit share will be the length of time the policy was to be governed by the agreement between lender and insurer that was in place at the time

- the guiding principle should be that the same period or periods(s) should be used for estimating anticipated profit share as for which commission was known or reasonably foreseeable (see paragraphs 4.51-4.52) – so, for example:

  – where there was a contractual ratchet agreement of specified commission rate changes over the first several years of the policy's life (as in some regular premium PPI policies), firms will need to estimate anticipated profit share over a similar period[95]; we acknowledge the estimates will be less reliable over longer horizons

  – where commission is fixed and paid upfront, as for most single premium PPI, the firm should estimate the profit share anticipated across the contractual duration of the PPI policy (which, for single premium policies was typically 3 years or 5 years) and add this total to the known commission for the purposes of assessing if the undisclosed commission plus anticipated profit share at point of sale exceeded 50%

We raised the notion of a buffer in CP16/20[96], when we asked for views on whether the main variable in establishing anticipated profit share would be the expected loss ratio at the start of the year, and whether allowance should be made for uncertainty. Having considered this further, we now reject the

95 In this scenario, firms can choose either to apply a single averaged anticipated profit share figure across the ratchet period, or separate anticipated profit share estimates for each year of the ratchet

96 See 4th bullet of our response on page 79 of CP16/20

suggestion that estimates should be adjusted by any fixed percentage. Instead, we think it is better and simpler for firms to make their best estimate of anticipated profit share, on the broad basis described above, and neither reduce their estimate to allow for uncertainty, nor use a range of estimates to reflect uncertainty.

We recognise that profit share may have been somewhat less predictable and foreseeable in some arrangements than in others, and that this can be reasonably reflected in firms' estimates of anticipated profit share.

Such potential retro-modelling of a remuneration model and point of sale profit share expectation may often not be necessary in practice. If the lender knows that its known or foreseen commission alone would exceed the 50% tipping point, then the level of anticipated profit share would be moot for merits purposes and need not be modelled or added, with the firm moving directly to the identification of actual profit share paid during the life of the policy and the calculation of redress. In view of profit share levels generally, this will often also be the case where commission was somewhat below the tipping point but the firm knows that the profit share it broadly anticipated would have taken the total over 50%, even if that anticipated profit share has not been worked out in detail.

We have added guidance to the Handbook text saying that for the purposes of making a reasonable estimate of anticipated profit share, reasonable efforts should be made by the lender to obtain information from third parties where relevant.

The use of industry-wide averages

4.43 Some responses said that, for simplicity of implementation and consistency of outcomes, we should impose industry-wide profit share percentages for all firms to use.

Our response

We have considered this as an option. However, we think that many firms would not prefer this or think it fair, as some would lose out from such an averaging. It would also contradict one of our main rationales for including profit share, namely, that firms *varied* in the proportion of PPI revenue they took as commission and profit share respectively, such that inconsistent and unfair outcomes for consumers would result if we did not reflect such differences.

However, we recognise (see App 3.1.6G) that a firm may need to make some recourse to industry trends, including, potentially, averages if this information is available, where it is facing particular data gaps or difficulties. Pragmatically, it would be open to a firm, where it can establish that its profit share figures over time lay within a range, to choose to assume the highest figure within that range.

Worked examples of profit share estimates or actuals calculations

4.44 Some responses said that, for consistency of implementation, we should provide worked examples of profit share calculations.

Our response

We have not published with this Policy Statement worked examples of anticipated profit share estimates or actual profit share calculations. However, in the course of our supervisory work with firms, we will consider whether publishing such worked examples would be helpful.

Requirements on insurers to provide necessary information to firms

4.45 Some responses said that because of the particular types of data our approach would need and their own record gaps, firms would potentially need extensive historic data from insurers, so we should ensure that this is provided to them.

Our response

We are confident that insurers will act responsibly and professionally in response to reasonable requests, and that the firms involved can discuss and address the potential costs arising in a sensible way. So we do not anticipate at this stage having to use our formal information gathering powers in respect of insurers, or see any likelihood of our having to make rules for insurers about such information provision. We would also encourage insurers to cooperate with the Financial Ombudsman Service if it needs information from them concerning these matters.

Feedback on the proposed treatment of variable commission

4.46 In this section, we discuss the feedback on our proposed clarifications of how firms should treat variable commission rates.

The definition of commission

4.47 We had proposed[97], for the purposes of PPI complaint handling only, to define 'commission' as: '*the proportion of the total amount paid in respect of a payment protection contract that was not due to be passed to and retained by the insurer*'. This was intended to:

- be broad, simple and applicable regardless of the business or accounting arrangements between lender, broker and insurer (including where two or all of these functions were carried out within the same group)
- not allow for 'costs' (including profit margin) to be deducted, whether reasonable or not

4.48 Most responses from industry, and some from CMCs and consumer bodies, maintained their agreement with this proposed definition of 'commission'.

4.49 However, some responses from industry maintained their views that it was a partial picture and unfair to lenders and that commission should be calculated and assessed net of various types of reasonable costs incurred by the lender.[98] Some of these responses now added that:

97 See paragraphs 5.39-5.48 of CP15/39 and paragraphs 5.45-5.47 of CP16/20

98 See paragraph 5.52-5.53 of CP16/20

- there was no evidence we had given proper consideration to the specific types of reasonable costs they had highlighted
- value for money needed to be assessed within the whole customer journey, including, notably, the insurance administration services lenders often provided
- we were giving an imbalanced view that invited consumers to wrongly equate commission with profit
- our statement that consumers' view of the potential value for money of the policy would not be affected by the disclosure or deduction of costs is at odds with our own research, which found consumers saying that the PPI may not have been 'good quality' if so much of the price did not go to funding the insurance[99] – showing they do assess costs and profits and differentiate what their payment is used for
- we should issue guidance on a fair methodology for determining commission levels

4.50 Some industry respondents noted that sums which go to purchase reinsurance for the insurer are not 'retained' by it but nor do they return (or have any prospect of returning) to the seller, and asked us to clarify whether such sums were in or out of the definition.

Our response

We have considered this feedback carefully, but still believe there are no compelling reasons in the *Plevin* judgment why such an adjustment downwards of 'commission' in light of 'costs' (whether or not they were reasonably incurred) would be necessary or appropriate. In particular, we do not consider that the consumer's view of the potential value for money of the policy would generally be affected by knowing the detail of the lender's or seller's costs or profit margins.

However, we have decided to make a minor amendment to the definition to clearly distinguish commission and profit share.[100]

We can confirm our view that the insurer's reinsurance costs, which are a commercial decision by it to use part of the monies it receives from the sale to manage its own underwriting risks, fall outside our definition of commission and should accordingly not be deducted.

Reasonably foreseeable commission and actual commission

4.51 Most responses from industry, and from consumer bodies and CMCs, agreed with:

- our clarification that whether it is presumed that an unfair relationship was created must be based on whether it was 'reasonably foreseeable' at the time of the sale that commission plus profit share would exceed 50% in any period, and

99 See paragraph 2.48-2.49 of CP15/39

100 The first part of App 3.1.5G(6) now reads: *"commission" means the part of the total amount paid in respect of a payment protection contract that was not due to be passed to and retained by the insurer, excluding any sums which may be payable under profit share arrangements*

- the distinction we drew[101] between rises in commission that would occur (e.g. under a contract ratchet mechanism) and those that only *might* occur, with only the former potentially establishing the presumption of an unfair relationship

4.52 Some responses from industry said that:

- to help achieve consistency, we should define 'reasonably foreseeable' and give specific guidance on its criteria
- even where contractual arrangements are not renegotiated, there are other factors which may lead, unforeseeably at the time of sale, to increased commission, for example:

  i. product pricing and commission rates may change over time outside of formal contract negotiations, due to external market factors

  ii. a post-sale price change may result in commission on a renewal premium exceeding 50%, where the commission on the premium at point of sale did not

  iii. following a rise in Insurance Premium Tax (IPT), a lender decides not to charge customers the increase, but persuades the insurer to fund the rise from its part of the premium, leading the lender's commission to increase as a percentage relative to the insurer's, and potentially above 50%, despite receiving the same sum as before

  iv. due to low claims, the claims ratio is reduced, resulting in the lender's commission increasing above 50% – this is effectively bringing forward profit share and would not have been foreseeable at the point of sale

  v. the distributor had no influence or involvement in the pricing of the net premium/reserving strategy of the insurer

  vi. a deduction for reasonable expenses would take commission below 50%

Our response

We have added Handbook text saying that what is reasonably foreseeable commission should be determined with regard to all relevant factors, including, where relevant, any agreement specifying rate changes over the first years of the policy's life (as in some regular premium PPI policies), and the length of time over which the commission was to be governed by the agreement between lender and insurer that was in place at the time of sale.

We agree that, provided the market factors and post-sale price rise weren't considered at the time of sale, circumstances i and ii appear not to be reasonably foreseeable.

We consider that, under the treatment of IPT we proposed in CP16/20, the lender's commission percentage would not rise in scenario iii relative to the insurer's. (We agree, in any event, that future increases in IPT will not be foreseeable before they are announced by the government.)

101 See paragraphs 5.103 and 5.104 of CP16/20

The scenario in iv appears to be a specific example of i, where commission is renegotiated with the insurer mid-arrangement. Higher commission rates resulting from circumstances that were not reasonably foreseeable at the time of the sale do not have to be factored into the consideration of what was not disclosed and whether this created an unfair relationship.

We do not see the relevance of v to foreseeability, as discussed in the context of profit share at paragraph 4.19 above and our response.

We answered vi by our definition of commission, as discussed in our response on page 67.

4.53 Most responses from industry also agreed that firms should calculate redress on the basis of actual commission and actual profit share and only in respect of those periods where these actuals together were over 50%.

4.54 Some industry respondents, however, did not agree. They said the foreseeable commission and anticipated profit share should be used to calculate redress, because these were the figures whose non-disclosure at point of sale had created the unfair relationship. These responses said that:

- our focus on actuals in redress does not reflect the logic in *Plevin* and conflates what was known by the parties at the relevant time with circumstances that subsequently ensued
- s.140A's application is about whether at the date of sale the lender knew or was anticipating that it was receiving benefits of sufficient proportion to make the relationship unfair: what happened after completion is irrelevant to whether the relationship is unfair, as there is no further decision to be made by the customer then and so no further unfairness from unexpectedly higher actuals

Our response

While we can see some logic in this suggestion, from the perspective of *Plevin* we consider that it would involve the somewhat hazardous application of a near-term commission and profit share prediction far (potentially many years) into the future of the policy, which forecast might diverge significantly from the reality and result in significant over-payment of redress (though it could equally result in under-payment).

4.55 Some responses from industry took a quite different view on foreseeable and actual commission, favouring the use of averaging and netting for both elements. They:

- asked for clarification of whether, in determining if the commission reasonably foreseeable at the time of sale was above 50%, the test is that it would be above 50% in any given period, or above over the whole life of the PPI
- noted that, where an agreement between an underwriter and distributor provides for different commission rates in different years, the outcome for the complainant, if the

commission they paid is not averaged, will heavily depend on which year they incepted and whether and when they cancelled, and thus be arbitrary[102]

- argued that a non-averaged approach would have especially unfair effects for lenders who front loaded very high commission in the first year or two of long term contracts whose commission rates then fall to much lower levels[103]
- argued that a non-averaging approach is disproportionate, because even a single period of foreseen commission in excess of 50% triggers the presumption of an unfair relationship, and then leads to redress which may include many periods of actual commission in excess of 50%, even though those levels were not reasonably foreseeable at point of sale
- said, more generally, that we need to acknowledge in our approach and guidance the difference between a single premium PPI policy which has a known commission calculated on the basis of a known premium, and regular premium PPI policies, where, to calculate a commission percentage, a firm would have needed, at point of sale, to make a number of projections and assumptions about the loan and policy, none of which would have been meaningful or readily explicable to the consumer
- said that, for redress purposes, actual commission sums too should be averaged over the life of the policy (ie setting off periods where actual commission was lower than 50% against periods when it was higher), with only the net excess over 50% (if any) being paid as redress, and with no redress due if the net rate was under 50%
- said that these averaging approaches to foreseeables and actuals were appropriate and necessary because:
  - otherwise, a firm that had an average predicted and/or actual commission level on the policy of less than 50% would still be required to pay redress in respect of some years
  - it better reflects any commission reductions through the life of the policy
  - it better reflects the intentions in the *Plevin* judgment

Our response

We have carefully considered these arguments but do not see reasons to change our approach.

We expect the firm to assess whether the commission rates which it knew or could reasonably foresee at point of sale (plus anticipated profit share) was:

102 These responses ask us to consider, for example, a 2006 agreement between an underwriter and distributor that provides for the following commission rates for regular premium PPI policies: 2007 – 30%; 2008 – 65%; 2009 – 65%; 2010 – 30%; 2011 – 30%; 2012 – 30%. On these figures, a customer who took out a policy in 2007 and cancelled it in the same year would pay less than 50% commission in total. A second customer who also took out the policy in 2007, but cancelled at the end of 2009, would pay more than 50% commission in total. A third customer who took out the policy in 2007, and cancelled in 2012, would pay less than 50% commission in total.

103 These responses ask us to consider, for example, the case where, under the arrangements agreed, the insurer pays the lender a commission of 130% of the first year's premium of the 25 year mortgage PPI policy (a percentage agreed using a series of assumptions about how long the customer will have the loan and policy and what payments will be made during that time). These responses say that it would be illogical and punitive to say that known or foreseeable commission is 130%. Instead, focusing on what was known at point of sale, the calculation of foreseeable commission should be the commission that would be paid as a percentage of the premiums that would be paid over the contracted 25 years, assuming the loan and policy go full term.

- for single premium PPI, more than 50% of the total amount paid by the consumer in relation to the policy, or

- for regular premium PPI, at any time in the relevant period or periods, more than 50% of the total amount paid by the consumer in relation to the policy in respect of the relevant period or periods

We have added Handbook text to that effect.

So, for example, if the commission rate ratchet is known to go: year 1 – 35%, Year 2 – 45%, and Year 3 – 55% (and for simplicity we assume no anticipated profit share in these years), then the presumption of an unfair relationship is triggered, because the rate is reasonably foreseen to go over 50% in Year 3.

We do not expect the firm, for regular premium policies, to estimate its potential commission (or profit share) over the entire life of the policy (whether contractual life or actuarially predicted persistence).

Averaging or netting future expected commission rates does not fit with our approach, and would merely introduce the further uncertainty of predicting how long the policy would remain live.

We do not agree that not averaging future commission rates gives perverse effects: if, in the example that was provided, the first year's commission was 130% but subsequent years' commissions were, for example, 20%, then on our approach, only that first year would fall to be redressed.

Averaging actual commission rates across years would not reflect the logic of our redress model, which is, in essence, to return the consumer's account to a level of commission (and profit share) which, if not disclosed, could no longer be presumed to have created an unfair relationship.

Relationship between commission and profit share

4.56 Some responses from industry said that it would be reasonable for a firm:

- where it anticipated negative profit share (ie an anticipated notional loss) in a period, to off-set this against (ie reduce) the known or foreseeable commission in that period

- where it had actual negative profit share (ie an actual notional loss) in a period, to off-set this against (ie reduce) the actual commission in that period

Our response

We agree that such off-setting, within the same year, of commission and profit share, is reasonable and consistent with our approach.

Suggestions for additional or amended guidance

4.57 Some responses said that to help achieve consistency our rules and guidance should:

- set out explicitly[104] that where, at point of sale, the commission known or reasonably foreseeable, plus the anticipated profit share, was 50% or less and the relationship was not otherwise unfair, then no redress is payable, even if it turned out subsequently that there were periods in which actual commission plus actual profit share exceeded 50%
- be amended and improved in certain technical details concerning draft App 3.7A.5E [105]

Our response

We consider that the first point is already clear in the rules and guidance.

We have deleted what was DISP App 3.7A.5E as consulted on, in light of other changes we have made to the Handbook text, and these technical amendments are accordingly no longer relevant.

Insurance premium tax

4.58 In CP16/20, we clarified our position (in CP15/39) that commission (plus profit share) should be assessed, and the 50% tipping point set, as a percentage of the total amount paid in respect of the policy by the consumer, and that this total amount would have included IPT.

4.59 In response to this clarification:

- Some consumer bodies and CMCs said it made our approach even more unfair to consumers, as it artificially reduces the firm's commission and profit share percentage and so reduces upholds and redress. These responses therefore called for our approach to be applied to what the consumer paid *net* of IPT.
- Some responses from industry also said a move to a net of tax basis would be desirable, because:
  - The insurance industry generally operates and accounts on a net of IPT basis (ie on 'gross written premium' (GWP)), so assessing commission and profit share levels against consumer payments gross of IPT would result in lenders having to recast and recalculate their past financial data from insurers. This would cause them significant additional effort and cost and increase the risk of error.
  - Our proposed approach would otherwise give rise to inconsistent outcomes, due to the IPT rate having been increased from time to time by the government[106]. For example, two customers buying PPI either side of an IPT rise could face the same commission rate and anticipated profit share in money terms but find themselves either side of the 50% tipping point, because the later buyer had paid more in total to cover the higher IPT, thereby, under our proposed approach, reducing the percentage that commission and profit share made up. It might be argued this is a strange outcome, as the question

104 As per our comments in paragraph 5.104 of CP16/20

105 Namely, these responses argue that DISP App 3.7A.5E should refer not only to cases falling within DISP App 3.3A.4E(1)(b) and DISP App 3.3A.4E(2)(b) (where relevant), but also to DISP App 3.3A.4E(1)(a) and 3.3A.4E(2)(a). This is because the calculations in DISP App 3.7A.3E and DISP App 3.7A.4E should also be applied in this way where anticipated profit share and known commission were in excess of 50% (or otherwise unfair) at the point of sale but then later fell below 50% (or such other level as is relevant). These responses also argue that the references in DISP App 3.7A.5E to DISP App 3.3A.4E(2) are unclear and have the potential to be confusing – DISP App 3.7A.5E should instead make clear that DISP App 3.3A.4E(2) will only be engaged for the purposes of DISP App 3.7A.5E where the presumption as to fairness has been rebutted. We have now deleted App 3.7A.5E.

106 IPT was 0% in 1990, 2.5% in 1994, 4% in 1997, 5% in 1999, 6% in 2011, 9.5% in 2015 and 10% in 2016, 12% in 2017

of whether their respective relationships were unfair then hinges on the rate of IPT at the time, even though that was outside firms' control and the government's share was probably not relevant to the consumer's view of the policy's value.

Our response

We have carefully considered these points

The Supreme Court's judgment in *Plevin* discussed the commission Mrs Plevin had paid, and how it might compare to a tipping point of potential unfairness, as a percentage of the total sum she had paid for the PPI, including IPT.

Whilst the past increases in IPT from time to time may lead to differences of outcome for some consumers who were in otherwise similar circumstances, we do not think such cases will be numerous, or that such differences in outcome are perverse or unreasonable, given our approach to redress as a whole is anyway broad brush, in the way s140A envisages.

We also note that the consumer's premiums and account balances and interest payments *include* IPT. So if we changed to a net of IPT approach, firms would then have to revise these balances and interest payments to remove IPT when calculating redress and restructuring accounts, which would be administratively costly. This cost would probably eliminate any savings the firm would make by not having to make 'GWP to amount paid' conversions of its commission and profit share percentages in data from insurers.

Overall, therefore, we think it is better to maintain the tipping point and assessment of commission and profit share on a gross basis, ie as a percentage of the total the consumer paid *including* IPT.

Scope of our rules and guidance

4.60 In CP15/39 and CP16/20, we proposed[107] that our rules and guidance concerning *Plevin* should apply:

- only to PPI complaints where a claim could be made against a lender[108] under s.140A and an order made to remedy any unfair relationship under s.140B of the CCA[109]: that means in particular[110] that the rules and guidance will apply if the PPI states it covered or covers[111]

107 See paragraphs 5.13-5.14 of CP15/39 and 5.11 of CP16/20

108 The scope of the proposed rules and guidance is intended to reflect that of s.140A-140C CCA. These sections concern the relationship between a 'creditor' and a 'debtor' and so a claim under s.140A would be against a 'creditor' within the meaning of s.140C. In our rules and guidance, the complaint would also need to be against the 'creditor' (who we refer to as a 'lender' in this paper)

109 Sections 140A-C were inserted into the CCA by the Consumer Credit Act 2006. Section 140A provides the court with wide powers under s.140B in connection with a credit agreement where it considers that the relationship between a debtor or creditor arising out of the agreement (or the agreement taken with any related agreement) is unfair because of various things, including anything done (or not done) by or on behalf of the creditor. Sections 140A-C came into force on 6 April 2007

110 It is possible that an order could be made under s.140B in other factual scenarios – one example is where a credit agreement was made after 6 April 2007 and completed before 6 April 2008

111 This includes partial coverage, for example, when only part of the term of a credit agreement is covered

a credit agreement where sums are payable, or capable of becoming payable[112], under it on or after 6 April 2008

- to any complaint meeting this criterion, regardless of the other characteristics of the PPI, credit agreement, or nature and relationships of businesses behind these

Regular premium PPI

4.61 Many responses from industry maintained their previous arguments that it would be inappropriate and disproportionate to include complaints meeting this criterion if they concerned regular premium PPI in general[113], or running-account and restricted-use credit agreements in particular[114] or, at least, regular premium policies that were sold before 6 April 2007 or that were dormant then.[115]

4.62 Some respondents now added that:

- Including profit share in our approach gives further reason to exclude regular premium PPI, because their uncertain lifespans and dependence on unpredictable individual customer behaviour mean the proposed estimations and redress calculations would involve many assumptions, and that any disclosure that could have been provided to the customer at point of sale would have been confusing, caveated and misleading in practice.

- They disagreed with our proposal not to exclude regular premium PPI policies dormant since 6 April 2007 because:

  - this perversely favoured inert customers over those who had actively used their card but cancelled it on or before 6 April 2008

  - the long-term dormancy of an account is something which a court would have regard to in determining if a relationship was unfair and any redress award

  - we should not draw any conclusions from *Plevin* about how a judge might have approached a dormant regular premium PPI case, as the non-dormant single premium PPI and fact pattern considered in *Plevin* was quite different[116]

- If we insist on keeping in scope regular premium PPI policies that were dormant at 6 April 2007, we should at least apply our regulatory discretion to specify a more appropriate and proportionate remedy of simply disclosing the current commission (if higher than the 'tipping point'), so the consumer can take this into account before potentially starting to use their account again.

112 A common example would be where a credit card agreement remains in place after April 2008 but, as a matter of fact, there happens to be a zero balance. In this case, no sums need to be paid, but sums are still capable of being paid under the agreement, were the credit facility to be subsequently used by the cardholder

113 See paragraphs 5.18 – 5.19 of CP16/20

114 See paragraph 5.20 of CP16/20

115 See paragraphs 5.22-5.23 of CP16/20

116 Specifically, these responses argued that the nature of a single premium PPI policy is such that, even where a premium was paid pre-2007, if the credit agreement continued in force after 7 April 2008 (i.e. payments were falling due/being made under the loan agreement) then the customer would continue to be protected by the PPI and it is clear, for the purposes of the CCA transitional provisions, that the credit agreement is not a 'completed agreement' and should be in scope of the CCA (Schedule 3, Paragraph 14(2)(b)); whereas with regular premium PPI policies, to the extent a credit card is not used, no PPI premiums will be charged to a customer, and therefore no PPI cover will be available.

Our response

We have carefully considered this feedback. However, we see no reason to depart from the views we expressed in paragraphs 5.19-5.22 (third bullet) in CP15/39 and in our responses under paragraphs 5.21 and 5.23 in CP16/20. So we are retaining regular premium PPI, including running-account and restricted-use credit agreement PPI, in the scope of our final rules and guidance, including where such credit agreements and policies were dormant at 6 April 2007.

We also do not see good grounds for taking a different approach to remedy and redress where the credit agreements and policies were dormant at 6 April 2007. In reaching that view, we note that such accounts would be within the scope of s140A CCA. It is not clear how the fact of an account being 'dormant' goes to the question of whether the relationship between the debtor and the creditor became unfair by virtue of non-disclosure of the level of commission.

Whilst it may be the case that calculating profit share will be more complicated in relation to regular premium PPI, most firms have not argued it would be impossible, at least in a broad brush way, to identify anticipated profit share. On that basis, we have concluded that regular premium PPI (including dormant accounts) should in principle be treated in the same way as single premium PPI.

Mortgage PPI

4.63 Some responses from industry expressed concern that some of our comments in CP16/20[117] implied that we regarded more mortgage PPI to be in scope than they did, and asked us to clarify our position. In their view, most first charge mortgages should be out of scope because:

- those sold since 31 October 2004, when mortgage regulation was introduced by the Financial Services and Markets Act 2000, are regulated mortgages contracts and thus exempt from the CCA
- most of those sold before 31 October 2004 were first charge residential mortgages that would have been considered to be exempt agreements under the CCA

Our response

As we said in paragraph 5.14 of CP15/39, those credit agreements that are excluded under s.140A(5) of the CCA – regulated mortgage contracts and regulated home purchase plans – are excluded from these rules and guidance.

Concerning first charge mortgages sales before 31 October 2004, the current position following the latest legislative amendments is that these do *not* generally fall within the exemption from s.140A, and so *do* generally fall in the scope of s.140A and thus the scope of our rules and guidance.

117 For example, our comment in the Compatibility Statement on page 149 of CP16/20 that: 'We do not agree that past sales of MPPI are generally not covered by s.140A or our proposed rules and guidance on *Plevin*'.

Complaints about undisclosed commission on policies that are out of scope

4.64 Some responses from industry maintained that we should state explicitly that:

- firms do not need to disclose commission on request in respect of PPI policies that are out of scope, or of any other products
- our proposed rules and guidance do not apply to any complaint about failure to disclose commission on a policy (or other product) that is out of scope
- firms can reject such out of scope complaints
- such out of scope complaints will not be considered by the Financial Ombudsman Service

4.65 In contrast, some responses from CMCs and consumer bodies maintained that we should broaden our rules and guidance, variously, to:

- include complaints about non-disclosure of commission where the PPI policy was out of scope of s140A CCA
- include complaints about non-disclosure of commission for other products entirely
- require commission disclosure for sales of annuities, package accounts, endowments and life insurance

Our response

We have carefully considered this feedback. We remain of the view that it would not be appropriate under our consumer protection objective to widen the application of our proposed rules and guidance on PPI beyond the scope of s.140A-B CCA. We did not require firms to disclose commission to retail consumers under ICOB or ICOBS (unless requested by the consumer[118]) and it is clear that in *Plevin* the Supreme Court addressed the question of unfairness under s.140A. So aligning the application of our rules and guidance with that legislation is most appropriate and proportionate, given that our aim is to ensure fair and consistent PPI complaint handling in light of *Plevin*.

We have not proposed rules and guidance concerning undisclosed commission, or other matters which may give rise to an unfair relationship, in non-PPI markets, as we are not currently aware of any evidence of potential relevant issues with inconsistent complaints handling in markets other than PPI.

We have carefully set out what we proposed to include in, and exclude from, our rules and guidance. If a firm were to receive a complaint about a matter that was not within this scope, it would need to consider the complaint under our existing high level (non-PPI specific) complaint handling rules. This would not mean that the complaint should be automatically rejected and it would not be appropriate for us to state that or make rules to that effect. Similarly, if such a complaint was then referred to the Financial Ombudsman Service, it would need to consider the complaint under its usual fair and reasonable jurisdiction.

118 See ICOBS 4.4.3G

Our rules and guidance in ICOBS do not currently require firms to disclose commission or profit share arrangements to retail customers of general insurance (unless they request it).[119] Our new rules and guidance here do not change that position. Clearly, however, a refusal by a firm to disclose this, on receipt of a subsequent request from a consumer, may be more likely to provoke a complaint about undisclosed commission and profit share.

McWilliam should be in scope of the rules and guidance

4.66 Some responses from CMCs and consumer bodies maintained their view that our rules and guidance should be extended to cover *McWilliam*-style complaints about PPI.[120] They said this would give consumers, firms and the Financial Ombudsman Service greater clarity about an important issue that raises similar issues to *Plevin.*

Our response

We have carefully considered these points. Given the complexities of assessing a *McWilliam-type* complaint, and the fact that the legal remedy for such a complaint would be different from those of our current DISP App 3 rules and guidance for PPI complaints, we still believe they are best treated outside of DISP App 3.

We are not saying, and do not consider that it would be appropriate to say, that *McWilliam-type* complaints about PPI do not need to be handled and assessed fairly under DISP. We are saying that we do not consider that the issues and case law are currently clear or stable enough to warrant or enable us to make specific rules and guidance about how to handle complaints about those issues.

We will continue to monitor further litigation in the wake of *McWilliam*, just as we monitor any litigation of potential significance to financial services.

Will the scope of *Plevin* rules be changed after further court decisions?

4.67 Some responses from CMCs and consumer bodies asked whether, or predicted that, the scope of our rules and guidance would need to be amended in the future to reflect any extended reach implied by court decisions on ongoing claims.

Our response

Concerning potential future decisions in the courts that might, for example, address the scope of s.140A-B, we will consider the issues and case law on a case by case basis in light of our statutory objectives and regulatory priorities.

119 Since April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for pre-contract commission disclosure by credit brokers for contracts entered into on or after 1 April 2014

120 See paragraph 5.134 of CP16/20

The two step approach

The approach to assessing merits

4.68 Some responses from industry, and from CMCs and consumer bodies, maintained their broad support for our proposed structuring of the new rules and guidance concerning *Plevin* as a separate 'second step' within our existing PPI complaint handling rules and guidance, seeing it as a sensible and proportionate approach.

4.69 However, some industry respondents maintained and amplified their concerns about our view (at paragraph 5.69 of CP15/39) that, in some marginal cases, a firm may conclude at Step 2 that not disclosing commission over 50% was the 'straw that broke the back' of the sale as a whole, and that, overall, the customer would not have bought the PPI if given better information, including about the commission, at point of sale. These responses argue that our view:

- inappropriately blurs the lines between two very different sets of circumstances
- is confusing and contradictory from the consumer's perspective
- will result in uncertainty and disorderliness, as CMCs will use it to try to get any Step 2 uphold 'upgraded' to a Step 1 uphold, increasing the length and complexity of handling for firms and delaying redress to consumers
- imposes disproportionate costs on firms and the Financial Ombudsman Service who will need to operationalise such hybrid assessments as standard in their processes despite the small number, we say, whose outcomes will change in practice

4.70 Conversely, some responses from consumer bodies and CMCs maintained and amplified their previous concerns that we are artificially and wrongly separating the issues at Step 1 and Step 2, when these should be considered together. Specifically, they said that:

- We had mis-understood the relevant case law and disregarded relevant considerations from the *Plevin* judgment, and ignored the findings of the Competition Commission that the non-disclosure of commission was a central plank of the sales strategy employed by most lenders.
- The question of unfairness under s.140A is not a narrow test of commission. Instead, it is a wide one in the round, so any sales failings at Step 1, or other issues of unfairness or inequalities of knowledge such as poor value from a low claims ratio, should also be considered at Step 2, in particular by the Financial Ombudsman Service, which has to consider all the circumstances anyway, not just s.140A.
- Conversely, *Plevin* says failure to disclose commission is unfair – which presumably also makes it a breach of FCA principles 6 and 7 – and that the customer did need to be told about poor value, and it explicitly cites unfairness arising from undisclosed poor value. So it is wrong for our proposed structure to imply (and Financial Ombudsman Service decisions to assert) that the non-disclosure of high commission and poor value was not relevant for causation and potential mis-selling or assessment at Step 1. Our proposed approach paid lip service to this, allowing that undisclosed commission may be the 'straw that broke the back' of the sale as a whole, but said these are 'marginal' cases that will be 'few and far between' – whereas in reality, they are the norm.

- As proposed, Step 2 assumes Step 1 has been fairly carried out, but we cannot reasonably assume that, given the continued poor complaint handling by firms. And the approach itself incentivises lenders not to concede a mis-sale, and to instead redress more cheaply at Step 2.

Our response

We have carefully considered this feedback. However, we see no reason to change our previous views or position.[121]

Plevin deals with the specific question of whether an unfair relationship between lender and borrower was created by undisclosed high commission on the PPI. This question is different from, and narrower than, the principal question behind our existing rules and guidance for firms, which is: did the conduct of the firm that sold the PPI fall so short, at point of sale, of what we would expect under our Principles and ICOB(S) rules, that it made the sale substantially flawed?

We still believe the two-step approach reflects this difference appropriately and fairly for complainants and firms. An alternative approach which merged considerations about undisclosed commission into the existing rules and guidance about mis-selling to create a single test would not be appropriate because:

- We do not consider the non-disclosure of commission in PPI sales to have been a breach of our ICOB(S) rules[122], and it is unlikely in and of itself to have been in breach of our Principles, whereas we do consider the various sales failings set out in the existing rules and guidance to be so.
- It would lead us, and firms, into difficult considerations of whether a consumer would still have bought the PPI if they had been told about the level of commission. This difficulty is compounded by the fact that complaints about PPI increasingly involve older, pre-2005 sales, of which some will be eligible to be considered at Step 2.
- Additionally, if we were to force firms to make these assessments it would result in complaint outcomes which would be both arbitrary and inappropriately 'all or nothing'. It could give too little – nothing – to many consumers who had suffered an unfair relationship, and too much – full return of premium and interest – to many consumers who had benefitted from the PPI cover. (See paragraphs 4.87-4.105 below for further discussion of our approach to redress.)
- We would, anyway, have to leave scope for a PPI complaint where undisclosed commission may be relevant to be assessed by a lender that did not sell the PPI and could not assess if it was mis-sold under our existing rules.

We do not agree that what we said in paragraph 5.69 of CP15/39 was inappropriate. Our comment was simply intended as one example of when a firm might decide that it needed to award more redress than under our

121 See paragraph 5.34 of CP16/20 and paragraph 5.27 of CP15/39

122 Or of our CONC rules in the case of contracts entered into before 1 April 2014

proposed standard Step 2 approach to redress. We did not seek to create any standard approach to 'marginal mis-sales' and expressly stated that such cases would be few and far between. We also expressly stated that such a scenario was only potentially relevant where the same firm was both seller and lender.

As noted in Chapter 3, we do not consider there is widespread mis-handling of complaints by firms at Step 1. We will have robust supervisory engagement with firms to ensure that they handle complaints fairly in the period before the deadline falls, including giving fair and appropriate outcomes under Step 1 or 2 respectively.

The practical operation of the two step process

4.71 Some responses from consumer bodies and CMCs maintained their view that it would benefit consumers if we prescribed that, even where one firm is involved, the simpler Step 2 should be progressed first and redress paid, with the more complex Step 1 done after and any redress paid as a top-up.[123] They said our rejection of this idea on the grounds that Step 2 redress is not automatic[124] is at odds with our insistence that exceptions to the presumptions around the 50% tipping point would be limited.

4.72 Some responses from industry:

- maintained their view that, where lender and broker are different, we should insist that on receipt of a complaint, the lender completes its Step 2 assessment *before* forwarding the complaint to the broker for a Step 1 one assessment[125], or
- asked for clarification of whether they would be expected to assess and provide a final response at Step 2 if they had referred the complaint to the seller (or FSCS) for a Step 1 assessment but not yet heard its decision on merits and redress

4.73 Conversely, some responses from industry maintained their view that to avoid the risk of double recovery by the consumer (ie full redress at Step 1 *and* redress at Step 2), we should specify that the Step 1 assessment should always be done first.[126] They said our comment that this was not necessary[127] was too optimistic and disregarded the eight-week time limit rule for complaint handling,[128] which does not provide sufficient time for the two firms' necessary coordination and responses.[129]

4.74 These responses further noted that:

- neither broker nor lender is obliged to respond to communications from the other as to whether they have provided redress, and not all can be relied on to do so promptly,

123 See paragraph 5.39 in CP16/20

124 See our response under paragraph 5.41 of CP16/20

125 See paragraph 5.38 in CP16/20

126 See paragraph 5.36 in CP16/20

127 Unnecessary, we said, because firms 'can safely rely on the existing high level complaints forwarding rules and on firms' common sense and professionalism to communicate appropriately among themselves to avoid excessive recovery by the complainant' – see paragraph 5.41 of CP16/20

128 DISP 1.6.2R

129 These responses saw this potential sequence as: the lender to forward the complaint to the seller; the seller to assess whether the PPI policy was mis-sold; the seller to communicate the outcome of its Step 1 assessment to the lender; the lender (in the event that alternative redress has been awarded or a decision reached that there was no mis-sale) to assess under Step 2; the lender to issue a Final Response Letter to the customer; the seller to issue a Final Response Letter to the customer

especially when their priority will be handling their own increased volumes in the run up to the deadline

- there is no exception from the eight-week obligation for firms who are seeking relevant information from other firms
- managing these time constraints will be especially difficult where, as is often the case, the broker is no longer trading, and such communication is not possible
- it is unrealistic to expect complainants or CMCs to be reliable sources of information about any prior receipt of redress
- our statement that we were not in a position to require the Financial Ombudsman Service or FSCS to disclose relevant information on awards would leave an information 'black hole' that would bring high risk of double recovery in some sectors, whether inadvertently or otherwise.

Our response

We have carefully considered this feedback, but see no reason to change our previous views and position.[130]

We remain of the view that the two-step approach is proportionate, in what it requires of firms, and fair. This is because it limits the risk that a complainant could recover two sums of redress incorporating both the full return of premium (for mis-selling) and some part of that premium (for undisclosed high commission).

We accept that for complaints about the small minority of PPI sales where the seller and lender were different firms, avoiding potential 'double dipping' by consumers, whether inadvertent or otherwise, is likely in practice to need some communication between the firms. But we do not intend to add any rules and guidance that prescribe which step a firm should deal with first, or how and when they should forward it to another firm to carry out the other step. This is because:

- We think this would be too granular an intervention. We remain of the view that we can safely rely on the existing high level complaints forwarding rules (DISP 1.7) and on firms' common sense and professionalism to communicate appropriately among themselves to avoid excessive recovery by the complainant.
- The 'Step 2 first' idea rests on the mistaken belief that *Plevin* redress would or should be automatic – which is not consistent with what *Plevin* decided and not what we have proposed in our rules and guidance.
- The 'Step 1 first' idea is closer to our own thinking that it will often be preferable for a firm that both sold and lent to carry out Step 1 first, as this is likely to result in the maximum redress at the earliest stage. However, we feel it should remain open to consumers to complain about non-disclosure

130 See our response under paragraph 5.41 in CP16/20

of commission and profit share first, or only, if they wish to, which may be better for them if, for example, the seller of the PPI cannot be identified or is no longer trading or is unresponsive, or the consumer wants to keep their PPI policy. We have inserted new Handbook text to provide that a firm that both sold and lent should consider Step 1 unless, in compliance with certain provisions in App 3.2, it has established that the true substance of the complaint is only about a failure to disclose commission.

We do not think imposing requirements on the Financial Ombudsman Service and FSCS to share information with firms concerning prior redress payments would be appropriate, as their ability to do so is likely to be limited by relevant confidentiality legislation in any event.

We do not regulate consumers and so cannot impose obligations on them to disclose any previous redress received.

The two step process and the consumer credit jurisdiction

4.75 Some responses from industry:

- welcomed our confirmation[131] that we did not intend for our proposed rules and guidance to bring any expressions of dissatisfaction into jurisdiction that were not currently *complaints* for that purpose
- expressed concern that the drafting of the proposed Handbook text unequivocally directs a firm that is handling the complaint at Step 1 to also (if it is the lender) assess it at Step 2, which did not seem to reflect this intention

Our response

We consider that the Handbook text is clear that a firm's obligation to carry out Step 2 is limited to complaints where an expression of dissatisfaction about the alleged failure to disclose commission would itself meet the definition of a complaint for the purposes of the DISP and Financial Ombudsman Service jurisdiction and where s.140A applies. We have, however, added a further provision at App 3.10.2AE for the avoidance of doubt.

However, we note that it is the Financial Ombudsman Service that has to interpret its jurisdiction in individual cases, and that such matters can be part of the dispute.

Assessing matters not mentioned on the face of the complaint

4.76 Some responses from industry asked us to clarify our intentions in regard to assessing matters not raised on the face of the complaint:

- Whilst they agree, in light of DISP App 3.2.5G, that for relevant cases[132] a firm that was both seller and lender should undertake Step 2 even if the complainant had not mentioned non-disclosure of commission, they:

131 See our response under paragraph 5.26 in CP16/20

132 ie if the customer's sale falls within the scope of s.140A CCA and the complaint is not upheld as a mis-sale

- were not clear, where, conversely, a complaint mentioned undisclosed commission but not mis-selling, if they had to assess it at Step 1 regardless
- noted that doing Step 1 on a complaint that didn't mention mis-selling may inadvertently lead the firm to cancel the policy, if mis-sold, potentially against the wishes of the consumer if they only meant to complain about commission
- felt we should make explicit that a seller only, in assessing Step 1, does not need to consider unmentioned aspects relevant to Step 2, and that a lender only, in assessing Step 2, does not need to consider unmentioned aspects relevant to Step 1, and also that neither is obliged to forward to the other for consideration of such unmentioned aspects, though they may choose to do so

- In respect of the amended DISP App 3.4.2G, concerning root cause analysis, they asked us to clarify that:
  - the additional text is not intended to override the scope of the new rules and guidance – ie whatever the wider non-disclosures of commission in the past and their root causes, only customers whose relationship is capable of being deemed unfair under s140A CCA are eligible for redress under Step 2
  - we do not expect firms to undertake any new root cause analysis of past non-disclosure of commission, or consider contacting customers to explain that past non-disclosure

Our response

We remain of the view that firms should not take a narrow interpretation of a complaint. For relevant cases in scope of s140A, a firm that was both seller and lender should undertake Step 2 even if the complainant had not mentioned non-disclosure of commission.

If a complaint appears to be raising undisclosed commission only, we would generally expect the firm, if it is also the seller, to look to clarify, including through reasonable enquiries of the complainant, the nature of the complaint and whether there was a particular reason why the consumer had raised this narrow complaint, and consider whether it would be right in the circumstances to expand the complaint for consideration at Step 1 also. As noted, we have clarified in the Handbook text that a firm that is both lender and seller may consider only Step 2 if it has established in accordance with certain provisions of DISP App 3.2 that the true substance of the complaint is only about a failure to disclose commission and profit share.

Where a firm is responsible for only Step 1 or Step 2 respectively, and identifies that the complaint raises issues relevant to the other step, or that such issues are anyway potentially relevant to the complaint (even if not mentioned), we would generally expect the firm, in light of DISP 1.7, to forward these aspects of the complaint to the firm responsible for the other step, where that firm is known to it or can be identified by it following reasonable steps.

Concerning root cause, we consider that the Handbook text is clear that Step 2 is relevant only where a complainant's relationship with the firm falls within s.140A of the CCA. In relation to proactive customer contact, we indicated in

CP 15/39[133] that we considered that the existing guidance (in DISP App 3.4.3G) applied only to non-disclosure of commission in relation to credit agreements that were entered into, or were outstanding, on or after 1 April 2014, when consumer credit became a regulated activity under FSMA.[134]

Safeguarding against mis-use of Step 2 redress

4.77 Some responses from consumer bodies and CMCs maintained their view that:

- it was important to ensure that firms do not misuse Step 2 in order to pay less redress (than at Step 1) to the complainant
- individuals making their complaints without CMC assistance would be more vulnerable to such lower offers
- so we should require firms to make clear in their final response that the two elements of the complaint are separate, and that accepting a Step 2 redress offer does not restrict the consumer, if they remain dissatisfied, from progressing the Step 1 aspect to the Financial Ombudsman Service

Our response

As noted in Chapter 3 above and in CP16/20 (our response under paragraph 5.32), we will have robust supervisory engagement with firms to ensure that they handle complaints fairly in the period before the proposed deadline falls.

We believe we can reasonably rely on the existing rules and guidance which require final responses to complainants, including any offers of redress, to be clear, fair and not misleading. We do not need to add rules and guidance prescribing what should be said in Step 2 offers, which we think would be too granular an intervention.

Tipping point

4.78 Most responses from industry maintained their view that setting a single tipping point, at 50%, was reasonable[135], though some maintained their view that 60% would be reasonable, in particular for regular premium PPI,[136] and some that it would be fairer to have multiple tipping points to reflect different business models and allocations of tasks and costs between insurer and lender (and, where different, broker).[137]

133 See paragraph 5.83 of CP 15/39

134 We also indicated in our response at pages 110-111 in CP16/20 that the effectiveness of our consumer communications campaign means that, in practice, it is unlikely that firms will need to take proactive measures concerning undisclosed commission, even in respect of PPI to which these root cause analysis provisions apply.

135 See paragraph 5.62 of CP16/20

136 See paragraph 5.63 of CP16/20

137 See paragraph 5.64 of CP16/20

4.79 Most responses from CMCs and consumer bodies maintained their views that while a tipping point needed to be set, we had set one that:

- was unreasonably high, unfair to consumers, did not reflect the *Plevin* judgment, Lord Sumption's comments or Mrs Plevin's award, and sets a dangerous precedent[138]
- was not backed by any justification in, or reference to, any economic, commercial or behavioural research or analysis or stated methodology[139]
- should be much reduced, with various alternatives suggested from 16% to 30%[140]

4.80 CMCs and consumer bodies also now further commented that:

- setting it at 50% considerably undermines the other more positive proposals, as the tipping point is the keystone
- 50% is biased towards lenders and makes it difficult for the public to regain their trust in the financial sector, and does not enhance the integrity of the UK financial system
- the proposal disrespects the Supreme Court's judgment which clearly described a situation of extremes in terms of the high level of commissions and the extent of the inequalities in the creditor-debtor relationship, such that a fundamental shift in the relationship is needed – whereas our 50% merely 'fine tunes' it
- the judgment speaks of the need for 'forensic assessment' whereas we seem to guess at what 'a long way beyond' means without providing any methodology or due diligence
- it is unreasonable for us to simply say the matter is one for our regulatory judgement and to deliberately ignore any facts or analysis
- we ignore the Competition Commission findings of excess profit and poor value which clearly showed the extreme nature of the PPI pricing model
- we said we would not find consumer views on the level of commission helpful, which gives the appearance we are only concerned with the views of industry

Our response

We have carefully considered all the feedback on this point, but see no reason to change our views or approach. So we are basing our final approach around a single presumptive tipping point of 50%, which we remain of the view is fair and appropriate and not remote from the approach the courts would take.

Specifically:

- We continue to consider that 50% is appropriate in the context of our regulatory judgement concerning PPI complaints, based on what the Supreme Court said in *Plevin* about undisclosed commission of 71.8% being a 'long way beyond' the 'tipping point' for unfairness

138 See paragraph 5.65 of CP16/20
139 See paragraph 5.67 of CP16/20
140 See paragraph 5.66 of CP16/20

- We have also taken account of the approach adopted by HHJ Platts (sitting in the Manchester County Court) in *Yates and Lorenzelli v. Nemo Personal Finance* (14 May 2010) who considered that a commission of over 50% should be disclosed

- We are aware that it is only one of a number of approaches that may have been taken in the county courts

- In particular, we are aware of some findings in the county courts of unfair relationships in cases where commission was 45%. But we note that, firstly, this figure is not far from our proposed 50%, and secondly, that there were other considerations in those cases, including facts indicating mis-selling had taken place, which would be considered under Step 1 in our approach where the seller and lender are the same firm. So we do not see cause in these cases to change our proposed 50%.

- Adopting a presumptive 50% tipping point is not the same as saying that most or all consumers would think 50% was a reasonable level of commission to pay. Rather, undisclosed commission of 50% is the level at which we think it can be reasonably presumed that an unfair relationship was created.

- It is important to note that such presumption is rebuttable: our approach allows for flexibility around that tipping point, including allowing that in some circumstances undisclosed commission of less than 50% may have created an unfair relationship in particular cases.

- We consider that the level of the tipping point in the context of our approach is a matter of regulatory judgement.

- We do not think that further information on consumer behaviour and preferences, or on firms' costs, is necessary for seeking to justify the 50% tipping point or identifying potential alternatives.

- There is an important conceptual distinction between commission being so high that it makes the whole relationship between lender and debtor unfair if not disclosed, and being too high economically in relation to efficiently incurred costs in a competitive market. We are concerned with the former, as this was the focus in *Plevin*, not the latter. We are not trying to regulate prices retrospectively or to redress economic detriment caused by high prices in an uncompetitive market.

- We have also carefully considered whether our rules and guidance should set out different proportions for the presumption of unfairness for different types of PPI policy or sale (to reflect, for example, the potentially different costs associated with their distribution). However, we have not identified any compelling reasons why this approach is either necessary or appropriate. In particular, taking into account our knowledge of the PPI market and consistent with our proposed definition of commission, it is not obvious to us that differences in PPI distribution costs between firms, or between different PPI products of a firm, are relevant or show the need for different proportions to be set for the presumption of unfairness.

Rebuttal of presumptions

4.81 Some industry respondents maintained their view that the presumptions should not be rebuttable in any circumstances[141], so as to:

- provide greater certainty, consistency and swifter outcomes for consumers
- avoid CMCs abusing them through template submissions that do not reflect individuals' circumstances and by always challenging them at the Financial Ombudsman Service
- avoid the expense and complexity of firms (and the Financial Ombudsman Service) having to build them into every complaint assessment and handling process despite our view that genuine rebuttal cases would be rare

4.82 Other responses from industry maintained their view[142] that, at least, the presumptions should be:

- made less broad, with additional and narrow guidance provided concerning their proper application
- worded to make clear that rebuttal would need supporting evidence, with the onus falling on the firm or complainant as appropriate
- discussed by firms with the Financial Ombudsman Service in due course, to understand its interpretation and aid the quality and consistency of firms' decisions

4.83 Most consumer bodies and CMCs maintained their views[143] that:

- taken collectively, the situations falling within the rebuttal examples will be more common than we suggest
- the guidance regarding rebuttal examples provides too much discretion to firms, and should be more narrow, balanced, and favourable to consumers

Our response

We have carefully considered this feedback, but still think it is appropriate and important to preserve flexibility around the proposed tipping point to reflect the nature of s.140A. The nature of an assessment of whether a relationship is unfair is broad, and we need to reflect this, while providing for certainty and consistency in complaint handling. We do this by providing presumptions that an unfair relationship arises or does not arise in certain circumstances but that these can be rebutted in some circumstances. We also still believe it is helpful to firms and consumers to provide specific examples of such circumstances.[144]

We remain of the view that we should not add detailed prescription to such examples, as this would work against their intended purpose of providing appropriate flexibility.

141 See paragraph 5.74 of CP16/20
142 See paragraph 5.72-5.73 of CP16/20
143 See paragraph 5.75 of CP16/20
144 See our response under paragraph 5.75 of CP16/20

4.84 Concerning the 'particularly difficult financial circumstances' rebuttal scenario, responses from industry maintained their:

- disagreement in principle[145], and
- request, if it is retained, for additional guidance which explains what such a customer looks like and states that this factor is only likely to be relevant in limited circumstances

4.85 Some responses from consumer bodies and CMCs:

- maintained that we should require firms, where commission (and profit share) is below the tipping point, to ask the complainant whether they were in financial difficulties when they took the PPI or experiencing other exceptional circumstances
- added that we should make clear to firms that, more generally, consumer vulnerability is a relevant matter in the assessment at Step 2

Our response

Concerning 'particular financial difficulty', we have considered this feedback carefully but do not see reason to change the views we expressed in our response under paragraph 5.86 of CP16/20, or to change or add to the Handbook text.

Concerning vulnerable consumers more generally, we note that DISP App 3.3A.2E in the rules and guidance already states that, when considering whether it can satisfy itself that the non-disclosure did not give rise to an unfair relationship, the firm 'should take into account all relevant matters'.

145 See paragraph 5.85 of CP16/20

4.86 Concerning the presumption around the lender's knowledge of the commission:

- some responses from industry maintained their view that we had not properly reflected the relevant parts of *Plevin* or *Axton*[146] and that we should amend the presumption to reflect that there may be circumstances where:
  - (as in *Axton*) the lender is not responsible for failing to disclose the commission to the customer; or
  - the lender shares responsibility for the failure to disclose the commission to the customer with other parties who also knew the level of their and the lender's commissions but did not tell the customer, and
  - that in such circumstances, the lender should not be solely responsible for the payment of redress at Step 2
- some responses from CMCs and consumer bodies maintained their view that we should not give weight to *Axton,* because if commissions were not disclosed to the consumer it would cause an unfair relationship, irrespective of who was responsible

Our response

We have carefully considered this feedback, but do not consider such amendments to be necessary or appropriate. Our rules and guidance already provide for the presumption of unfairness being rebutted where the lender did not know – or could not reasonably have known – the level of commission. The Supreme Court judgment in *Plevin* focuses on the lender and made clear that, for the purposes of unfair relationships under s.140A, it is the lender who is responsible for the failure to disclose the commission to the consumer (even if it received none itself), not any other party to the transaction (even if that party did receive commission). We also note that consumers may complain about a broker under DISP 1.4.1R, and the lender may seek contributions from the broker.

Key elements of redress

4.87 We proposed[147] that where a firm concludes that an unfair relationship under s.140A has arisen by virtue of undisclosed high commission, it should pay redress consisting of three key elements:

1. the difference between the commission the customer paid (e.g. 70% of the premium) and (the proposed tipping point of) 50% of the premium paid (i.e. 20% of premium in this example);

   plus

146 *Axton v GE Money Mortgages Ltd* – judgment handed down by the High Court on 22 May 2015

147 See paragraphs 5.63-5.67 in CP15/39 and paragraph 5.88 in CP16/20

2. the historic interest the customer paid on that portion of the premium (where relevant) (ie the interest paid on the 20%);

   plus

3. annual simple interest at 8% on the sum of 1 and 2.

The excess over the tipping point

4.88 Responses from industry maintained their agreement with our core principle of returning the excess over the 50% tipping point.

4.89 Most CMCs and consumer bodies, however, maintained their views, variously, that the approach was:

- reasonable in principle but made unfair by the excessively high tipping point
- flawed and should instead return all the commission
- flawed and should instead return all the premium

4.90 Some of these responses added that our stance was incoherent, as we claimed that our approach is not focused on issues of causation or intended to remedy hypothetical situations[148], but then justified our approach by relying on the sweeping assumptions that:

- *had* the amount of commission been disclosed, the customer *would have* searched for alternative cover but *would not been able to find it*, and so *would have* taken the policy anyway, and
- *had* the commission been less than 50%, the firm *would not have been required* to disclose the commission anyway

4.91 More broadly, these respondents added, variously, that we:

- were inappropriately deviating from awards in the courts and unhelpfully creating a dual system where a consumer would get more redress through the courts than via a complaint
- had not given any credence to the points and concerns about the redress approach that were put to us by consumer bodies and CMCs
- gave the impression we favour balance sheet protection over consumer protection

Historic interest

4.92 Some responses from industry asked us to clarify whether, as for mis-selling redress, we would expect, for credit card PPI, the relevant historic interest to be calculated on the basis of a full account reconstruction.[149]

4.93 Other responses from industry assumed we would require such full account reconstruction for credit card PPI, but maintained that we should not. In their view:

148 See paragraph 5.66 in CP15/39

149 For regular premium PPI, including credit card PPI, where there has been a mis-sale we expect firms to undertake a full account reconstruction on a month by month basis when calculating redress. This involves calculating what the account balance would have been without the addition of the PPI policy, including the PPI premiums that were paid and the additional historic interest that was paid in relation to those premiums.

- Full account reconstruction had already shown itself in mis-selling cases to be over-generous to consumers, because it typically provides for an amount of historic interest to be redressed that is disproportionate to the limited share of the total card spend that the PPI premiums made up.[150]

- This disproportion is magnified in our proposed approach to Step 2 redress, where, unlike for mis-selling redress, only a portion of the premium is removed. This results in the excess commission elements, despite being only, for example, 7% of all transactions on the card, generating (on the reconstruction) historic interest equivalent to, for example, 30% of the interest that actually accrued on the card. This seems unreasonable.

- To extend this over-generous reconstruction to Step 2 redress not only goes beyond the detriment, it goes well beyond the relevant case law and legislation.

4.94 Specifically, these responses argued that:

- *Plevin* redress should be doing something different from mis-selling redress: it is not known what the customer would have done, had they been told the commission, only, per the Supreme Court, that they would have questioned

- s.140B CCA is permissive concerning remedies, not prescriptive, and provides no clear principles. Case law has been limited, and circumstance-dependent, but judges have consistently *not* been forensic in assessing redress, as they would have done in tort. Instead they have come up with broad solutions to remedy unfairness, without considering how the consumer might have acted differently or what their account might otherwise have looked like.

- The PPI case law, with different approaches adopted in different cases, stresses the importance of the facts and circumstances of individual cases in deciding remedies.[151] It said the remedy must not punish the creditor, merely relieve the unfairness, and did not need to relieve all onerous consequences or detriment that had flowed.[152]

- In the non-PPI case law[153], a credit relationship went back to the 1970s: the judge saw the complexities, including records gaps, and took a broad, pragmatic approach, recognising that a forensic approach, given the claimant was asking for all loans in the chain to be quashed, would go too far in his favour.

- From this perspective, account reconstruction is an extreme approach which heads in an inappropriately forensic way into the difficult territory of consequential loss

- Furthermore, it is inconsistent with our stated wider approach in two respects:

  - Having declared that our approach to assessment and redress does not rest on any assumption about whether commission disclosure would have led the customer to have taken a cheaper policy (or none), it is inconsistent of us to expect firms to assume the kind of behavioural changes in the consumer's account use and repayments

150 These responses base their view on the fact, which we recognise, that over time, as the account reconstruction is performed, and because account borrowing limits tend to be fixed, an increasing proportion of the total account balance is deemed (in the reconstruction) to be due to the PPI, and so an increasing proportion of the total interest paid in that month is refunded as redress. Where the redress due reaches or exceeds the actual account balance, the entire interest paid that month is refunded

151 See for example the comment by HHJ Platts in *Plevin v Paragon Personal Finance Limited and another*, Manchester County Court , 2 March 2015 at paragraph 35

152 HHJ Keyser QC in *Brookman and another v Welcome Financial Services Limited*, Cardiff Mercantile List dated 6 November 2015

153 *Patel v Patel [2009] EWHC 3264*

which account reconstruction typically requires. So it would be more consistent to assume they would have made the same payments[154] – which renders full account reconstruction unnecessary.

– Full account reconstruction would involve a recalculation of the amount of PPI premium that would have been charged based on a lower balance, so the recalculated amount of PPI premium will be lower than the actual amount. But this is inconsistent with our view that redress should be based on the *actual* amounts of commission and profit share paid by the consumer in respect of their PPI.

4.95 These industry responses further argued concerning full account reconstruction that:

- we had not set out clearly why it was appropriate and proportionate in light of *Plevin*
- it was an additional unnecessary and administratively costly complication, in a proposed approach to *Plevin* which was already too complex
- it will place heavy demands on firms' historic records and increase the difficulties for those parts of accounts where they lack full (or any) records
- it will inevitably lead to different and inconsistent outcomes, given its complexity and the fact firms have different approaches and calculators
- it will invite frequent CMC challenge over behavioural assumptions and consequential losses, causing delay and costs for all concerned
- it will likely entail further protracted discussions and revisions of firms' specific calculators and assumptions, of the kind that have dogged mis-selling redress

4.96 In light of all these considerations, these industry responses said that we should:

- replace account reconstruction with a simpler, pragmatic redress methodology that could apply consistently across firms and PPI of different types, and
- not underestimate our own ability as regulator to show some thought leadership to the courts as to what a sensible approach might be

4.97 Some responses from industry therefore suggested various alternative approaches:

a. not including historic interest at all, as in the Card Protection Plan (CPP) redress scheme, which they felt was clearly and simply based on the total amount of payments made on the card by the customer in respect of the CPP product, plus simple interest at 8%

b. limiting the historic interest to the single month in which the particular excess commission that generated it fell: this approach would not refund the additional interest that would potentially accrue in subsequent months due to that excess commission having been embedded in the account balance[155]

154 Not least, these responses argue, because they knew what they were buying and at what price and anyway could not have varied the way they funded the PPI, as the premiums were always an integral part of the balance

155 These responses argue that this approach is fair due to firms' payment hierarchy provisions, which tend to state that, as repayment is applied to balances, PPI is paid off before other balances: ie since in nearly all cases the 1% minimum payment each month would have paid off the excess commission, that excess should not be carried across to a subsequent month and bear further interest

c. returning the same proportion of total historic interest on the card that the excess commission portions formed of the total spending on the card

4.98 These responses said of alternative c) in particular that:

- It is more appropriate and proportionate, because it does not entirely reverse the transaction, and assumptions about consumers' repayment behaviour fall away.
- It is more consistent with the case law judgments and their broad remedies, sitting squarely in the range of the kind of discretionary remedies a judge would have, and striking a good balance between the parties.
- It is easier to calculate and less demanding on firms' records.
- It is easier to explain to complainants and leaves less scope for disputation.
- In common card scenarios it is generous to the complainant, albeit it would give much less historic interest in the rare scenario where the complainant had had many months of non-paid-off small balances (accruing PPI premium and interest on the card) but then a later large transaction which they quickly paid off.

4.99 Lastly, some responses from industry said that it was helpful and welcome that we had clarified[156] that we were open to pragmatic approximations to full reconstruction if a firm has established that redress is de minimis (e.g. in the tens of pounds or less) and provided it can be established that consumers would not be disadvantaged.

8% simple interest

4.100 Consumer bodies and CMCs maintained their view that 8% was reasonable and in line with past guidelines.

4.101 Industry respondents maintained their views that the 8% simple interest rate was not representative of the amount of interest the consumer would have earned if they had had the benefit of the monies at the time, and neither fair nor appropriate in the current economic environment, particularly given non-disclosure of commission was not a regulatory breach.

4.102 Some of these responses added that our stated reasons for continuing to apply interest at 8% are not correct because:

- We say a rate of 8% is justified at Step 2, because 8% is the rate at Step 1, but 8% is also an unjustifiable rate at Step 1, albeit we are not consulting on that.
- We say throughout the consultation paper that our approach to *Plevin* is founded firmly in s.140A-D of the CCA – but for the most part, that legislation applies to agreements that have operated in a very low interest rate environment.
- We say that most of the parties involved in the relevant court cases, and their financial circumstances, did not seem to closely resemble typical PPI consumers. But the key case these responses had highlighted was *McWilliam*, where the McWilliams were typical, indeed actual, PPI customers.

156 See our response under paragraph 5.101 in CP16/20

4.103 Some of these responses also noted our comment that firms can apply a lower rate 'if they can justify this as fair and appropriate in the particular circumstances of the complaint and the complainant's financial circumstances' and asked for guidance as to what circumstances may support such an approach.

4.104 Some responses from industry asked us to clarify whether we really meant that redress for credit cards needed to include 8% for the months where the reconstructed balance was positive and then also (as the consultation paper text seemed to imply) 8% on that whole redress sum.

Our response

We have carefully considered all the feedback on our proposed approach to redress.

We do not agree that full account reconstruction for calculating historic interest gives disproportionate outcomes for mis-selling complaints at Step 1, or that it would do so for Step 2 redress. We also do not agree that a full account reconstruction approach to calculating historic interest for Step 2 redress is extreme, unduly forensic, or too focused on consequences compared to remedies envisaged by s140A or in the relevant case law. Instead, we consider that, for Step 2, our approach deals appropriately and proportionately with the full impact of the excess commission that was charged. That impact was not limited just to the month in which that excess was charged, since it would often form part of the account balance on which interest was charged in subsequent months. Though it is true that the core of our approach to redress, in its focus on the actual excess over the tipping point, is not a strictly tortious approach, once that sum is taken as the in-put to the redress calculation, it seems to us most logical and reasonable to then work through the subsequent impact of that sum on the consumer in the broad kind of way that is familiar from tortious remedies, in order to remedy the unfairness. We do not see that goes against s.140A-B. Nor do we agree that such an approach imposes undue complexity or administrative burdens and costs on firms. Indeed, given this approach is their well-established practice for mis-selling redress, with highly refined calculators in place, it would seem more costly to take a different approach now to Step 2. In particular, we note that many firms have well-established approaches to making behavioural assumptions (for example about consumers who make either maximum or minimum balance repayments) that feed into the account reconstruction. We would anticipate that these would generally also be reasonably applicable to redress and account reconstruction at Step 2, and that this should mitigate firms' concerns about whether account reconstruction can give excessive historic interest redress in some scenarios.

We do not generally favour the alternative approaches to historic interest which some responses suggested because, respectively, they:

a. Do not award any historic interest, so do not at all reflect the effects of the undisclosed excess commission on the account and what the consumer paid.

b. Award only one month's interest, so do not adequately reflect the effects of the undisclosed excess commission on the account and what the consumer paid.[157]

157 We do not agree with the payment hierarchy argument at footnote 155 above: if there is still a balance that would not have existed without the excess commission, then we would say it still has an ongoing impact in subsequent months.

c. Award some historic interest but are unlikely, in many card use scenarios, to reflect fully the effects of the undisclosed excess commission on the account and what the consumer paid; in any case, we do not think it would save firms much in assessment costs, as the calculations that would be needed are still complex. However, we accept that some form of this more summary approach might be reasonable in the particular and extreme circumstances where the firm has little or no information about the credit card's historic monthly balances and use.

We have added Handbook text clarifying the application of historic interest to redress on credit card PPI at Step 2 and Step 1. In respect of Step 1, this repairs an omission in the Instrument in PS10/12[158] (August 2010) and brings DISP App 3 into line with the worked examples in PS10/12 and firms' established approach since then.[159]

We see no reason to change our view that in respect of most PPI complainants, including at Step 2, additional simple interest at 8% should be paid on the relevant elements of the redress calculation.[160] We do not agree there is a need for further guidance on when it may be appropriate to pay a consumer a rate of less than 8%, or, indeed, more than 8%.

We do agree that 'pay 8% on the sum of excess commission and profit share plus historic interest' is not a correct description in the context of credit card PPI redress and account reconstruction and so we have amended this in the Handbook text.

Concerning the core logic of our proposed approach to redress, we note that *Brookman*[161] and *Plevin* show that the courts might take a variety of approaches to redress on individual cases. However, we remain of the view[162] that our approach, centred on the return of that portion of undisclosed commission plus profit share that exceeded the tipping point, is fair and appropriate. As we have explained (see our response under paragraph 3.27 above), we are exercising our regulatory judgement about appropriate assessment and, where appropriate, redress of relevant PPI complaints in light of s.140A-B, taking account of *Plevin*. In doing so, we are seeking to ensure fair and consistent complaint handling. We consider our approach to redress to be a reasonable starting presumption, which fits well with the central importance Lord Sumption gave to the notion of a tipping point.

For these reasons, although it was the remedy in *Plevin* ordered by the Manchester County Court, we do not agree that our general approach to redress should be the return of all the commission that was not disclosed. Also, the consumer, who, as would generally have been established at Step 1, was not mis-sold, had a need for the protection offered by the policy and enjoyed the benefit of that protection before complaining. So it is fair and reasonable for the lender to keep some of the commission from the policy's distribution (i.e. the portion under the tipping point).

158 Policy Statement 10/12: The assessment and redress of payment protection insurance complaints (August 2010)

159 We are not consulting on this change to the definition of 'historic interest' at Step 1. Given that our definition of 'historic interest' at Step 2 does cover credit card PPI, we consider that the delay caused by consulting on the change to the definition to Step 1 would be prejudicial to the interests of consumers, because it would suggest that we intend a different approach to that at Step 2.

160 See our response under paragraph 5.100 in CP16/20

161 We also note the more recent case of *Langley and Langley v Paragon Personal Finance Limited*, Coventry County Court, 26 October 2016 (unreported), which resulted in the lender being required to repay the commission plus interest, in a similar vein to *Brookman*.

162 See our response under paragraph 5.93 in CP 16/20.

Nor do we agree that our approach to redress should be the return of all the premium(s) paid by the consumer. Adopting this approach would dissolve any meaningful distinction between a mis-sale and an unfair relationship under s.140A, and thus between our existing Step 1 and proposed Step 2. In our view, it would (even more than the return of all commission) give excessive redress to the consumer who had enjoyed the benefit of that protection before complaining. We consider it is fair and reasonable for the consumer to have still paid for the underwriting of the policy and for some of the commission from the policy's distribution (ie the portion under the tipping point).

We do not agree that our approach to redress at Step 2 inconsistently evokes hypothetical scenarios or, in general or for historic interest specifically, implies any assumption that the customer would have searched for or bought an alternative PPI policy that was cheaper by the amount of the excess commission over the tipping point. So we do not need to take into account whether such alternative cheaper PPI policies existed or were available to the consumer.

Rather, as stated above, our approach simply seeks to redress the customer for that element of undisclosed excess commission and profit share which created the unfair relationship under s.140A. It is in that specific sense, of our approach not second guessing what the consumer would have done had they been told of the commission, that we meant that our approach was different from the 'but for' logic at Step 1. We did not mean that our overall approach to redress had no element of restoring the consumer's financial position to what it would have been without the undisclosed excess commission.

Lastly, we note that our approach to redress has to be viewed in the round, as a package. Responses from CMCs and consumer bodies have focused on aspects which they believe depart from *Plevin* and are ungenerous to complainants, such as the presumptive 50% tipping point and redress based on the excess over it. Responses from industry have focused on aspects which they believe depart from *Plevin* and are overly generous to complainants, such as historic interest based on full account reconstruction and additional interest at 8%, and firms' obligation to consider whether more redress than under our general approach is needed in the circumstances of some cases. So we consider that, overall, our approach is balanced and will give redress, in aggregate and to individuals, that is fair and proportionate in light of the detriment identified and described by the Supreme Court's judgment.

We do not consider that our approach implies excessive complexity or operational challenges for firms. However, we recognise that, just as for redress under Step 1, there will probably be some period of bedding-in of the approach, and some unforeseen issues arising out of particular case scenarios, that will need to be sensibly discussed and resolved along the way.

We recognise that some complainants and CMCs may be sceptical about firms' accuracy in assessing redress. But we think this can soon be overcome if firms are diligent and compliant in their approach and redress calculations, and explain their redress offers clearly and fairly to complainants.[163]

163 See our response under paragraph 5.93 in CP16/20

Calculations and examples

4.105 Some industry respondents said that:

- It was vital for our approach to redress to be clear and well defined, especially with respect to calculators, in order to provide consistent outcomes, safe harbour to compliant firms, and to avoid (right from commencement) unnecessary referrals to the Financial Ombudsman Service and help firms defend their responses there.

- Such clarity as to what the rules and guidance mean in practice would be assisted by clear and comprehensively worked-through examples and technical guidance, for different products and scenarios, from us and the Financial Ombudsman Service. These materials should make clear that there was not only one way to comply or calculate, and acknowledge the legitimate differences in firms' established calculators.

- We should also consider establishing industry standard product-specific calculators, to avoid any ambiguity and provide fair outcomes for consumers and lenders alike.

Our response

We do not consider that it is necessary or appropriate to try to establish industry standard product-specific calculators. As noted, most firms that handle significant volumes of PPI complaints already have well established and refined redress calculators whose approach and outputs have been validated by us, through our supervisory work, and by the Financial Ombudsman Service through its consideration of firms' offers in the cases referred to it.

We agree that worked examples would assist firms in implementing our approach to redress, and complainants in assessing firms' offers. We have provided some at Appendix 2.

We will consider on an ongoing basis whether further examples or other material in support of our rules and guidance would be helpful.

The treatment of rebates in step 2 redress

4.106 In CP15/39[164], we proposed that, unlike for redress at Step 1, redress at Step 2 should not be reduced by deducting the value of any previous rebate the complainant had received when they cancelled the policy. We said this difference reflected the fact that:

- the logic of our proposed approach at Step 2 was not to put the customer back in the position they would have been in had they been told of the high commission, but rather to correct the unfair relationship created at the time by the non-disclosure

- the subsequent cancellation of the policy by the consumer did not alter the unfair relationship created at point of sale and hence should not (through the rebate) reduce the redress due

4.107 However, responses from industry disagreed with this proposed treatment[165]. They argued that it allowed some element of double-recovery for the complainant, because in being rebated part, or all, of their premium, they would have been rebated part or all of the commission, and thus part or all of the commission over the tipping point.

164 See paragraph 5.80 in CP15/39

165 See paragraph 5.109 in CP16/20

4.108 We agreed with this reasoning, and in CP16/20 proposed to allow previously rebated commission and profit share sums above the tipping point to be reflected in, and thus reduce, redress at Step 2 (which we gave a worked example of[166]). We asked:

> ***Q21:*** ***Do you agree with our proposed modification of allowing rebates to be reflected when calculating redress at Step 2?***

4.109 Some consumer bodies and CMCs disagreed with our revised proposal, arguing variously that:

- They maintained their agreement with our original reasoning for not deducting rebates when calculating Step 2 redress.
- It is not clear where in CP16/20 we explain why our original reasoning was flawed, so the amended proposal appears to be an unjustified change in response to industry concerns.
- The rebate does not come out of the loan, it comes from the insurer, so it is irrelevant to the fairness or otherwise of the credit relationship.

4.110 Responses from industry agreed with our amended proposal, but some added that allowing for rebates when calculating redress will require individual assessment of the customer's account. When combined with the proposal to calculate the profit share actually paid up to the point of rebate, this will make the process more complex and increase the overall cost of handling Step 2 complaints.

Our response

We have carefully considered this feedback.

In changing our position, we are not disavowing our original logic. It remains our view that the subsequent cancellation of the policy by the consumer did not repair or otherwise alter the unfair relationship that had been created at the point of sale. We were simply acknowledging that we had failed to consider, from the perspective of redress calculations, that part of the undisclosed commission over the tipping point would have been included in the rebate. We consider that it would be unreasonable not to reflect this in the Step 2 redress.

We do not agree that rebates necessarily come from the insurer, as our understanding is that the precise arrangements between lender and insurer can vary. We agree, however, that the rebate is irrelevant to the fairness or otherwise of the credit relationship and does not correct or reduce an unfair relationship. But that is different from reflecting it in redress to avoid the same portion of excess commission and profit share being returned to the consumer twice.

We accept that adjusting the Step 2 redress for the rebate will add calculations and administrative cost. However, it will also reduce the redress cost. It will be a commercial decision for the firm whether making such adjustment is worth its while.

166 See our response under paragraph 5.109 in CP16/20

4.111 Some responses from industry asked us for clarification of various points about rebates:

i. in circumstances where the consumer got a full rebate of premiums, does the firm still need to undertake the calculation in draft App 3.7A.6, given that a full rebate would have included full return of commission and profit share?

ii. firms will not be able to calculate the actual profit share on the policy 'up to the point of cancellation', so how should they proceed?

iii. which types of rebate are caught by the amended provision (as in CP16/20, draft DISP App 3.7A.6 referred to 'any rebate' (first line), but draft DISP App 3.7A.7 (2) (last line) referred more narrowly to 'cancellation value')?

iv. at which point in the redress calculation sequence should the rebate be deducted?[167]

Our response

i. In some scenarios even the full rebate can have been less than the Step 2 redress due. So firms should remain alert to that possibility and such scenarios.

ii. We do not consider that assessing the actual profit share in respect of the policy up to the point of cancellation introduces any great difficulty. As we explained at pages 60-62 above, the firm should establish a broad notional allocation to the policy of profit share in the year, and can thus apply that percentage to the relevant part of the loan repayments which the consumer paid up to the point of rebate. We recognise that this will gloss over the fact that the profit share will reflect the whole year of the book's experience, while the policy cancellation may have occurred early or mid-year. But we do not think this is a material defect in the approach, and the discrepancies will even out across consumers who cancelled at different times.

iii. We have amended the drafting of the provision to reflect more consistently 'any rebate'.

iv. On the question of which point in the redress calculation sequence the rebate should be deducted at, we agree that the rebate should generally be applied in the calculation in a way that reflects its timing. We have amended the Handbook text to clarify this.

The treatment of claims in Step 2 redress

4.112 In CP15/39[168], we expressed the view that a subsequent successful claim on the policy does not, after the event, correct the unfair relationship under s.140A that was created at point of sale by the non-disclosure of the high commission, and so, unlike in our existing approach to redress at Step 1 in DISP App 3, the claim should not be reflected in (reduce) redress at Step 2.

167 These responses noted, for example, that App 3.7A.6 said 'deduct this from the amount of redress otherwise payable to the complainant' (second to last line); whereas, it might be appropriate to apply the rebate in such a way as to reflect its timing, rather than as a line item at the end of the calculation after the statutory interest is applied.

168 See paragraphs 5.77-5.79 of CP15/39

4.113 Some responses from industry to CP15/39 disagreed with this proposed approach. They said that we should provide at Step 2, as we do at Step 1, that a previous successful claim on the policy should be deducted from any redress due. Otherwise there would be double recovery.

4.114 In CP16/20[169] we said that we did not agree:

'Deducting the value of a previous claim makes sense in the context of redress at Step 1, which is based on an assumption that the consumer, but for the significant sales failings, would not have bought the PPI policy. In that assumed scenario, they would not have had a policy to make a successful claim on. In contrast, […] the logic of our approach to redress at Step 2 does not take a view on what the consumer would have done had they been told of the commission, but merely seeks to redress them for the unfair relationship created by the non-disclosure of the commission over the tipping point. On this scenario, they would still have had the policy and been able to claim on it. So there is no reason to deduct previous claims from the redress due at Step 2.'

4.115 Some responses from industry maintained their view on claims but now added that:

- the need to allow the deduction of claims from Step 2 redress is stronger than ever given the proposed inclusion of profit share, because claims are intrinsically linked to profit share and a policy that paid out a claim will not make any contribution to the book's future overall profit share
- it is inconsistent for us to now allow rebates to reduce redress at Step 2, in order to avoid double recovery, yet maintain our view that previous claims should not reduce the redress due; the claim provided a benefit to the consumer that was not diminished or otherwise impacted by the non-disclosure of commission or unfair credit relationship

Our response

We have carefully considered this feedback.

We do not agree that the significance of rebates and claims is the same. Not reflecting the rebate in Step 2 redress would clearly involve an element of double recovery since, as noted, the rebate already returns some of the undisclosed commission over the tipping point, and Step 2 redress would return all of it. By contrast, the successful claim did not return premiums or any element of commission, but simply paid the benefits the insurance contract had specified in response to relevant harms. Before and after the claim, the consumer had been paying their premiums or loan repayments, and the unfair relationship caused by the non-disclosure at point of sale remains unrectified within those premiums. So the subsequent remedy of the unfair relationship through the return of premiums over the tipping point has no link to, or overlap with the claim sum.

Therefore, we consider that our original proposal is correct.

However, we note that periods during a successful claim would be periods when payments by the complainant of any actual commission or amounts that

169 See paragraph 5.108 of CP16/20

contributed to profit share were zero, and that this would be reflected in the redress calculation at Step 2, to the extent this involves account reconstruction.

We have addressed the issue of the relationship between a claim on the policy and its notional profit share allocation at pages 61-62 above.

Relationship between Step 2 and partial or alternative redress at Step 1

4.116 In CP15/39[170], we proposed that where the firm is both seller and lender, and decides at Step 1, concerning a single premium PPI complaint, that alternative redress is due, then it should also consider the complaint at Step 2, and pay the complainant the higher of the Step 1 redress or (if any) Step 2 redress sums.

4.117 In response to CP15/39, responses from industry supported our proposal.[171] But some also asked:

- if this contradicted our proposed guidance[172] that a lender should look at Step 2 only if no redress, or only partial redress, has been provided under Step 1
- whether and how forms of partial redress at Step 1 other than alternative redress should be treated at Step 2

4.118 In light of that feedback, we proposed to amend our rules and guidance[173] to clarify that:

- where a firm considers a complaint under both steps, and assesses under Step 1 that partial redress is due (for example, because alternative redress is appropriate, or because it intends to deduct the value of a previously paid claim on the policy), then it should pay the higher of that partial Step 1 redress or the redress it assesses as due at Step 2[174]
- where a firm that is a lender has previously paid partial redress at Step 1 (or is aware that another firm has previously done so), it should assess what redress might be due at Step 2 and, if this sum is higher than the partial redress the consumer received previously, pay them the difference[175]
- where a firm is assessing redress at Step 1 and is aware that another firm has previously paid redress at Step 2, the firm may deduct this from the redress due under Step 1[176]

4.119 Some responses from industry said they disagreed with this clarification, arguing that:

- If a firm has done Step 1, identified a mis-sale and intends to (or already has) put the complainant back in the position they would have been in if they had not bought the policy they bought, then there is no justification for requiring firms to also assess Step 2 and pay this redress instead if higher.
- It should be irrelevant that the Step 1 redress may, as is permitted by our existing rules, be less than the full return of premium because of a previous successful claim on the policy –

170 See paragraph 5.80, 3rd bullet, of CP15/39
171 See paragraph 5.110 of CP16/20
172 At DISP App 3.1.1G(3) in the draft Instrument in CP15/39
173 See our response under paragraph 5.111 in CP16/20
174 See DISP App 3.7A.10E as amended in the draft Instrument in CP16/20
175 See DISP App 3.7A.12E in the draft Instrument in CP16/20
176 See DISP App 3.7.16E in the draft Instrument in CP16/20

an established approach which recognises that such customer, though mis-sold, received value from the policy.

- Furthermore, the previous claim on the policy will have eliminated any contribution from the policy to the firm's profit share, so it makes no sense to require the firm to pay the claim, plus partial Step 1 redress net of the claim, plus additional Step 2 redress (if more) that includes an element of profit share.
- Our clarified approach would potentially result (as worked examples of real cases show) in some complainants receiving more than they paid in premiums, which would be an unreasonable windfall.
- It makes firms undertake an expensive operational and administrative process (i.e. completing Step 2) in many cases when it will be moot (because less than Step 1 redress).
- Therefore, the original position implied in CP15/39 should remain the correct one, namely, that the firm should consider Step 2 redress only if, at Step 1, alternative redress had been or would be paid, and not if other forms of partial redress were paid or due.

4.120 Lastly, one response said that extensive modelling with potential refund values of alternative redress compared to Step 2 redress indicated that the latter would never exceed the former, so requiring firms to assess and compare these would be adding unnecessarily to their already complex workload.

Our response

We have carefully considered this feedback and the examples provided. We accept that our clarified approach in CP16/20 could result in a windfall to some complainants and that this would be an unreasonable outcome. So we have amended our final rules and guidance to provide that Step 2 does not need to be considered where the firm has concluded at Step 1 that the complainant would not have bought the PPI policy they bought and provided redress on that basis. This reflects our amended view that any potential complaint and redress at Step 2 has been adequately addressed, and thus extinguished, by these kinds of remedies at Step 1.

However, we do not consider this to be true of those Step 1 remedies used by some firms in the past that were arbitrary ex gratia sums given in response to mis-selling complaints. Where a complainant received such ex gratia sum in the past, and now makes a further complaint about undisclosed commission, we consider that the firm should assess this further complaint at Step 2 and pay redress, if due, without any deduction of the previous ex gratia sum, which would be unfair in the circumstances.

Redress in circumstances where the presumption has been rebutted

4.121 In CP15/39[177], we proposed that where undisclosed commission of less than 50% (e.g. 45%) was assessed in a particular case to have created an unfair relationship under s.140A, then redress should be based on the difference between the commission the customer paid and the

177 See provision App 3.7A.4E in the draft Instrument in CP15/39

level of commission which the firm considers would not have created an unfair relationship for that customer, in their particular circumstances at point of sale.

4.122 Some respondents from industry expressed concern that this proposed approach would not be operationally feasible and would lead to inconsistency between firms. They said it would be more appropriate for the rules simply to require payment of 'an appropriate amount of redress taking into account all the circumstances of the case'. Some responses from CMCs and consumer bodies expressed concern that this approach left too much discretion to firms to choose the percentage to use.

4.123 In CP16/20[178], we said in reply that:

- we considered our proposal to be a natural extension of the logic of our proposed approach to Step 2 redress more generally, and did not agree it would be operationally unfeasible or give firms too much discretion, but
- we accepted that the proposed approach was not necessarily the only way to provide fair redress and agreed that the over-arching obligation on the firm is to pay redress that remedies the unfairness found in the circumstances[179]

4.124 Responses from industry maintained their view that this approach:

- is vague and unsupported by any guidance as to how it should be done
- is unworkable in practice, relying on imprecise considerations and value judgements by complaints-handlers that will be difficult, if not impossible, to justify objectively or explain to customers, leaving open another avenue of challenge at the Financial Ombudsman Service, who will itself have to struggle with the same obscure considerations
- adds cost, complexity, inconsistency, uncertainty and delay, and disproportionately so, given our view that such cases would arise relatively infrequently in practice

4.125 These responses added that our acknowledgement that this proposed approach is not necessarily the only way to provide fair redress in these circumstances is helpful, but that in light of it, not doing redress that way cannot be relied on as tending to establish contravention of our complaint handling rules[180], so the relevant draft evidential provision[181] needs to be amended – for example, downgraded to guidance.[182]

Our response

We do not accept or agree with these concerns and are not altering the content of this provision or its status. We believe our proposed approach to redress in such cases is an obvious and natural extension of the logic of our proposed approach in cases where the undisclosed commission was over 50%. We do not see why this approach would be operationally unfeasible. Any scope

178 See our response under paragraph 5.96 in CP16/20

179 We also noted that, if we made these rules and guidance, we would monitor firms' complaint handling in light of them and act robustly if we found unfair approaches, including unfair assessment of redress in complaints where the usual presumptions had been rebutted. This remains our position.

180 DISP 1.4.1R

181 See DISP App 3.7A.4E in the draft Instrument in CP16/20

182 Which, these responses suggest, should indicate that the approach outlined is but one way to satisfy DISP 1.4.1(2)(c)R

for discretion is caused not by this proposed approach to redress, but by our allowance, discussed above, that the presumptions around the tipping point can be rebutted – flexibility which we continue to consider appropriate. We accept that the approach is not necessarily the only way to provide fair redress, if a firm can demonstrate a different but fair approach, but that does not mean that we need to change the status of the provision.

Disclosure as part of redress for upheld complaint with live regular premium policy

4.126 We proposed[183] that for a live regular premium PPI policy, the firm should, as part of offering and paying any Step 2 redress, also :

- tell the complainant the level of commission (and now anticipated profit share) on the PPI that they are paying, and
- offer them an informed choice of whether to continue the PPI policy on that basis or cancel it without penalty

4.127 Some responses from industry maintained their agreement with this proposed approach but suggested that the handbook text[184] needed changing, so as to:

- provide explicitly that this disclosure should be of the commission foreseeable and the anticipated profit share as at the date of the complaint
- make explicit that such disclosure applies only to complaints upheld at Step 2

4.128 Some responses from industry went further, however, and said we should confine this disclosure to cases where the commission plus anticipated profit share was over 50% at the time of the complaint.

4.129 Some responses from industry:

- asked if this disclosure could set out a range of anticipated profit share and commission
- maintained their view that we should provide guidance on what we consider 'good disclosure' in this context[185], especially if profit share is included, given the potential for customer confusion, and the desirability of a common approach that is supported by us and the Financial Ombudsman Service

4.130 Some responses from industry expressed concern about paragraph 5.115 of CP16/20[186], which they felt implied that a subsequent increase in commission and anticipated profit share would also have to be disclosed to avoid unfairness. Such an ongoing obligation, they said, would be:

- at odds with the lack of any such disclosure requirements in ICOBS

183 See paragraph 5.80, second bullet, in CP15/39, and paragraph 5.105, 4th bullet, in CP16/20

184 See DISP App 3.7A.8E in the draft Instrument in CP16/20

185 A view we had rejected, as too granular an intervention, and given firms should be guided by Principle 7 – see our response under paragraph 5.115 of CP16/20

186 See the seventh paragraph of our response under paragraph 5.115 of CP16/20 which stated that: 'If a customer with a live policy is told of the current level of commission and anticipated profit share, then we agree that this disclosure is likely to mean that the relationship is not (or is no longer) unfair under s140A, at least as long as these remain at or below the level disclosed'

- unworkable and disproportionate, as anticipated profit share will change frequently, or at least annually, so could require frequent new disclosures
- incommensurate with the position in CP16/20[187] that the key element in assessing the unfairness of non-disclosure at point of sale was what was reasonably foreseeable at the time: the same principle of foreseeability at the time should apply to the disclosure made in the response to the complaint

Our response

We have carefully considered this feedback. We have amended the final Handbook text to provide that such disclosure:

- applies only to relevant complaints upheld at Step 2
- should be of the known or reasonably foreseeable commission plus the anticipated profit share as at the time of the response to the complaint
- should be made regardless of whether the commission foreseeable and the anticipated profit share as at the time of the response to the complaint is more than the 50% tipping point; this is because we take the view that the disclosure is part of the remedy for the upheld complaint, to give an informed choice of whether to maintain the policy – so whether the current commission and anticipated profit share is over the tipping point is irrelevant
- may be in the form of a range, provided this is sufficiently narrow to be clear and informative, albeit we remain of the view that it is generally clearer to the consumer for the firm to set out its best estimate
- may or may not separately disclose commission and anticipated profit share, as the firm prefers

Beyond these provisions, we do not think we need to specify further guidance about how firms should make such disclosure. We remain of the view that this would be too granular an intervention and that we can reasonably rely in this context on Principle 7 (firms' obligations to provide consumers with information that is clear, fair and not misleading). Consistency in disclosure should anyway be helped by our proposed definitions of commission and anticipated profit share.

With regard to the concern that we have implied an ongoing obligation to disclose if the commission and profit share subsequently rise, we note that when we said that such disclosure is likely to mean that the relationship is not (or no longer) unfair under s.140A, at least for as long as these remain at or below the level disclosed, we simply meant that:

- this provision for disclosure is part of the remedy for an upheld complaint at Step 2 and is included for the purposes of fair complaint handling only, so that the complainant can make an informed choice, having received redress, about what to do with their live policy – the decision they were effectively deprived of the opportunity to make at the point of sale

187 See paragraphs 5.103 – 5.104 of CP16/20

- the provision does not speak to what firms might have to do in the future because of, for example, ongoing s.140A considerations, and nor does it change the position in ICOBS, or CONC for contracts entered into before 1 April 2014, which do not currently require firms to disclose commission or profit share arrangements to retail customers of general insurance[188] (unless, in the case of ICOBS, requested by the consumer).

Previously rejected complaints

4.131 In CP15/39, we said that, despite the *Plevin* judgment, we did not think a consumer could re-submit a complaint (for assessment against our new rules and guidance) that is the same, or covers the same subject matter, as a previously submitted complaint, including where that previous complaint had expressly raised non-disclosure of commission.[189] This was because:

- we do not consider the non-disclosure of high commission to have breached our ICOB(S) rules and it is unlikely in and of itself to have been a breach of our Principles
- so we do not consider that the firm's decision to reject a complaint about such non-disclosure was unfair complaint handling
- so it would be retrospective and wrong to require the firm to reassess now a further complaint on the same point (or to proactively reassess the original complaint)

4.132 Responses to CP15/39 from consumer bodies and CMCs disagreed, saying:

- All previous rejected complaints about commission should be re-opened or, at least, considered if raised again in new complaints. To exclude any from this would be:
  - unfair, as it treats them more harshly than those who complain about commission after the FCA's intervention
  - perverse, as it would exclude precisely those consumers who were engaged enough to have raised commission before the FCA's intervention
  - incorrect in law and in principle, because *Plevin* was declaratory on the law on unfair consumer relationships, on the issue of non-disclosure of commissions, as it has stood since s.140A came into force, so most or all previously rejected non-disclosure complaints were decided incorrectly
- At the least, previous rejected complaints about commission should be re-opened where the original complaint was rejected after the *Plevin* judgment (November 2014), or, preferably, after October 2012, when Mrs Plevin lodged her appeal with the Court of Appeal following the initial hearing at Manchester County Court on 5 October 2012.

4.133 In CP16/20[190], we said that, having considered this feedback, our view remained that:

188 Since April 2014, the FCA's new consumer credit rules (CONC 4.5) do provide for commission disclosure by credit brokers

189 See paragraphs 5.87-5.89 of CP15/39. We also said there that we would not require or expect firms to proactively reopen and reassess such previously rejected complaints about undisclosed commission; see also our response under 3.30 in Chapter 3

190 See our response under paragraph 5.121 in CP16/20

'[…] by taking an approach which considers whether the issue of undisclosed commission or profit share was expressly dealt with or not at the time of the original complaint, our proposal strikes the right balance between being fair to consumers and avoiding putting retrospective obligations on firms. We do not think that this approach is affected by, or should be changed in light of, the various stages in the judicial process that ultimately led to *Plevin*. If a complainant raised a complaint about undisclosed commission or profit share in light of the *Plevin* litigation, and that complaint was rejected by the firm in question, then it would have been open to the complainant to refer the complaint to the Financial Ombudsman Service. And we do not consider that the fact (which we accept) that *Plevin* was declaratory of the law on unfair relationships in this context as it has stood since s.140A came into force means that previously rejected complaints about commission or profit share were wrongly decided, or, in the context of our existing complaint handling requirements, need to be reassessed.'

4.134 Most responses from CMCs and consumer bodies maintained their view as per paragraph 4.132 above. In addition, some of these responses now argued that:

- We had recently said elsewhere[191], in the context of allegations that we sometimes apply rules retrospectively as a consequence of hindsight bias, that: '… *we would argue that if a practice is unfair, it is unfair, and the regulator should have the tools to fulfil its objectives, primarily appropriate protection for consumers'*.
- Given that, previous complaints about undisclosed commission appear to be exactly the type of situation where we would expect firms to have historically applied a standard which is subsequently determined to have been fair.
- In particular, the *Plevin* situation does not involve the assessment of the application of any new rules, as the relevant provisions (s.140A) have existed since 2008, since when there was always a relevant set of circumstances that would be unfair, including a tipping point of undisclosed commission. What has now happened is simply that, in one particular case, the Supreme Court provided some context as to what those circumstances may be.

Our response

We have carefully considered this further feedback. However, we see no convincing reason to alter our view of the matter set out in CP16/20 and at paragraph 4.133 above.

We consider the situation with previous rejected complaints about undisclosed commission to be different from the scenarios discussed in our January 2015 paper. This is because they considered issues around the retrospective application or interpretation of our rules, whereas in this case there were no relevant rules to apply or interpret and our public and established policy position was *not* to require disclosure of commission to retail customers (unless requested by them).

191 See '*The retrospective application of rules: feedback on the call for examples*' (January 2015)

CMCs and second complaints

4.135 Some responses from industry said that:

- Our proposal in CP15/39[192] that complainants who previously had rejected mis-selling complaints could now make a complaint about undisclosed commission (if the policy is in scope of s140A), and our clarification in CP16/20[193] that this would also be the case for previous complaints that were upheld but given only partial redress, would lead to wholesale resubmission of such complaints by CMCs for Step 2 consideration.

- Therefore it is vitally important that, with respect to these resubmissions in particular, the CMR and MoJ, and in due course the FCA:

  - ensure that CMCs have the proper authority to bring them on behalf of clients and observe appropriate standards, including being suitably selective[194]

  - expedite the proposed reforms in relation to CMCs, and in particular the proposed fee cap, all of which should apply to such resubmitted complaints even where the client had previously signed a CMC agreement on different terms

- We need to clarify whether, in respect of such resubmitted complaints, we meant[195] that CMCs should not seek a fee without obtaining a fresh letter of authority, or should simply not seek any fee, whether or not there is fresh authority.

Our response

We are not yet the regulator for the claims management sector. The proposals put forward by the CMR, including the proposed fee cap, remain under consultation.

Our observation was merely that CMCs would need a fresh authority from the client before resubmitting this kind of complaint and charging a fee for it.

As discussed, we now consider that a complainant who received or receives redress at Step 1, on the basis that they would not have bought the PPI they bought but for the sales failings, has no claim to redress at Step 2. So they should not make a further complaint about undisclosed commission, and if they do, a lender will not need to consider it or pay redress.

192 See paragraph 5.89 in CP15/39

193 See our response under paragraph 5.111 in CP16/20

194 For example, the Conduct of Authorised Persons Rules contain requirements that CMCs act ‘responsibly’, with ‘professional diligence’, and that they take ‘all reasonable steps to investigate the existence and merits of each element of a potential claim before presenting it to a third party’

195 At paragraph 5.124 of CP16/20, where we said that ‘where a customer previously made a complaint about a PPI sale using a CMC …, then in our view, and that of CMR, the CMC … would not be able to rely on their previous authorisation from the consumer to make a new complaint about undisclosed commission or seek a fee from any redress resulting from that new complaint’

The treatment of complaints already at the Financial Ombudsman Service

4.136 The Financial Ombudsman Service has explained publicly that it is committed to taking cases impacted by *Plevin* as far as possible, but it has a growing number (over 120,000) where it would want to consider our rules and guidance, if we made them, before making a final decision. In light of this circumstance, some responses from industry variously:

- argued that many of these cases pre-date CP15/39 (November 2015) and do not mention undisclosed commission issues on their face, so should therefore be adjudicated concerning potential mis-selling only, given we say that firms will not be expected to review previously rejected complaints from the perspective of *Plevin*
- expressed doubt that, even under its 'inquisitorial' remit, the Financial Ombudsman Service has powers to assess undisclosed commission in these cases before firms have had chance to handle the complaint in light of any final rules and guidance we issue
- urged the Financial Ombudsman Service, in any event, to hand these cases back to firms and allow them opportunity to consider and respond to them first, in light of any final rules and guidance we issue, because this would:
  - be more appropriate and fair to firms
  - free up Financial Ombudsman Service resource to focus on the specific types of complaints and issues that firms have been unable to resolve
  - avoid firms having thousands of such cases recorded and reported as 'overturned' by the Financial Ombudsman Service, which would unnecessarily and unfairly undermine public confidence in firms' PPI complaint handling

Our response

It is for the Financial Ombudsman Service to interpret its jurisdiction and decide how to carry out, in particular cases, its remit to adjudicate on the basis of what is fair and reasonable in all the circumstances. The Financial Ombudsman Service will consider the best way to progress these cases already with it, including their eventual reporting. As it issues decisions, this should help firms to understand its likely approach and help to inform their complaint handling.

PPI complaint reporting requirements

4.137 Some responses from industry said, variously, that we should clarify:

i. that where a complaint was previously decided at Step 1, but the customer now brings a further complaint at Step 2, this should not be treated as a new complaint for reporting purposes, because, in substance, it is a re-opened one

ii. that complaints assessed by lenders only at Step 2 should nonetheless be recorded as PPI or insurance complaints, as otherwise it would artificially inflate credit complaint numbers and give consumers a misleading picture of credit practices

iii. how a firm that is the lender only, but is handling claims on policies on behalf of an insurer, should report, where it gets a complaint about a rejected claim that alleges mis-selling, which it then considers in its own right at Step 2: one complaint or two?

Our response

i. In our view, these are not new complaints for DISP 1.10 reporting purposes. We note, however, that such a complaint will nonetheless trigger its own obligations under DISP, including the eight-week period for responding (see also DISP 2.8.8), as if it were a new complaint.

ii. We agree that, for DISP 1.10 reporting purposes, complaints assessed at Step 2 should be treated as PPI complaints/complaints about insurance because, despite the significance of s.140A CCA to these complaints, the key aspects in them remain the non-disclosure of high commission being paid out of the premium, and potential redress needing the return of some appropriate part of the premium.

iii. If the firm is handling a complaint, as agent, on behalf of another firm, then the agent does not report the complaint, the owner of the complaint does. If the agent, as seller and/or lender, and the insurer, both feel they have responsibilities for responding to the complaint, then they should both report it (ie as two complaints) for DISP 1.10 reporting purposes.

In addition to the DISP 1.10 complaints reports that firms submit, the firms in our project submit additional detailed reports about PPI monthly. We are amending this reporting currently to better reflect the current stage of our work and our new rules and guidance in light of *Plevin*. For the purposes of this reporting, we will ask firms to treat and report complaints about undisclosed commission by previously rejected complainants as new complaints. As such, they will be included in the updated total of PPI complaints that we publish each month.

5.
Next steps

Commencement of rules and guidance and consumer communications campaign

5.1 In CP16/20, we proposed that if we made rules at end December 2016, then:

- the fee rule and the rules and guidance on handling complaints in light of *Plevin* would come into force three months after their making, by the end of March 2017
- the deadline rule would come into force 6 months after it was made, by the end of June 2017, with the consumer communications campaign starting at the same time
- the deadline would fall two years after the deadline rule came into force, by the end of June 2019

5.2 Some industry respondents maintained their views that there should be no delay between the rules being made, and their coming into force and the campaign starting. Some responses maintained or expanded their concerns about the space for alternative messaging from CMCs that delayed commencement would create, and said we should commence sooner to take into account that our policy process had taken longer than originally anticipated[196].

5.3 Other responses from industry, however, maintained their views that there should be adequate lead time between the rules being made and their coming into force, so that no operational problems arise in the early part of the deadline period and campaign.[197]

5.4 On our proposals concerning *Plevin*, some responses from industry said the practical challenges of including profit share meant that a 3 month implementation date was too soon for them to prepare properly. However, others said we should implement sooner, so they could press on with handling relevant complaints, including those currently stayed.

Our response

We have carefully considered these responses, and have concluded that:

- The communications campaign fee rule will come into force on 31 March 2017, with the first half of the fee collected from relevant firms in April 2017.

196 See paragraph 6.6 of CP16/20
197 See paragraph 6.7 of CP16/20

- The deadline rule will come into force on 29 August 2017 and the consumer communications campaign will begin at the same time.[198]
- The rules and guidance on PPI complaint handling in light of *Plevin* will also come into force on 29 August 2017, to give firms more time to prepare to implement our approach, and us more time to engage with their preparations.
- The deadline will fall two years after the deadline rule comes into force, on 29 August 2019.

In light of the feedback and other considerations, we consider that these timings are most appropriate to ensure that we, firms and other stakeholders, including our partners, have time to prepare for and implement our respective actions in support of the campaign, and complaint handling in light of *Plevin*.

Some stakeholders have said that if we make rules and guidance along the lines proposed in CP16/20, then they are likely to challenge these in court. We will issue prompt updates if at any point we intend to depart from the commencement dates set out above.

Looking further ahead

5.5 Until the final rules and guidance on PPI complaints and *Plevin* come into force, firms will still be able (under our existing complaint-handling rules[199]) to explain to a complainant that they cannot yet provide a final response for complaints that could be affected. When these rules and guidance do come into force, we will expect firms to provide fair and prompt final responses to complaints they had put on hold. We encourage firms to work with the Financial Ombudsman Service as they continue to progress cases relating to *Plevin,* to ensure that the outcomes they reach are consistent with the views of the Financial Ombudsman Service on what is fair and reasonable in all the circumstances of the case.

5.6 In the periods before and after our package of measures came into force, we will take forward the robust proactive supervisory engagement with firms we described in Chapter 3 (paragraphs 3.16 and 3.18) and Chapter 4 (paragraph 4.8).

5.7 We will continue to monitor and challenge firms to ensure that they deal fairly and promptly with PPI complaints, including cooperating with the Financial Ombudsman Service, until all complaints made in time have been appropriately assessed and responded to. We will take action where firms fail to act fairly.

198 As we explained in CP16/20, doing this ensures that significant expenditure on campaign production and advance media booking takes place only now, after we have taken a final decision on the deadline and campaign. It would not have been responsible or a good use of our resources to spend significant sums on this, out of our general fee revenue, before we had decided whether to proceed with a deadline and our other measures.

199 DISP 1.6.2R(2). Firms should still deal with the mis-selling parts of a complaint without delay, because if this is upheld, then *Plevin* considerations in any case fall away and a final response can be sent to the complainant without delay.

Annex 1
List of non-confidential respondents

Adam Samuel

Alliance of Claims Companies Ltd

Becca Thompson

BlackLion Law LLP

Building Societies Association

Claims Advice Bureau (UK) Ltd

Claims Advisory Group Ltd

Coventry Building Society

Crystal Legal

CT Capital Ltd

Dooneen Ltd

EMC Advisory Services Ltd, trading as EMCAS

Financial Services Consumer Panel

Gladstone Brookes Ltd

Investor Compensation (UK) Ltd

James Mayo

M Corbally

Miller Gardner Ltd

Money Advice Trust

MoneySavingExpert.com Ltd

National Association of Citizens Advice Bureaux, operating as Citizens Advice

National Franchised Dealers Association

Paula

Professional Financial Claims Association

Redhawk Legal Ltd

The Fair Trade Practice

The Finance & Leasing Association

We Fight Any Claim Ltd

Which? Limited

Annex 2
Equality Impact Assessment (EIA)

Background

1. We are required under s.149 of the Equality Act 2010 to have due regard in the exercise of our functions to the need to:

- eliminate discrimination, harassment, victimisation and other conduct prohibited by the Act
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not
- foster good relations between people who share a relevant protected characteristic and those who do not

2. The relevant protected characteristics which we are required to consider are:

- age
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation
- marriage or civil partnership status[200]

3. We also consider that our consumer protection objective requires us to consider the position of vulnerable consumers.[201]

200 In relation to the elimination of discrimination, harassment, victimisation and other prohibited conduct, but not the advancement of equality of opportunity, or fostering of good relations

201 It is one of the FCA's objectives to secure an appropriate degree of protection for consumers. The FCA must have regard to "the differing degrees of experience and expertise that consumers may have" (Financial Services Markets Act 2000, 1C). This acknowledges that different types of consumers may need different treatment. The risk of detriment from a failure to address vulnerability is high, so this clearly falls within the regulator's consumer protection objectives. As the FCA's research shows, the impact of vulnerability on everyday life should not be underestimated. "Vulnerability is often characterised by a range of emotional and practical consequences that impact people's ability to deal with their finances and interactions with firms. Detriment could take many forms including emotional aspects such as stress and anxiety; financial detriment arising from sub-optimal or reduced choices, a debt spiral, or inappropriate purchases; and wasted time spent in resolving issues. A negative and unfair experience with a financial service can have a disproportionate effect on people in vulnerable situations, often making a difficult situation worse" FCA Occasional Paper No. 8 Consumer Vulnerability (February 2015)

4. In CP16/20 we set out our EIA, revised following feedback on the initial assessment we included in CP15/39. The revised EIA was substantially updated, following further work to assess the potential impact of our proposals on protected groups and vulnerable consumers. This work included:

- an extensive review and report from equality and diversity consultants Goss Consultancy Limited (GCL), on the potential impact of the proposals set out in CP15/39 on protected groups and vulnerable consumers
- advice from GCL, communication consultants Multicultural Marketing Consultancy (MMC) (advising specifically on black and minority ethnic audiences) and BDS Communications (advising specifically on disabled audiences) in relation to testing the advertising concepts
- testing of the advertising concepts with specific protected groups and vulnerable consumers. The approach included direct in-depth individual interviews, focus groups and speaking to advocates who represent and support those protected groups
- getting feedback and recommendations directly from protected groups and vulnerable consumers, their advocates and our independent consultants on how the proposed campaign should be adjusted to best reach and engage those audiences
- considering feedback provided in consultation responses on how vulnerable consumers and those in protected groups might understand *Plevin*
- careful consideration of the GCL report and its recommendations

5. Our main conclusions were that our proposals could present a greater risk of adverse impacts to some vulnerable consumers and protected groups, but that provided we took all the mitigating actions set out in the updated EIA, these potential disadvantages would be either eliminated, or minimised to a level where we could be reasonably confident that it was reasonable and justified to proceed.

We asked:

> ***Q23:*** ***Do you have any comments on our assessment of the impacts of the proposals on protected groups or vulnerable consumers? Do you have any comments on the proposed mitigations we are taking forward?***

Feedback received

6. Most responses from industry and some CMCs agreed that:

- we had identified key protected groups and vulnerable consumers and given a reasonable assessment of the impact of our proposals on them
- the proposed mitigations were appropriate

7. Some responses from industry largely agreed with our assessment and mitigations, but suggested additional considerations, including that:

- women should not be classed as a protected or vulnerable group, and did not require specific mitigations
- we should add rules and guidance that guide firms to treat fairly any vulnerable or disadvantaged customers, taking into account their specific circumstances
- it will be important to further test the creative concepts, and to undertake user acceptance testing of the website, with protected groups and vulnerable consumers
- we should consider how vulnerable customers can be protected from inappropriate targeted approaches from certain CMCs
- we should set specific key performance indicators and perform monitoring linked to the impact on vulnerable consumers
- vulnerable consumers' understanding of 'undisclosed commission' and how redress is calculated was important and would need to be given further consideration

8. Most responses from consumer bodies and CMCs said, variously, that:

- the current assessment, while improved, still did not go far enough to address the diverse needs of vulnerable consumers
- vulnerable consumers are more likely not to know whether they have or had PPI or who sold it to them, and so the campaign will not reach them
- it remains unclear how we intend to monitor the impact of the campaign on vulnerable and protected groups
- information about firms' support for vulnerable consumers is too vague
- not enough consideration has been given to the provision of face-to-face support, in particular ensuring a joined up service for those who will not contact the FCA
- we should give consideration to consumers who are in or have been discharged from bankruptcy, Individual Voluntary Arrangements (IVAs) or other debt relief
- the campaign should include stronger warnings about the risks from CMCs, as vulnerable consumers will be particularly at risk
- we risk harming vulnerable consumers if our campaign puts them off using CMCs but they lack the confidence to complain directly or cannot do so effectively, so they should be given the option of using a regulated CMC
- vulnerable customers should be exempt from the deadline

9. We have updated our EIA to take account of any new points raised and to incorporate our progress on mitigating actions. We also address much of this feedback in Chapter 3.

Analysis

10. We considered the three areas to which it is necessary to have due regard under section 149 in relation to each protected group. We also considered the position of a broader category of vulnerable consumers. While we did not find any evidence of harassment, victimisation or anything relevant to the fostering of good relations, we did identify that our proposals have the potential to result in less favourable outcomes for some protected groups and vulnerable consumers.

11. We identified that there are particular reasons why belonging to certain protected or vulnerable groups makes some consumers less able to understand or less willing to act upon our proposed communications campaign. This means there is a greater chance of such consumers not having considered whether they would like to complain about their PPI policy (concerning mis-selling and/or in light of *Plevin*) before the deadline expires.

12. The particular groups our research shows may be disadvantaged by our proposals are:

- older people (particularly those aged over 65 and even moreso for those over 75)
- women
- black and minority ethnic (BAME) groups (particularly those for whom English is not their first language)
- disabled consumers, with mental health problems, learning disabilities, cognitive and/or sensory impairments
- vulnerable consumers on low incomes with low financial confidence

13. Given the evidence on age and cognitive impairment, we also identified a need to ensure that the proposed campaign engages people who care for older or disabled people. We consider how best to target carers below.

14. In response to feedback, we have also considered the potential impact on those in, or discharged from, bankruptcy, and those in other forms of debt relief arrangements, including IVAs and Debt Relief Orders (DROs).

15. As a result of this analysis, and where we identified there could be an adverse impact, we have developed mitigations and actions that we will take forward when designing the communications campaign. We have already undertaken some of these. We set out our analysis, proposed actions and conclusions for each of these groups below. Further, we consider below whether any amendments to our proposals could be made which would put protected groups and vulnerable customers in a better position.

Age

16. We have not identified an adverse impact for younger and middle aged groups, due to their high internet usage and higher propensity to complain. Therefore, we do not consider them further in this EIA.

17. We have identified evidence that those aged 65 or over could be adversely impacted by the proposals. This is because of lower financial capability, knowledge and confidence and lower levels of usage of the internet, particularly as a significant amount of information about PPI is internet-based. The issues become more significant for those aged over 75, as financial skills and proficiency can often decrease, which can make complaining more difficult. We also identified cold calling as an issue. Any increase in cold calling as a result of the proposed deadline could have a more significant impact on older people, who are more likely to have land lines and be at home during the day. There are 11.6 million people aged 65 or over in the UK and 5.5 million aged 75 and over, so the proposals could have a significant impact on this group.

18. Our view is that the large scale communications campaign and deadline we propose would be likely to have both positive and negative impacts on the over 65 and over 75 age groups. The campaign will raise awareness of the issue of PPI through a trusted source, making it more likely that consumers will consider whether to make a complaint before the deadline. Many consumers over the age of 65 may not have considered before whether they were sold PPI, for example, so we view this as a considerable positive impact which, without a deadline and campaign, would likely not have occurred.

19. However, unless we can be confident that the campaign will be effective, we recognise that consumers in these age groups are at risk of being disadvantaged by the imposition of a deadline, as well as possibly suffering an increase in cold calls. There are a number of steps that we will take to ensure that consumers in these age groups are reached by the campaign equally as well as younger consumers, so that any disadvantage they might otherwise suffer as a result of our PPI proposals is either eliminated, or minimised to a level where we can be confident that it is reasonable and justified to proceed.

20. We have already taken the following steps in preparation for the potential campaign:

- following our consideration of the evidence on internet usage we have decided that the Freephone helpline number should appear on all of the above the line advertising, i.e. TV adverts, posters etc. This will ensure that older audiences who are less likely to use the internet have a clear route of contacting us to obtain further information about PPI

- we tested our four advertising concepts with groups aged over 65 and over 75, including direct testing through focus groups and individual depth interviews with advocates who support consumers in these age groups. This research provided evidence that the selected concept will resonate with older people

- to optimise the concept, we incorporated feedback provided by older research respondents and then re-tested the revised creative with five focus groups of respondents aged 65+ to ensure our concept delivers maximum impact

- our independent channel planning and media buying agency has provided provisional plans that aim to deliver a very high coverage and frequency of audiences over the age of 65 and 75

- we have secured an agreement in principle from Age UK to partner with us during the campaign.[202] Age UK will share our message through their owned channels and provide consumers with adapted communications (large font formats) if required. This mitigation reflects specific evidence we considered about the need to reach older people through a trusted partner

- we have designed our consumer tracking research to include robust coverage of older people. This allows us to monitor their awareness and understanding, as well as identify

202 This agreement is based on the partner’s current projections of resource come campaign launch

any issues and make changes where necessary. We will also take into account feedback from partners

- concerning cold calling, the Information Commissioner's Office (ICO) has confirmed that it is willing to work with the FCA and Claims Management Regulator and will consider:
  - issuing targeted communications at various points during the proposed PPI communications campaign to remind consumers of their rights
  - reminding companies of their duties under the Privacy and Electronic Communications Regulations
  - working with partners in order to ensure that consumers most likely to be impacted are aware of their rights and how to exercise them

21. There are a number of further mitigations we are taking forward. These include:

- seeking to secure editorial coverage, for example a discussion, report or phone-in about PPI and which is not paid for advertising, with non-commercial radio stations. This would increase awareness of the deadline, as the evidence demonstrated this is a key channel for those aged over 55
- testing PPI website content either directly with older people and/or with partners supporting older people, to ensure that it is easy to understand for consumers in these age brackets who do use the internet

Women

22. The evidence we have identified shows that men are slightly more likely to have held PPI, but are also more likely to have complained already. Women in the UK appear less likely than men to complain, due to slightly lower financial knowledge and familiarity. This disparity is larger than for other countries for which we have evidence. In mid-2015, the UK population consisted of 33 million (50.7%) women and 32 million (49.3%) men, so this is a potentially large audience.

23. While our view is that the large scale communications campaign will be effective at reaching women, we will also implement further actions in order to either eliminate any disadvantages, or minimise them to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

24. We have already:

- tested the four advertising concepts with women, drawing out particular feedback from women in different age groups, i.e. those over 65 and 75 as identified above. This research provided evidence the selected concept will resonate with women
- taken account of feedback and re-tested the improved creative with 45 women, including three women-only focus groups, to ensure our advertising concept delivers maximum impact
- discussed with our independent channel planning and media buying agency how best to target women. They have advised that our proposed strategy will secure high coverage of women, and that no specialist media buying will be required

- designed our consumer tracking research to include sufficient coverage of women. This enables us to monitor their awareness and understanding as well as identify any issues and make changes where necessary

Race

25. The evidence generally showed that many members of BAME groups have lower levels of financial knowledge which could impact their decision-making on PPI. However, overall rates of complaining to the Financial Ombudsman Service about PPI from the BAME population appear consistent with the overall proportion of BAME people in the population as a whole, which indicates that there may be little impact on decision making in relation to PPI. However, language barriers for some, in particular for those with limited fluency in English, appear to lead to lower levels of awareness and interaction with financial institutions.

26. While our view is that the proposed campaign is likely to have a generally positive impact in raising awareness about PPI, we have taken and propose to take a number of specific steps with BAME consumers in mind. These will ensure any disadvantages are either eliminated, or minimised to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

Steps already taken:

- we instructed an independent communications expert, MMC, with experience of reaching and engaging diverse BAME audiences, to advise on the planning and production of the proposed campaign. In particular, MMC highlighted the factors that can hinder effective communication, such as differences in culture, religion or language

- in deciding which BAME audiences to focus on for testing the advertising concepts we were informed by the views of our independent consultant. As a result, we took into account audience sizes, English proficiency, receptiveness to mainstream communications and evidence of financial awareness

- we tested the four creative concepts with a range of BAME audiences, including direct testing with consumers and interviews with advocates of BAME communities. This research provided evidence the selected concept will resonate with BAME audiences

- we incorporated feedback provided by BAME audiences and then re-tested the improved creative to ensure our concept delivers maximum impact

- our independent channel planning and media buying agency have provided provisional plans that deliver a very high coverage and frequency of BAME audiences. MMC have been involved in this process and are supportive of the proposed channel selection

- we have designed our consumer tracking research to include sufficient coverage of BAME communities. This enables us to monitor their awareness and understanding, as well as identify any issues and make changes where necessary

27. We will also seek to secure editorial coverage, for example a discussion, report or phone-in about PPI and which is not paid for advertising, with key broadcast channels used by BAME.

28. In the EIA published alongside CP16/20, we said that we intended to work with our independent communications expert to identify potential partner organisations and work with such partners to explore ways they could support the proposed campaign, including the provision of specific feedback about adapted communications (including translated communications). Although we have approached a number of organisations, we have not yet secured any partners in respect of BAME consumers, for reasons including availability of resource or relevance to remit, but will continue to seek to do so. In the absence of securing any partners so far, we have added additional targeted media in the channel plan (including specialist TV channels, targeted out of home and digital display) and targeted PR (including a regional focus on areas with a high population of BAME communities).

29. We are satisfied that, overall, these mitigations will either eliminate any disadvantages to BAME people, or minimise them to a level where we can be confident that it is reasonable and justified to proceed. Our BAME communications expert agrees with this assessment.

Disability

30. While many disabled people effectively manage their day to day affairs, evidence also showed that many disabled people appear to have lower levels of financial confidence, lower awareness of financial matters, less engagement with financial issues and a lower propensity to complain. Specifically we identified that:

- there is clear evidence that there is lower financial confidence among many people with mental health issues
- the process of complaining could be more difficult for those with a visual impairment, due to inaccessible formats, lower internet usage levels and the potential need to review historic information when considering making a PPI complaint
- the particular service offered via our helpline may not be helpful for people with hearing-impairments
- cognitive issues which impact on memory were likely to have an impact on financial capability and complaining about PPI, and a high percentage of this group may be supported by a friend, relative or carer

31. Our view is that, provided we put appropriate mitigations in place, our proposed large scale campaign will be likely to have a positive impact on disabled consumers as a whole. Many of these consumers may not previously have considered, for example, whether they had PPI or whether they may have paid high undisclosed commission on a PPI policy. The majority of disabled consumers use mainstream channels and the internet and so will be reached and impacted by our advertising and campaign in any event. However, there are specific mitigations that we propose to put in place to ensure any disadvantages are either eliminated, or minimised to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals.

32. We have already taken a number of steps:

- instructed an independent communications expert, BDS Communications Limited, with experience of reaching and engaging these audiences, to advise on planning and producing the proposed campaign

- tested the four creative concepts directly with consumers and with advocates that support the groups identified above in respect of cognitive impairments, learning disabilities, mental health and sensory impairments. We amended the concept to take account of any feedback and re-tested with disabled people, in particular with those who have a cognitive impairment, to ensure the concept delivers maximum impact. This research provided evidence the selected concept will resonate with disabled people

- obtained feedback from advocates about adapted communications and effective media, which we will take forward when designing and testing the campaign materials

- our independent channel planning and media buying agency have provided provisional plans that deliver a very high coverage and frequency of disabled audiences

- secured agreements in principle to partner with the campaign from 11 organisations that support disabled people including: Action for Hearing Loss, British Deaf Association, British Dyslexia Association, British Institute of Learning Disabilities, Capability Scotland, Disability Rights UK, Learning Disability England, Mind, Parkinsons UK, Scope and Visionary.[203] These organisations have agreed to share our message through their owned channels and provide consumers with adapted communications (audio, braille, large print, easy read, British Sign Language and accessible PDF formats) if required. This mitigation reflects specific evidence we considered about the need to reach disabled people through a trusted partner

- we have designed our consumer tracking research to include coverage of disabled people. This enables us to monitor their awareness and understanding, as well as identify any issues and make changes where necessary

33. We will also take the following steps before the launch of the communications campaign:

- ensure all our communication is inclusive in terms of language, formats and imagery and that they meet appropriate accessibility standards

- test our website: it is already tested by an independent agency with users who have a range of visual, hearing and cognitive impairments. The FCA website is developed and tested in order to meet Web Content Accessibility Guidelines (WCAG[204]) AA standards of accessibility. The accessibility of the FCA website is evaluated independently every year on an annual basis to WCAG standards (industry best practice standards). The PPI specific website content will be tested to the same standards and with a range of users ahead of campaign launch. While we complete an annual review of our website, we will arrange a specific test for this content to take account of the issues identified in this EIA

- explore publishing a reasonable adjustments statement and process on our website

- provide specific training on accessibility to our helpline staff who give information about PPI. This includes not speaking too quickly, being prepared to repeat or rephrase, giving the caller time to explain fully, not assuming the caller can see and read, and how to receive a call via the text relay service

203 These agreements are based on the partners' current projections of resource come campaign launch

204 Web Content Accessibility Guidelines (WCAG) are developed through the W3C process in cooperation with individuals and organisations around the world, with a goal of proving a single shared standard for web content accessibility that meets the needs of individuals, organisations, and governments internationally. The WCAG documents explain how to make web content more accessible to disabled people

34. There are some suggested mitigations concerning disability that we have concluded are not reasonably practicable to implement, or need to be taken forward in a slightly different way to the way recommended by GCL. We set out below how we will address these recommendations:

- **to consider utilising the Browse Aloud facility**

  The use of Browse Aloud was considered by our Equality and Diversity Committee. However, it decided instead to allow users to use their preferred screen reader or tools embedded in their own devices' operating systems, rather than impose a solution that they have to download and install. This means users are able to use a programme they are comfortable with already, and the site will be accessible to multiple devices, browsers and operating systems. By aligning to AA standards, the website is accessible for screen reader software.

  Our approach is consistent with the approach of the RNIB and GOV.uk. GCL has confirmed that it does not believe users will be at a disadvantage using other systems, as opposed to Browse Aloud.

  In terms of translation services, we currently have the facility to translate on request and will consider whether to translate key PPI pages based on demand and feedback from partners.

- **online communications should continue to follow the WCAG AA standards with a longer term aspiration to reach AAA**

  When re-designing the FCA website recently, our Equality and Diversity Committee considered whether we could aim for AAA standard. A decision was taken that it would not be reasonably practicable to fully achieve AAA standard at this time, for various reasons, including that it would reduce the capability of the website by removing some interactive technologies that mainstream users find useful. We are aiming to meet some of the criteria for AAA but we will review the position annually.

- **explore the feasibility of having an accessibility tab at the top of every web page, which also provides information for those less competent with the internet and those with English as a second language**

  We already have accessibility information on our main FCA website, however the advertising campaign will direct consumers to a specific PPI website with its own address (url). We will include accessibility tools on this PPI website and will test the impact on users as part of our testing of the PPI website pages. We will also take account of feedback from partner organisations.

- **provide information about accessible methods for contacting us about PPI on the main contacts page**

  As above, the PPI website will have its own address and the campaign advertising will signpost consumers there as a first port of call. We intend to publicise PPI on our main website to coincide with campaign 'bursts', for example in the news feed.

- **ensuring all our campaign communications are available in the full range of accessible formats specified in government guidance**

  We already provide specific materials for people with hearing impairments, such as captions. We have considered, with the input of our partners, what further adapted communications are most practical and effective and will develop these further ahead of implementation.

35. Although in a few cases it is not reasonably practicable to adopt every aspect of the specific recommendations set out in the GCL report, our view, which is supported by GCL, is that the package of mitigations we intend to introduce, as set out above, will nevertheless either eliminate any disadvantage, or minimise it to a level where we can be confident that it is reasonable and justified to proceed with the PPI proposals.

Other groups considered

36. Other groups with protected characteristics that we considered were:

- lesbian, gay, bisexual and transgender (LGBT) consumers
- pregnant consumers / recent mothers
- consumers who hold a particular religion or belief
- marital status

37. In relation to pregnancy and maternity, religion and belief and marital status, we have not identified any specific and robust evidence or information about poor financial confidence or propensity to complain. Therefore, we do not propose to put in place specific actions for these groups in the communications campaign strategy. Our view is that the mainstream communications will be effective at reaching and engaging people with these characteristics.

38. For LGBT consumers we only identified limited evidence. However, this highlighted that an LGBT customer considering making a complaint may be more confident in doing so if certain improvements are made to the customer experience. For transgender consumers, we identified that a PPI deadline may create disadvantages connected to changing name because of the process of personal identification in the course of the PPI complaints process.

39. As a result we will:

- explore with Stonewall whether any other specific training for helpline and/or front-line staff should be provided
- get more information about how the PPI complaints process works for transgender people, to identify any specific logistical issues or barriers about verification of identity that they may face

Low incomes and low financial confidence

40. Our evidence identified that low income could be more likely to make someone vulnerable and impact their likelihood of complaining as a result of lower financial confidence. As such, our view is that there could be a potential adverse impact on this group. To address this, we have tested the creative advertising concept with this group and taken into account any feedback. This research provided evidence the selected concept will resonate with people on low incomes and with low financial confidence.

41. We have secured agreements in principle to partner with the campaign from five organisations including: Action for Communities in Rural England, Advice UK, Christians Against Poverty, Gingerbread, Money Advice Trust and Shelter.[205] These organisations have agreed to share our message through their owned channels. This mitigation reflects specific evidence we considered about the need to reach consumers on low incomes and with low financial confidence through a trusted partner.

42. We have designed our tracking research to ensure we can specifically track this group against the campaign objectives, in order to identify issues and make changes if necessary.

43. We have also considered the position of those in or discharged from bankruptcy or other forms of personal insolvency, in particular, IVAs and DROs, and concluded that a PPI deadline is unlikely to cause any adverse impact on this group. We have assumed that individuals abide by the rules or requirements of their individual personal insolvency arrangement, which (while varying from case to case) would generally require the disclosure of a potential PPI complaint as a potential asset at the point an individual became aware of it. We have spoken with the Insolvency Service, who have confirmed that our understanding of the arrangements is correct.

44. We do not intend to put in place specific mitigating actions for this group, although our mitigating actions in relation to people on low incomes and with low financial confidence are relevant for reaching this audience through the communications campaign. We will also include information for those with personal insolvency issues on our PPI hub.

Carers

45. Given the evidence on age and disability, we believe it will be important to reach and engage with carers. The evidence we obtained confirmed that carers consume media in the same way as mainstream audiences but are more likely to experience pressure on their time. We will need to ensure that the campaign is clear, understandable and presents the importance of making a decision rather than pressuring them to complain. Our view is that the proposed mainstream campaign will be effective at reaching this audience. However, we have taken additional steps to ensure this audience is engaged:

- we have tested the advertising campaign with a relevant advocate organisation and have evidence that the selected concept will resonate with carers
- We have secured an agreement in principle to partner with the campaign from Carers Trust.[206] This organisation will share our message, and the specific information relevant to the caring community, through their owned channels. This mitigation reflects specific evidence we considered about the need to reach carers through a trusted partner

46. We also intend to consider other ways in which we can reach this audience, such as specific publications or networks, and whether we can create specific tools to provide information quickly to this audience.

205 These agreements are based on the partners' current projections of resource come campaign launch
206 This agreement is based on the partner's current projections of resource come campaign launch

Monitoring

47. Over the course of the deadline and campaign period, we will monitor and report on the impact of the deadline and campaign on the vulnerable consumers and protected groups identified as at greater risk of being disadvantaged. We will make amendments to the campaign and/or consider alternative options should the evidence suggest that our mitigating actions are not having the desired effect.

48. We will monitor the impact on these groups through a number of measures, including:

- consumer tracking research, which we have designed to include robust coverage of all groups
- Management Information (MI) from the FCA's PPI Helpline
- feedback from partner organisations
- firm data, including the number of vulnerable consumers supported

49. As set out in the policy statement (chapter 3), we will be putting in place enhanced support arrangements for those contacting the FCA. In response to feedback questioning whether we had made enough provision for consumers who may not approach the FCA directly, we will also monitor, through feedback from our partners and other nationwide organisations, whether any gap develops in provision for people who may need more assistance reaching a decision, for example, through face-to-face support. If this appeared to be the case, we would consider whether additional mitigations were needed.

Alternative options

50. We have considered whether any amendments to our proposals would put members of protected groups and vulnerable consumers in a better position, whilst still advancing our operational objectives of securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. We considered:

- **whether members of protected groups and/or vulnerable consumers should be exempt from the deadline**

51. Our view is that to exempt these groups from the deadline altogether is not a practical alternative or necessary for several reasons, including that:

  - membership of certain protected groups and vulnerability are not static, so it would be difficult for firms to know whether people fall or fell into such groups for some or all of the time since the deadline expired
  - the Financial Ombudsman Service already allows complaints to be considered outside of applicable time limits where there are 'exceptional circumstances'[207]

207 We also considered, in response to feedback received, whether consumer vulnerability, or being a member of a protected group, should be specified as an exceptional circumstance. However, we considered that this would be too broad and as such it was unlikely that we would achieve our aim of bringing the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector

- the potential negative impacts of the campaign identified in our EIA (e.g. increase in cold-calling) may be exacerbated for vulnerable or protected groups for a longer period if they were not subject to the deadline

- it would make it unlikely that we would achieve our aim of bringing the PPI issue to an orderly conclusion, reducing uncertainty for firms about long-term PPI liabilities and helping rebuild public trust in the retail financial sector.

- **whether the deadline should be extended to longer than two years (either generally or for vulnerable consumers and those in protected groups)**

52. We considered whether we could run a communications campaign without any deadline in CP15/39[208]. We maintain that without the focus of a deadline, the campaign will be unlikely to prompt as many consumers, including those in protected groups or vulnerable consumers, to consider whether to make a complaint. We also considered a three year deadline in CP15/39[209]. We maintain that two years is the optimal period in which to deliver our objectives and have not identified any evidence that suggests that our proposed mitigations cannot be implemented within a two year timeframe. Two years will give us sufficient time to assess and monitor the impact of the campaign, including the impact it is having on protected and vulnerable groups. In our view, our advertising campaign alerting consumers to the deadline would lose impetus and impact if the deadline were further away, which would risk undermining a key objective of tackling consumer inertia.

- **whether firms should be compelled to write letters to certain groups**

53. We considered this option generally in CP15/39[210] and CP16/20[211] and at pages 24-26 above. Based on what we know about the data held by firms, it is unlikely that they would have sufficient information about which of their PPI sales were to members of protected or vulnerable groups to enable a targeted letter campaign. In our view, this exercise would risk inconsistent and potentially unfair outcomes. We take the view that implementing mitigations such as working with partners will be much more effective in ensuring protected and vulnerable groups are not disadvantaged.

EIA overall conclusion

54. We have considered carefully:

- the feedback to the proposals set out in CP15/39 and CP16/20
- the evidence and recommendations provided to us by our independent consultants
- the advertising testing feedback and recommendations from the protected groups, vulnerable consumers and their advocates
- the mitigations that we have or are intending to put in place

208 See paragraph 3.36-3.37 of CP15/39
209 See paragraphs 3.12 and 3.13 of CP15/39
210 See paragraph 3.38-3.42 of CP15/39
211 See paragraphs 3.19-3.22 and our response under paragraph 3.22 in CP16/20

- GCL's views of whether the mitigations are enough to either eliminate any disadvantages, or minimise those disadvantages to a level where we can be confident that it is reasonable and justified to proceed with our PPI proposals

55. We have also considered whether two years remains the appropriate length of time within which to implement all of the mitigations, and whether there are any alternative proposals which would put protected and/or vulnerable groups in a better position.

56. Our conclusion is that with a two year deadline, provided we take the mitigating actions that we have identified, the potential disadvantages identified in relation to each protected or vulnerable group will be eliminated, or where they are not eliminated entirely they will be minimised to a level where we can be confident that it is reasonable and justified to proceed. This conclusion takes into account the views of GCL and our other expert consultants. As such, our view is that we are justified in proceeding, taking into account the need to achieve the objectives set out in paragraph 2.30 above and the fact that we do not think we could reasonably and proportionately achieve the same objectives using alternative means.

Annex 3
Cost benefit analysis

Background

1. FSMA requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish 'an analysis of the costs, together with an analysis of the benefits' that the proposed rules will bring. It also requires us to include estimates of those costs and benefits, unless we cannot reasonably estimate them or it is not reasonably practicable for us to produce this estimate.

2. In CP15/39 (Annex 2), we set out our assessment of the costs and benefits of our proposed package of interventions as a whole. We explained that:

   - for various reasons, the costs and benefits of our proposed package cannot be reasonably estimated (s.138I(8)(a) FSMA) or are not reasonably practicable to estimate (s.138I(8) (b) FSMA)
   - but the dynamics we discussed provided us with a reasonable basis for expecting that it would deliver a net benefit for consumers and other potential benefits
   - given the uncertainties involved, this overall conclusion was not guaranteed

3. In CP16/20 (Annex 4), we discussed the feedback we had received on our CBA. We noted that, generally, respondents' views of our CBA broadly reflected their views of our rationale for intervening and whether this was sound. That is:

   - Most responses from industry agreed with our CBA, albeit some pointed to a number of additional costs to firms which they felt should be added to and reflected in our CBA.
   - Most responses from consumer bodies and CMCs felt that it was not detailed or helpful, was unquantified and un-evidenced, and that it understated the detriment and costs to consumers cut off by the deadline, and over-estimated the benefits to consumers, firms and the market generally.

4. We considered this feedback carefully, but it did not lead us to change fundamentally our view of the costs and benefits. We did, however, make small amendments to the CBA in order to recognise more explicitly that there would be:

   - Costs to firms of running voluntary consumer communications and process improvements in support of our consumer campaign
   - Increased administrative costs to firms of handling complaints, including due to the additional processing required when handling complaints at Step 2 from modelling anticipated and actual profit share and varying commission rates, and from adjusting redress to allow for any rebates paid to the consumer.

5. We also estimated that, relative to our original proposals on *Plevin* in CP15/39, our modified approach including profit share would lead to a significant proportionate increase in the redress that would be paid at Step 2, but that this would amount to a much lower proportionate increase in the total redress for PPI complaints. This is because Step 2, including profit share considerations, would apply only in that sub-set of all PPI complaints where the complaint was

both rejected at Step 1 (only around 20% currently) and concerns a credit agreement that falls in the scope of s.140A (which a significant proportion do not).

6. We set out our revised analysis of the costs and benefits of our proposed package, as amended, in the following table in CP16/20:

Summary table of costs and benefits of our proposed package as amended

	Firms	Consumers	Wider economy
Costs	Increased redress payments	Lost redress after deadline	
	Increased administrative costs of complaint handling		
	Increased Ombudsman service fees		
	Communications campaign fee		
	Costs of running own voluntary, complementary consumer communications		
Benefits	Reduced Ombudsman service fees per complaint involving undisclosed commission	Increased redress receipts	
		Earlier receipt of redress	
		Saved time/ effort in making complaints involving undisclosed commission	Reduced supervision and enforcement costs after the deadline
	Reduced uncertainty over PPI liabilities lowers weighted average cost of capital	Lower weighted average cost of capital and efficient corporate restructuring in the retail financial sector lead to reduced prices of financial products	Reduced uncertainty over PPI liabilities allows efficient corporate restructuring in retail finance sector

Feedback on CP16/20

7. In response to CP16/20, some consumer bodies and CMCs have maintained their previous views that:

- our CBA of our proposed package of measures is inadequate because it:

  - implausibly claims that no meaningful modelling can be done of the baseline scenario and thus of the potential incremental impact, even though firms must have made such projections for their own purposes
  - merely asserts that our proposals will benefit consumers, relative to the status quo, while saying this cannot be evidenced or shown
  - contains no numbers or estimates of the values of the costs and benefits
  - fails to consider any assessment of the costs and benefits of alternative options, for example s.404 schemes and letter writing by firms, thus contravening government guidelines on assessing a range of potential actions
- this inadequacy undermines any justification for the deadline, and also the consultation, because it is impossible to judge whether, or reasonably conclude that, the proposals are beneficial to consumers and justified and proportionate

Our response

In CP15/39, we explained that we had considered whether we could estimate the scale of the impact of our proposals on the number of complaints and the consequent value of redress, but had found practical issues as well as a number of inherent difficulties with doing this.

In practical terms, we had examined the past trends in PPI complaints and PPI redress payments, as well as advertising spend by CMCs, to try to predict the likely future level of complaints and how it would change over time if there was no further intervention. We sought an advertising agency's view on the likely time path of redress, taking into account advertising spending by CMCs. We also asked firms for their view on the future time path of complaints, assuming there was no deadline. However, there was only a relatively short history of useful past complaints data (since the peak in 2012) on which to base a prediction of the future. Previous projections of future PPI complaints based on past data have tended to be poor predictions just a few months ahead, let alone a few years ahead (and this observation applies both to firms' future provisioning for PPI liabilities as well as the FSA's estimates in CP09/23, CP10/6 and PS10/12 during 2009/10).

More fundamentally, there were a number of developments, such as the impact of the *Plevin* judgment and the government's planned proposal for a cap on CMC charges, which meant that the past pattern of PPI complaints is not a reliable predictor of the future.

We concluded that no amount of data or effort could give us reasonably precise and meaningful numbers on the future path of PPI complaints. As a result, we concluded that we could not construct a meaningful benchmark against which to *quantify* the effects of our proposed package of interventions.

In assessing the effects of a deadline, we also noted that there is no precedent for a comparable deadline that would allow us to estimate how consumers will respond to it.

All of these considerations remain as true today as in November 2015. Although we do have another 18 months of complaints data since that discussed in CP15/39, this is still an inadequate history with which to estimate meaningful and reliable numbers on the future path of PPI complaints.

Because of these continuing considerations, we remain of the view that we cannot reasonably estimate the costs and benefits flowing from the change in the level of complaints and redress (and s138I (8)(a) FSMA applies).

We appreciate that there is some frustration that we cannot provide more certainty or quantitative detail about the potential costs and benefits associated with the proposed intervention. However, having carefully considered:

- all the feedback we received, including on the details of the proposed consumer communications campaign
- our further creative work and programme of testing, including with certain protected groups and vulnerable customers
- the other actions we are taking to mitigate potential disadvantages to those protected groups and vulnerable consumers
- the enhancement to the campaign we have made in requiring letters about *Plevin* to be sent to 1.2m previously rejected complainants
- the commitments we have obtained from larger firms to make improvements in their PPI related processes and to support the key messages in our campaign with their own communications, in order to ensure that consumers experience as few barriers as possible once they have decided to act
- the stable and high rate of firms' decisions in favour of mis-selling complainants, and the falling rate of decisions in favour of the consumer by the Financial Ombudsman Service
- the carve out from the deadline of future complaints about claims on policies rejected for reasons linked to the sale

– we remain of the view that the dynamics we identified and set out in paragraphs 3.6-3.21 of the CBA in CP15/39 and at paragraphs 27-53 below continue to provide us with a reasonable basis for expecting that our package of measures, as amended, will deliver a net benefit for consumers, including a higher level of complaints and redress than would arise otherwise, and other potential benefits, albeit we recognise, given the uncertainties involved, that our overall conclusion is not guaranteed.

As we explained in CP16/20, as is our normal practice, we have not conducted or set out similar cost benefit analysis for alternative approaches that we did not propose. The CBA was conducted against the counterfactual of the status quo, which we consider the relevant counterfactual in this situation. We are not required to assess a proposed intervention against other possible interventions or counterfactual scenarios. However, we have carefully and repeatedly considered alternative potential approaches throughout this consultation process, including establishing a s.404 scheme or requiring firms to write to all PPI consumers.

If we were choosing between two or more options for intervention which in other key respects were finely balanced, then we would indeed be likely to assess in detail the costs and benefits of each, as the government guidelines suggest, because in this scenario such comparative CBA would likely be a key determinant of our choice. However, as our discussion in Chapter 3 (pages 24-26), indicates, we have rejected the options of a s.404 scheme and letter writing by firms for reasons other than costs. To recap briefly, we do not consider that sending merely generic letters to consumers would add materially to the impact of our campaign, but writing specific letters would require a large scale case review under s.404 which we do not consider would be appropriate at this advanced stage in the PPI issue, and which anyway we cannot impose for the two thirds of PPI sales made before 2005. We also noted the existence of significant, irrevocable gaps in firms' records. In other words, the key determinants of our decision not to pursue these options were not based on cost, so there would have been no purpose in modelling in detail the costs and benefits of these options, relative to the approach we preferred for other reasons. We remain of the view that our approach of adding a deadline, consumer communications campaign, including 1.2m letters to previously rejected complainants, and rules and guidance on *Plevin*, to our existing mainly complaints-led approach to PPI redress, is a reasonable and proportionate intervention that can reasonably be expected to deliver a net benefit for consumers and other potential benefits.

8. Some responses from individuals said that our CBA had not taken into account the fact that:

- limiting the timescale in which new complainants can be made creates a bottleneck and will increase firms' costs as they strive to meet concentrated volumes: this in turn will impede firms' ability to resource product development, impeding our strategic objective that the market functions well
- redress flowed into consumers' pockets and the economy, which was helpful during post-Brexit uncertainty and helped national prosperity: stopping this flow will make the financial markets more unstable

Our response

The impacts on firms' administrative costs in the period before the deadline from our package of measures, including the potentially increased complaint volumes, and, for example, the cost of recruiting and training additional complaint handling staff, are already reflected in our summary table above as increased administrative costs of complaint handling.

We think it unlikely that such pressures and costs would be such as to impede significantly firms' product development or other commercial activities, or thereby impede the market's working. However, even if that did prove to be the case in the two years before the deadline, we consider that it would be offset by the benefits in the longer term from the finality and certainty our intervention brings to the PPI issue, as we set out in paragraph 2.30 in Chapter 2, and at paragraphs 35-40 and 49-53 below, including reducing uncertainty for firms about long-term PPI liabilities and potentially stimulating innovation and the supply of improved PPI or post-PPI debt protection products. Also, as we said in CP6/20, if firms find themselves in difficulty when dealing with large volumes of PPI complaints, they can discuss with us potential methods within the regulatory framework to manage these pressures and avoid detriment to consumers or disproportionate consequences for firms or the FSCS.

As we explained in Chapter 3, we do not consider that the benefits of an orderly closure of the PPI issue are undermined or otherwise altered by the UK's decision to exit the European Union. Nor do we consider that stopping PPI redress flows after the deadline will undermine firms' stability or market integrity. On the contrary, we consider that bringing the PPI issue to an orderly conclusion will, among other things, protect and enhance the integrity of the UK financial system.

9. Some responses from industry said that our CBA had significantly underestimated the costs of our proposals to smaller firms or certain sectors in particular, notably running account credit providers, who will be adversely affected by our proposals concerning *Plevin* because of the long-term nature of their products. For example, ways need to be found to prevent redress being calculated for periods before the CCA's unfair relationship provisions were introduced.

Our response

We have discussed our approach to PPI complaint handling in light of *Plevin* in detail in Chapter 4. Our main considerations were the issues and detriment identified in the judgment, and setting out rules and guidance that would ensure certainty and consistency in the handling of relevant complaints. Clearly, decisions about what should be included in the scope of our rules and guidance have potential cost implications for firms. However, we did not see compelling reasons, in light of *Plevin*, why regular premium policies in general, or running account credit providers specifically, should be excluded from scope. The costs to relevant firms this inclusion may imply are balanced by the costs they would likely face if the status of complaints about these products was left uncertain, and thus invited significant numbers of claims in court about these products, with the attendant costs to firms and claimants.

The costs and benefits of our amended proposals

10. As noted, we have amended our final package of measures in some respects, relative to our proposals in CP16/20, and we now consider the costs and benefits of these amendments.

Writing to previously rejected complainants in scope of s.140A CCA

11. Our final rules require firms that sold PPI to write to all previously rejected PPI complainants who may be able to make a further complaint in light of *Plevin* to tell them this. This addition to our package of measures is to help consumers who may have disengaged from the PPI issue, because they were rejected in the past, to re-engage and consider complaining again, in light of *Plevin*. This change implies a small increase, relative to our previous proposals, in the aggregate future PPI complaints redress to consumers and administrative costs to firms.

12. We estimate that there are around 2.5m previously rejected PPI complaints (where there had in fact been a policy sale), of which around half concern credit agreements that are in the scope of s.140A CCA and thus of our rules and guidance in light of *Plevin.*

13. To write to this half only would require a firm to first review, for these 2.5m cases, the type of PPI, date of sale, and date of cancellation (if any) of the credit, to decide if it was in scope of s.140A. We consider that doing this is likely to be reasonably straightforward for larger firms who were both the PPI seller and CCA lender.[212] Smaller firms that did both roles may, to the extent they have less sophisticated relevant databases, find this exercise more time consuming and costly.

14. The task is likely to be more challenging for firms that were only the PPI seller and not the lender – ie brokers – as they may not necessarily be able to identify from their own records whether the credit the PPI covered was in scope of s.140A. However, we estimate that only a small proportion of the total mailing would fall to be made by brokers. This is because only a minority of PPI sales were by brokers and, further, many of them mainly sold single premium PPI, concerning which most mis-selling complaints are upheld and most credit agreements are not in scope of s.140A. However, we recognise there will be relatively more impact and cost for brokers who mainly sold regular premium mortgage PPI, concerning which fewer mis-selling complaints are upheld and more credit agreements (if sold before April 2004 and still in force at April 2008) are in scope of s.140A.

15. If a broker cannot identify from its own records whether the credit the PPI covered was in scope of s.140A, then it would need to take reasonable steps to seek relevant information from lenders. If that too proves fruitless, they can, if necessary, approach us with a request to be able to mail all their previously rejected complainants, albeit an unknown proportion of consumers who will then be contacted will be out of scope.

16. Overall, we estimate that the costs to firms of this required mailing will be around £4m-5m[213]. But we consider that this additional requirement is proportionate and that these costs are outweighed by the benefits to these consumers: only a small proportion of recipients (around 10%) would need to respond and have their further complaints upheld and redressed for the cost of the mailing to firms to be exceeded by the additional redress to consumers, and we consider that it is reasonable to anticipate this range of response rate, given the resonance these letters will have with these consumers and their specific circumstances, and in light of response rates in other mailing exercises previously, both for PPI and other issues.

17. These additional costs are reflected in our summary table above as 'Increased administrative costs of complaint handling' (for sellers) and 'Increased redress payments' (for lenders).

Carving out from deadline future complaints about rejected claims on live policies

18. Our final rules exclude from the deadline future complaints (to the seller) relating to the sale of the PPI policy that are made following a rejection of a claim on a live policy, where that rejection was due to reasons connected with their eligibility under, or exclusions or limitations in, the policy.

19. This change implies a very small increase, relative to our previous proposals, in the aggregate redress for future PPI complaints and administrative costs to firms.

212 For example, in 2015, they were able to tell us, quite quickly, how many of the PPI policies they had sold were in scope of s140A, and how many of those had already been complained about and redressed or not.

213 We base our estimates of the cost of the mailing on typical costs for merge, print and fulfilment, postage, and sourcing of customer contact details. We also factor in additional costs of assessing whether relevant complaints were in scope of s140A, taking into account the cost estimates larger firms had provided when they responded to our information request concerning *Plevin* in mid-2015.

20. We estimate that there were around 16,000 claims on PPI in the last 12 month period, of which no more than 20% were rejected for reasons relating to the sale, such as ineligibility for the cover. This relatively low number reflects the improvements that many firms have made in existing policies' terms and conditions and their handling of relevant claims, which many carry out on behalf of the insurers.

21. We do not consider it likely that these numbers will increase significantly in the future, or give rise to significant numbers of complaints, as live policies are declining, and because it is hard to make entirely speculative complaints about mis-selling following and relating to a rejected claim. So even if, in years after the deadline, such annual numbers of rejected claims *all* gave rise to complaints that were allowed to be in time and upheld and redressed, the likely additional redress cost to firms in aggregate would be only several million pounds. Nor would the likely additional post-deadline but 'in time' complaints be sufficient to require firms to maintain extra standing PPI complaint resource – ie such volumes could be safely handled within businesses' BAU complaint handling capacity.

22. These additional costs are reflected in our summary table above as 'Increased redress payments'.

23. We consider that this very narrow carve out from the deadline of these specific potential cases is the most effective, targeted and proportionate mitigation of this potential detriment to this small potential group of consumers and that it would not materially undermine the certainty and orderly conclusion we believe the deadline and communications campaign would bring.

Amendments of relationship between Step 1 redress and Step 2 redress

24. In light of feedback to CP16/20, we have amended our final rules on redress so that any decision by the seller at Step 1 that the complainant would not have bought the PPI they bought is regarded as extinguishing any claim they might have concerning undisclosed commission at Step 2, regardless of whether the Step 1 redress paid was less than full return of premium (because, for example, it was alternative redress or reduced because of a previous successful claim on the policy), and of whether the seller and lender are different firms or the same.

25. This amendment is likely to be relevant to a relatively small proportion of complaints – ie those where there was mis-selling, but redress was not the full return of premium, and which concerned credit agreements in the scope of s.140A, and where redress at Step 2 would otherwise have been paid. The amendment thus implies a small reduction, relative to our previous proposals, in the aggregate redress for future PPI complaints, and in administrative costs to firms (lenders), who will not now need to carry out Step 2 in respect of these complaints.

26. These cost savings are not reflected explicitly in our summary table above but can be regarded as slightly off-setting or reducing 'Increased redress payments' and 'Increased administrative costs of complaint handling'.

The effects of the proposals, and their costs and benefits

27. We have carefully considered the feedback on CP15/39 and CP16/20, the extensive further work we have conducted, as set out on page 133 above, and assessed the costs and benefits of the amendments to our package we have made since CP16/20. Our assessment of the effects of our package of measures, as amended, and their costs and benefits, remains fundamentally unchanged from that in CP15/39 and CP16/20 and as follows.

Effects on redress payments and complaint volumes

28. Our package of interventions will have the following effects on the level of PPI complaints and associated redress:

a. Some consumers who would not have complained will now do so before the deadline. They will do so in response to one or more of (i) our consumer communications campaign; (ii) other publicity about the deadline, the *Plevin* judgment and our rules and guidance about it (e.g. from CMCs and general media); (iii) the prompting effect of the deadline itself. Many of these consumers will get redress that they would not have received without the package of interventions.

b. Some consumers who were not mis-sold but may not have been told about high commission will complain before the deadline and get redress. Among these will be some people whose previous complaints about mis-selling were rejected, some of whom will have been prompted by the letters we are now requiring firms to send to consumers in this position.

c. Some consumers who would have complained eventually will not do so before the deadline (for example, because they do not respond to the communications campaign). Such consumers will not obtain the redress to which some of them would have been entitled.

d. However, a small number of consumers who eventually complain after the deadline will now potentially still get redress, to the extent their complaint concerns a claim on a live policy that is rejected for reasons connected to the sale, such as ineligibility, exclusions or limitations, and that complaint is upheld.

29. Together, these effects represent the change in the number of complaints and the level of redress payable under our interventions compared with the alternative of continuing with the existing arrangement of rules and guidance for handling PPI complaints. We have considered the likely magnitude of these respective effects. We note that:

a. Given the historical and ongoing level of publicity from CMCs[214] and our own consumer communications campaign, as enhanced, there are likely to be very few consumers who will not be aware of PPI redress possibilities by the time of the deadline.

b. The deadline and communications campaign will encourage consumers who are currently thinking of complaining to do so in a reasonable time frame before the deadline, helping them to overcome the behavioural inertia that some consumers experience.

c. Consumers were not previously aware of the issue of non-disclosure of commission and their potential grounds for complaining about this. This new information, added to the current scope for complaining about mis-selling, is likely to increase the number of PPI complaints. Our consumer research indicates that the size of such an increase could be significant (see paragraphs 2.48-2.49 in CP15/39).

d. Providing rules and guidance to firms on the fair handling of complaints involving commission non-disclosure is also likely to increase the volume of such complaints, compared to the alternative of consumers having to resort to and rely on the Financial Ombudsman Service or the courts to have their complaint considered fairly.

214 The FCA is aware there are current proposals for a cap on the charges of CMCs. Depending on the scale and timing of such a cap, CMCs may be expected to reduce their levels of advertising or direct marketing spend related to PPI complaints.

e. However, we recognise that even after the FCA-led communications campaign and CMC publicity, some consumers who would have eventually complained may not do so by the proposed deadline. Some of these consumers will thus miss out on redress to which they would have been entitled – or alternatively they will have to resort to court action, where possible, after the deadline to obtain any redress.

30. The FCA-led communications campaign, which will clarify the PPI issue and how to complain, is likely to increase the number of complaints made directly to firms, rather than through CMCs. This will in turn result in these complainants receiving higher average net levels of redress because less of it will go in fees to CMCs.

31. As welfare economists have shown, if society has a degree of aversion to inequality, then transfers from higher income to lower income groups can produce net benefits, even where some of the transfer is lost in "leakages" such as administrative costs[215]. In this sense, to the extent that the recipients of PPI redress have lower average incomes than those who ultimately bear the cost, the increased redress payments anticipated from our intervention package will generate social benefits.

32. In addition to deriving outright benefit from the redress received, recipients who are in debt may benefit from being paid their redress earlier. This will be true for recipients who (a) make their PPI complaint sooner because of our intervention, and (b) use their redress to pay off debts with interest rates higher than the 8% annual PPI redress uplift which is applied for each year between the PPI sale and redress date. We believe, given the socio-economic profile of PPI complainants[216], that such cases will significantly outnumber those in which the complainant would be better off being paid later and receiving 8% additional redress for each additional year of delay.

33. While we cannot reasonably estimate the costs and benefits (as explained at pages 132-133 above), the dynamics explained in paragraphs 28-32 above provide a reasonable basis for expecting that the proposed interventions will lead to a higher level of complaints and redress than would arise otherwise. However, given the difficulties set out in our response under paragraph 7 above, this judgement is necessarily subject to a degree of uncertainty.

34. The additional PPI redress payments we expect to be made following our package of interventions will create a cost to firms and a benefit to consumers. As we noted in CP16/20 and paragraph 4 above, our inclusion of profit share in our approach to *Plevin* is likely to lead to some increase in total redress to complainants, relative to our original proposals in CP15/39.

Uncertainty and Finality

35. The public attention that continues to be directed to the PPI mis-selling episode is continuing to undermine the orderly operation of the UK retail financial sector. The main firms concerned are multi-product firms at the heart of this sector. Bringing the redress programme, and its associated reminders of past misconduct, to an orderly conclusion will contribute to an environment where consumers feel more confident about buying the financial products that they need.

215 Welfare economists can infer an 'inequality aversion' in society by examining, for example, evidence that individuals exhibit diminishing marginal gains from extra income as their income rises. See Cowell and Gardiner (1999). 'Welfare Weights', Economics Research Paper 20, STICERD, London School of Economics, UK. Available online at http://darp.lse.ac.uk/papersDB/Cowell-Gardiner_ (OFT).pdf (a research paper commissioned by the UK Office of Fair Trading).

216 PPI consumers are more likely to earn less than the UK national average income or come from socio-economic groups C and D. See UK Competition Commission report, "Market investigation into payment protection insurance" 29 January 2009, page 3. Available online at http://webarchive.nationalarchives.gov.uk/20140402141250/http:/www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/non-inquiry/rep_pub/reports/2009/fulltext/542.pdf

36. Our intervention package will reduce long-term uncertainty about firms' PPI liabilities. This is because firms will stop paying redress after the deadline (except to complainants caught by the rejected claim carve out, or who successfully take claims to the courts).

37. Conversely, the intervention package also has the potential to increase uncertainty about these liabilities in the period before the deadline, especially given the difficulty of predicting how PPI customers and CMCs will react.

38. Capital market participants tend to incorporate uncertainty about the level of future liabilities into their judgements of the riskiness of providing funding for firms. As a result, an overall reduction in uncertainty about PPI liabilities could be expected to lower firms' long-term weighted average cost of capital (WACC).

39. It is theoretically possible to quantify the effects of this reduction in the cost of capital by assessing the effects of 'news' about expected PPI liabilities on indicators of the cost of capital, such as the premiums for Credit Default Swaps. One of the practical difficulties in estimating this effect is that 'news' about changes in expected PPI liabilities may only filter into the market gradually and so the impact may be difficult to detect among many other factors affecting securities' prices. We examined a number of potential 'news' events such as the Supreme Court ruling on *Plevin* but could not identify a discernable impact on how the market assessed risk.

40. However, reduced uncertainty about PPI liabilities is clearly a benefit in terms of lowered risk in the banking system. Reducing the potential for future shocks to banks' capital lowers the probability of future financial crises, and is therefore of benefit to the economy[217]. That said, the precise relationship between bank capital and financial crisis has not been established under the present monetary policy conditions, and it is therefore not reasonably practicable for us to estimate this benefit (s138I(8)(b) FSMA is applicable).

Campaign costs

41. We estimate the cost of our consumer communications campaign as £42.2m. We will recover this cost by a fee levied on 18 firms, with each contributing in proportion to their respective level of reported PPI complaints in the period 1 August 2009 to 31 August 2015.

Administrative costs and savings

42. The additional PPI complaints we expect to be made will create additional administrative costs for firms. Firms' own estimates before CP15/39 put these costs at approximately £310 per complaint where the complainant held PPI (regardless of complaint outcome). For complaints where the complainant had not held PPI, the cost is approximately £75. Firms expect such 'No-PPI' complaints to make up approximately 27% of total complaints in the next two years. As we flagged in CP16/20, our inclusion of profit share in our approach, and also smaller changes such as allowing the reflection in redress of previous rebates, is likely to increase administrative costs above firms' original estimates for the costs of handling complaints where there was PPI. However, this will be in respect of only a minority of all PPI complaints (ie those where there was not a mis-sale and the relevant credit agreement is in the scope of s.140A).

217 See de-Ramon, Iscenko, Osborne, Straughan, and Andrews (2012). 'Measuring the impact of prudential policy on the macroeconomy', Financial Services Authority Occasional Paper Series #42. Available online at www.fsa.gov.uk/static/pubs/occpapers/op42.pdf

43. If a complaint is rejected, the complainant has the right to take the case to the Financial Ombudsman Service for further investigation and adjudication. Regardless of outcome, the firm facing the complaint is currently charged a fee of £550 per case. In 2012-2014, approximately 6.5% of all submitted PPI complaints were taken to the Financial Ombudsman Service in this way.

44. Firms will therefore have to pay an increased level of Financial Ombudsman Service fees for the additional volume of complaints that we expect will result from our intervention.

45. Our package will, however, result in a lower proportion of complaints involving undisclosed commission being referred to the Financial Ombudsman Service than would otherwise be the case. This is because, without FCA rules and guidance on PPI complaint handling in light of *Plevin*, there would be considerable uncertainty about which complaints must be considered and how. Certainty about which complaints must be considered and how they should be handled would instead have to be established over time through cases taken to the Financial Ombudsman Service and the courts. We therefore expect our proposals to significantly reduce the Financial Ombudsman Service fee 'burden' on firms *per PPI complaint involving undisclosed commission*.

46. Although, as noted above, the deadline will cut off from potential redress some consumers who would have complained at a later date but who are not prompted to do so before the deadline, it will also cut off the so-called 'No PPI' complaints. Investigating these 'No PPI' complaints creates costs for firms, and firms estimate they remain a significant proportion of total complaints.

47. Firms will have lower administrative costs for complaints that are submitted sooner, due to our intervention package, than they would if the same complaints were allowed to 'age'. Firms estimate that complaints about older sales are currently slightly more costly for them to handle.

48. After the deadline, our own overall PPI supervision costs will reduce substantially. Until then, we now expect these costs will be at a level somewhat more than that carried out by us now.

Corporate restructuring in the retail financial sector

49. It could be argued that a further benefit of reducing uncertainty over PPI redress liabilities would be to assist efficient corporate restructuring in the retail financial sector. After a financial crisis, such as that of 2007-9, one might expect some significant restructuring of the sector. One reason this may not have happened is a reluctance to take on uncertain PPI liabilities.

50. That said, firms could potentially write legal agreements that "contract around" PPI liabilities. For example, to facilitate the Lloyds-TSB demerger Lloyds provided a conduct indemnity to TSB in respect of past misconduct complaints and associated regulatory actions, specifically including PPI. However, there are costs associated with creating such arrangements.

51. Quantifying the benefits of enabling this kind of potential restructuring is extremely challenging. Doing so would require not only estimating the degree to which potential restructuring is being held back by uncertainty over post-2019 PPI liabilities, but also modelling what kind of restructuring might take place, and then estimating what consumer benefits, if any, this might subsequently bring. As such, this benefit is both highly uncertain in principle and not reasonably practical for us to estimate (s138I(8)(b) FSMA is applicable).

Missing PPI-market

52. Ongoing publicity surrounding PPI redress may be negatively colouring people's perception of PPI as a product to be re-launched by the sector. A PPI deadline would help bring the mis-selling issue to an orderly conclusion, and so potentially contribute to creating the conditions for an effective new market for such debt or income protection products. Given firms' experience of the consequences of historical PPI mis-selling, a new market is likely to work better for consumers than the previous one.

53. However, the specific contribution that a deadline and consumer communications campaign would make to the wider conditions that could lead to the creation of a new PPI or protection market is uncertain. Furthermore, the size of the "missing" market is unknown. The previous size of the PPI market provides little guide because the number of policies sold was substantially inflated by mis-selling and the price was generally geared to cross-subsidising profits and commissions on related credit products, rather than paying for the underlying insurance cover itself. In light of these considerations, although we consider there to be a benefit in facilitating the successful re-launch of better PPI-like products, it is not reasonably practicable for us to estimate the benefit (s138I(8)(b) FSMA is applicable).

Conclusion

54. We conclude that no further changes are needed to the summary table of costs and benefits at paragraph 6 above, and our overall assessment remains that:

- for the various reasons explained at pages 132-133 above, the costs and benefits of our package of interventions cannot be reasonably estimated (s.138I(8)(a) FSMA) or are not reasonably practicable to estimate (s.138I(8)(b) FSMA)
- but the dynamics we have discussed at paragraphs 27-53 provide us with a reasonable basis for expecting that it will deliver a net benefit for consumers and other potential benefits, as set out in the summary table
- given the uncertainties involved, this overall conclusion is not guaranteed

Annex 4
Compatibility Statement

Background

1. In CP15/39 (Annex 4), we set out in detail our reasons for concluding that our proposed package of interventions:

- was compatible with our strategic objective
- advanced one or more of our operational objectives
- had regard to the regulatory principles in section 3B FSMA
- was compatible with the duty on us to discharge our general functions (which include rule-making) in a way that promotes effective competition in the interests of consumers (section 1B(4) FSMA)
- would not have an impact on mutual societies which is significantly different from the impact on other authorised persons
- was compatible with our duties under the Legislative and Regulatory Reform Act 2006

2. In CP16/20 (Annex 5), we discussed the feedback we had received on our compatibility statement. Briefly:

- Most responses from consumer bodies and CMCs made no comments. Some, however, said that they did not agree with the statement, because they did not feel our package of proposals was compatible with our consumer protection objective.
- Most responses from industry either broadly accepted our compatibility statement or said that they had no comments on it.
- Some responses from industry expressed concerns about some parts of the statement. These concerns mainly focused on whether we had adequately considered and evidenced the impact of our proposals, particularly in the short term, in a way which recognised differences in the nature of businesses. Specifically, they felt we could not reasonably say that our proposed burdens and restrictions were proportionate to the expected benefits, or respected the responsibility of senior management, in respect of small and medium-sized firms, the running-account credit sector, and mutuals. In light of their concerns, these responses said that we needed to make significant changes to our proposals, to protect such firms, otherwise our compatibility statement would remain invalid.

3. We carefully considered this feedback. However, we concluded that our compatibility statement in CP15/39 remained appropriate and did not need to be changed. In particular, we felt that the concerns and risks raised by some sectors of industry were over-stated, or, to the extent valid, possible to mitigate adequately through sensible preparations by firms and appropriate flexibility on our part, and, in the case of our proposed rules and guidance on *Plevin*, anyway attributable mainly to the Supreme Court judgment itself and its consequences, rather than to our proposed intervention.

Feedback in CP16/20

4. In response to CP16/20:

- Most responses from consumer bodies and CMCs did not comment, but some maintained their view that our package of proposals was not compatible with our consumer protection objective.
- Most responses from industry either broadly accepted our compatibility statement or said that they had no comments on it.
- Some responses from mutuals said they were concerned by our comment that we do not agree that past sales of MPPI are generally not covered by s.140A or our proposed rules and guidance on *Plevin*.
- Some responses from small and medium-sized firms, and the running-account credit sector, said that they welcomed our:
  - stated willingness to assist individual firms who may be adversely impacted by high volumes of PPI complaints or cash outflow issues following the implementation of the new rules
  - confirmation that the consumer communication campaign will be clear about which credit agreements are in scope and about the fact that consumers already redressed for mis-sales cannot complain again in light of *Plevin*
  - continued intention to work with the CMR and the Financial Ombudsman Service on CMC behaviours, including the high volumes of No PPI cases
  - clarification that an assessment under Step 2 will only be required if the PPI complaint was within the existing scope of DISP for the purposes of consideration at Step 1, and confirmation that no new mis-selling complaints will be brought within DISP by our new rules
  - confirmation that if a firm has established that redress at Step 2 is de minimis (e.g. in the tens of pounds or less), then a pragmatic approach to payment of redress can be used which does not, for example, use detailed account reconstruction, provided it can be established that consumers will not be disadvantaged

Our response

As discussed in Chapters 2 and 3 above, we remain of the view that our package of interventions will secure an appropriate degree of protection for consumers, and also protect and enhance the integrity of the UK financial system.

What we meant when we said that we do not agree that past sales of MPPI are generally not covered by s.140A CCA or our proposed rules and guidance on *Plevin* is simply that, under the relevant legislation, as recently amended, only credit agreements which have been entered into by a person carrying on a regulated activity are covered by the relevant exclusion in the CCA. So, while most mortgages sold on or after 31 October 2004 will be out of scope of s.140A and therefore of our rules and guidance on handling PPI complaints in light of *Plevin*, most mortgages sold before that date will not be exempt from s.140A and so will be potentially in its scope if the agreement remained in force as at April 2008.

We note that some small and medium-sized firms, including from the running-account credit sector, feel appropriately reassured, in light of our responses in CP16/20, about the impact of our final package of measures on them.

5. As we discussed in chapter 4, some responses from mutuals expressed concern that including profit share in our approach to *Plevin* would have disproportionate outcomes for their mortgage PPI, as the commission for much of it was under the proposed tipping point, but the inclusion of profit share would likely tip some over the tipping point, leading to redress, even though, in their view, mortgage PPI provided much better value than other PPI.

6. However, we do not consider our approach in this regard will have a significantly different or disproportionate impact on lenders that are mutuals. As explained in Chapter 4, we are using our regulatory judgement to make rules and guidance that broadly reflect the principles raised in *Plevin*. The *Plevin* judgment focused on the unfair relationship and detriment potentially caused to the consumer because non-disclosure of commission above the tipping point had not given them full opportunity to consider the value of the product. The judgment did not consider questions or levels of value per se. It focused on the percentage of commission, not its absolute level, and did not take into account the price of the policy or its cost compared to others.

Consideration of the amended parts of our package of measures

7. We have also considered the amended parts of our package of measures.

Carving out from deadline future complaints about rejected claims on live policies

8. This change to our final rules and guidance impacts PPI sellers only, and could increase their potential redress and administrative costs, relative to our proposals in CP16/20. This measure advances our consumer protection objective in that it recognises and mitigates a particular and, in extremis, potentially severe detriment to a specific group of PPI policyholders, which we consider it appropriate and proportionate to address. However, we do not consider that this change impacts any particular type of sellers, including mutuals, significantly more than others or impacts them disproportionately. We also consider that this change is compatible with the general regulatory principle that consumers should take responsibility for their decisions[218].

Amendments of relationship between Step 1 redress and Step 2 redress

9. This change to our final rules and guidance on PPI complaints and *Plevin* impacts s.140A lenders only (irrespective of whether they were also the PPI seller), and could reduce their potential redress and administrative costs, relative to our proposals in CP16/20. The change supports our consumer protection objective by providing appropriate redress that we think is right in the circumstances, and avoiding redress to some individuals that we think would be excessive in the circumstances. However, we do not consider that this change impacts any particular types of lenders, including mutuals, more than others, or disproportionately so.

Writing to previously rejected complainants in scope of s.140A

10. Relative to our proposals in CP16/20, this change to our final rules and guidance impacts PPI sellers, by increasing their potential administrative costs, and lenders, by increasing their potential redress costs.

11. We acknowledge (see paragraphs 13-17 in the CBA at Annex 3) that targeting the mailing in the way required is likely to be more challenging, and thus more time consuming and costly, for firms that were only the PPI seller and not the lender (i.e brokers), and in particular for brokers who mainly sold regular premium mortgage PPI.

12. As we noted, if a broker cannot identify from its own records whether the credit the PPI covered was in scope of s.140A, it would need to take reasonable steps to seek relevant information from lenders. However, if that too proves fruitless, it can, if necessary, approach us with a request to be able to mail all their previously rejected complainants, albeit an unknown proportion of the consumers who will then be mailed will be out of scope.

13. This measure advances our consumer protection objective in that it recognises and addresses a particular additional communications need for a specific group of PPI consumers who had complaints previously rejected and therefore may not necessarily engage with our campaign. We consider it appropriate and proportionate to address this need.

14. We consider that this measure is compatible with the general regulatory principle that consumers should take responsibility for their decisions.

Our supervision of firms' preparations for implementation

15. In our compatibility statement in CP15/39, we said, at paragraph 8 (and see also paragraph 25), that we had had regard to the need to use our resources in the most efficient and economic way, and did not believe that our proposals would have a significant impact on our resources

218 Section 3B(1)(d) FSMA

or the way in which we use them. We said the main resource demands on us would be some ongoing leadership and monitoring of the associated consumer communications campaign, and supervisory monitoring of firms' handling of PPI complaints in the period up to (and for a while after) the deadline, including their dealings with the Financial Ombudsman Service, *at a level broadly similar to, or somewhat less than, that carried out by us now* [emphasis added].

16. In the context of our final package of measures, as amended, we remain of the view that we are using our resources in the most efficient and economic way. However, we note the commitments we have made in this Policy Statement to take forward robust proactive supervisory engagement with firms in the periods before and after our package of measures came into force, including, in respect of their approach to estimating profit share.

17. In light of these commitments, we think it would now be more accurate to say that the main resource demands on us in the period up to the deadline will be at a *somewhat higher level than that carried out by us now*.

Legislative and Regulatory Reform Act 2006 (LRRA)

18. We have continued to have regard to the principles in the LRRA and the Regulator's Compliance Code for the parts of our package of measures that consist of general policies, principles or guidance. We have continued to engage with firms and other stakeholders in this process, and consider that our final measures are proportionate and result in an appropriate level of consumer protection, when balanced with impacts on firms and on competition. We have continued to be transparent with external stakeholders, as far as possible, in terms of informing stakeholders of the work being undertaken and direction of travel. A core aim of the rules and guidance about PPI complaints and *Plevin* is to deliver consistent outcomes to consumers and provide certainty to firms and ensure consistent complaint handling by them.

Conclusion

19. We have carefully considered all the feedback received on our proposals in CP15/39 and CP16/20. We believe that our compatibility statement in CP15/39 remains appropriate and, with the small exception in paragraph 17 above, does not need to be changed, and that our package of measures, as amended, is compatible with all relevant requirements. These considerations have informed our decision to proceed with our finalised package of measures.

Appendix 1
Revised final Handbook text (legal instruments)

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 1) INSTRUMENT 2017

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following power and related provisions in the Financial Services and Markets Act 2000 ('the Act'):

(1) section 139A (Power of the FCA to give guidance).

Commencement

B. This instrument comes into force on 2 March 2017.

Amendments to the Handbook

C. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 1) Instrument 2017.

By order of the Board
1 March 2017

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, striking through indicates deleted text.

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

…

3.1.5 G In this appendix:

(1) “historic interest” means the interest the complainant paid to the *firm* because a ~~single premium~~ *payment protection contract* was added to a loan or credit product;

…

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 2) INSTRUMENT 2017

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):

(1) section 137A (FCA's general rule-making power);
(2) section 137T (General supplementary powers);
(3) section 138C (Evidential provisions);
(4) section 139A (Power of the FCA to give guidance);
(5) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
(6) paragraphs 13(1), (2) and (4) of Schedule 17 (FCA's rules).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:

Annex	Date comes into force
Annex A	29 August 2017
Annex B	31 March 2017
Annex C	29 August 2017

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 2) Instrument 2017.

By order of the Board
1 March 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

CCA lender has the same meaning as “creditor” under section 140C of the *CCA* which is, in summary:

(a) a “creditor” is a *person* who provides the debtor with credit of any amount;

(b) references to a “creditor” include:

(i) a *person* to whom their rights and duties under the credit agreement have passed by assignment or operation of law;

(ii) where two or more *persons* are the creditor to any one or more of those *persons*.

Amend the following definitions as shown.

commission <u>(other than in *DISP* Appendix 3)</u> any form of commission or remuneration, including a benefit of any kind, offered or given in connection with:

(a) *designated investment business* (other than commission equivalent);

(b) *insurance mediation activity* in connection with a *non-investment insurance contract*; or

(c) the sale of a *packaged product*, that is offered or given by the *product provider*.

credit agreement

<u>(1)</u> <u>(other than in *DISP* Appendix 3)</u> in accordance with article 60B of the *Regulated Activities Order*, an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount<u>;</u>

<u>(2)</u> <u>(in *DISP* Appendix 3) has the same meaning as “credit agreement” for the purposes of sections 140A to 140C of the *CCA* which is, in summary, an agreement which meets the</u>

following conditions:

(a) it is between an individual (the "debtor") and any other *person* (the "creditor") under which the creditor provides the debtor with credit of any amount; and

(b) an order under section 140B of the *CCA* could be made in relation to it. In summary, orders can be made under section 140B of the *CCA* in relation to credit agreements except where:

  (i) the exclusion under section 140A(5) of the *CCA* applies (this relates to *regulated mortgage contracts* and regulated *home purchase plans*); or

  (ii) the agreement was made before 6 April 2007 and became a completed agreement before 6 April 2008.

For the avoidance of doubt, the reference in (2)(b) to agreements in relation to which orders may be made under section 140B is a reference to such agreements as affected by amendments to enactments that took effect up to and including 1 March 2017.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text unless otherwise stated.

3 Application, Notification and Vetting Fees

…

3.2 Obligation to pay fees

…

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee Payable (£)	Due date
…		
<u>(zv) Any *firm* that meets the test in *FEES* 3 Annex 10C(1)R(1) (PPI campaign fees).</u>	<u>The amount set out in *FEES* 3 Annex 10C(1) R(2).</u>	<u>Within 30 *days* of the date of the invoice.</u>
…		

…

After FEES 3 Annex 10BR (Designated Credit Reference Agencies and Finance Platforms Fee), insert the following new Annex. The text is not underlined.

3 Annex 10C PPI campaign fees

(1) R (1) A *firm* must pay a PPI campaign fee calculated in accordance with (2) if it has:

(a) reported over 100,000 *complaints* cumulatively under question 17(A) (payment protection insurance – advising, selling and arranging) of the complaints return form in *DISP* 1 Annex 1R; and

(b) reported those *complaints* from 1 August 2009 up to and including 1 August 2015.

(2) The PPI campaign fee is calculated by multiplying the number of *complaints* cumulatively reported to the *FCA* under question 17(A) of *DISP* 1 Annex 1R for the *firm* from 1 August 2009 up to and including 1 August 2015 by £3.64.

(2) R (1) A *firm's* PPI campaign fee will be a proportion of the total amount of costs the *FCA* has estimated it will incur in running the consumer communications campaign highlighting the introduction of the two-year PPI complaints deadline.

(2) (a) The *FCA* will invoice the PPI campaign fee in equal amounts over two years.

(b) The *FCA* will invoice the first part of the fee during the *month* following *FEES* 3 Annex 10C coming into force and will invoice the second part one calendar year later.

(3) The *FCA* will write to each *firm* that meets the test at *FEES* 3 Annex 10C(1)R(1) before sending out its first invoice, setting out:

(a) the number of *complaints* reported to the *FCA* under question 17(A) of *DISP* 1 Annex 1R for that *firm* from 1 August 2009 up to and including 1 August 2015; and

(b) the basis on which it has calculated the PPI campaign fee for that *firm*.

(4) Any amounts raised that are in excess of the actual cost of the PPI consumer communications campaign will be refunded to fee payers under *FEES* 3 Annex 10C on a pro rata basis.

(3) R References in this annex to question 17A in the complaints return form at *DISP* 1 Annex 1R are to that question as it existed on 1 August 2015, and to any corresponding question in previous versions of that form.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text, and striking through indicates deleted text, unless otherwise stated.

1.4 Complaints resolution rules

…

Payment protection insurance complaints

1.4.6 G *DISP* App 3 sets out the approach which *respondents* should use in assessing *complaints* relating to the sale of *payment protection contracts* and determining appropriate redress where a *complaint* is upheld. It also requires *firms* to send a written communication to complainants in certain circumstances (see *DISP* App 3.11).

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

…

Payment protection insurance complaints

2.8.8 G If a *complaint* relates to the sale of a *payment protection contract*, knowledge by the complainant that there was a problem with the sale of the *payment protection contract* generally (for example where there has been a rejection of a claim on the grounds of ineligibility or exclusion, or the complainant has received a customer contact letter explaining that they may have been mis-sold) would not in itself ordinarily be sufficient to establish for the purposes of the three-year time period in *DISP* 2.8.2R(2) that the complainant had become aware (or ought reasonably to have become aware) that he or she had cause for complaint in respect of a failure to make the disclosure set out at *DISP* App 3.3A.2E (relating to failure to disclose commission).

2.8.9 R (1) In addition to *DISP* 2.8.1R and *DISP* 2.8.2R, unless one or more of the conditions in (2) below is met, the *Ombudsman* cannot consider a *complaint* which:

(a) relates to the sale of a *payment protection contract* that took place on or before 29 August 2017; and

(b) expresses dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling or administrative matters such as taking the incorrect amount of premium).

(2) The conditions are that:

(a) the complainant referred the *complaint* to the *respondent* or to the *Financial Ombudsman Service* on or before 29 August 2019 and has a written acknowledgement or some other record of the *complaint* having been received; or

(b) in the view of the *Ombudsman*, the failure to comply with the time limit in (2)(a) was as a result of exceptional circumstances; or

(c) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limit in (2)(a) has expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the *Act*); or

(d) the *complaint*:

(i) is made on or after 29 August 2019;

(ii) relates to the sale of a *payment protection contract* that was live as at 29 August 2017;

(iii) is made following a full or partial rejection of a claim on or after 29 August 2017 on the grounds of ineligibility, exclusion or limitation

and this condition applies only to the extent that the *complaint* relates to those grounds of rejection.

2.8.10 G Where a *complaint* meets the requirements of *DISP* 2.8.9R(2)(d), those parts of the *complaint* that relate to the grounds of rejection of the claim are not subject to the restriction in *DISP* 2.8.9R(1) on an *Ombudsman* considering the *complaint*.

…

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

Application

App 3.1.1 G (1) This appendix sets out how:

(a) a *firm* should handle *complaints* relating to the sale of a *payment protection contract* by the *firm* which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling); and

(b) a *firm* that is a *CCA lender* and which has received such a *complaint* should consider whether there was a failure to disclose commission in relation to the sale of a *payment protection contract* which covers or covered or purported to cover a *credit agreement* (this includes partial coverage).

(2) It relates to the sale of any *payment protection contract* whenever the sale took place and irrespective of whether it was on an advised or non-advised basis; conducted through any sales channel; in connection with any type of loan or credit product, or none; whether the *insurer* was in the same *group* as the *firm* or not; whether the premium was financed by the credit product or not; and for a regular premium or single premium payment. It applies whether the *policy* is currently in force, was cancelled during the *policy* term or ran its full term.

(3) It does not require *firms* to assess whether the *firm's* conduct of the sale was in breach of a fiduciary duty where there has been a failure to disclose either the existence of, or the level of, any commission and/or profit share paid. *Complaints* concerning such issues should be dealt with under *DISP* 1.4.1R.

(4) It requires *firms* to send written communications to complainants in certain circumstances where their previous *complaint* in relation to the sale of a *payment protection contract* did not result in the *firm* offering (or being required to pay) redress on the basis that the complainant would not have bought the *payment protection contract* that they bought (see *DISP* App 3.11).

(5) There are further provisions on the application of this appendix in *DISP* App 3.10.

Two-step approach

App 3.1.1A E This appendix provides for a two-step approach to handling *complaints*. *Firms* should apply it as follows:

(1) a *firm* which is not a *CCA lender* should only consider step 1;

(2) a *CCA lender* which did not sell the *payment protection contract* should only consider step 2, but does not have to do so if it knows the complainant has already made a *complaint* about a breach or failing in respect of the same contract and the outcome was that the *firm* which considered that *complaint* concluded that the *complainant* would not have bought the *payment protection contract* they bought;

(3) a *CCA lender* which also sold the *payment protection contract* should:

(a) consider step 1 unless-

(i) it has already considered step 1, or

(ii) after considering *DISP* App 3.2.2G and *DISP* App 3.2.3G, it is clear that the true substance of the *complaint* is only about a failure to disclose commission; and

(b) consider step 2 in cases where it has not concluded at step 1 that the complainant would not have bought the *payment protection contract* they bought.

App 3.1.1B G In the case of a *complaint* described in *DISP* 2.8.9R(2)(d), the *firm* need only consider step 1 and only to the extent of the relevant grounds of rejection of the claim.

Step 1

App 3.1.2 G ~~The~~ At step 1, the aspects of *complaint* handling dealt with in this appendix are how the *firm* should:

(1) assess a *complaint* in order to establish whether the *firm's* conduct of the sale failed to comply with the *rules*, or was otherwise in breach of the duty of care or any other requirement of the general law (taking into account relevant materials published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*). In this appendix this is referred to as a "breach or failing" by the *firm*;

(2) determine the way the complainant would have acted if a breach or failing by the *firm* had not occurred; and

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

App 3.1.3 G ~~Where~~ At step 1, where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing. This appendix establishes presumptions for the *firm* to apply about how the complainant would have acted if there had instead been no breach or failing by the *firm*. The presumptions are:

(1) for some breaches or failings (see *DISP* App 3.6.2E), the *firm* should presume that the complainant would not have bought the *payment protection contract* ~~he~~ they bought; and

(2) for certain of those breaches or failings (see *DISP* App 3.7.7E), where the complainant bought a single premium *payment protection contract*, the *firm* may presume that the complainant would have bought a regular premium *payment protection contract* instead of the *payment protection contract* ~~he~~ they bought.

App 3.1.4 G There may also be instances where a *firm* concludes after investigation at step 1 that, notwithstanding breaches or failings by the *firm*, the complainant would nevertheless still have proceeded to buy the *payment protection contract* ~~he~~ they bought. *CCA lenders* should still go on to consider step 2 in such cases.

Step 2

App 3.1.4A G At step 2, the aspects of *complaint* handling dealt with in this appendix are how a *CCA lender* should:

(1) assess a *complaint* to establish whether failure to disclose commission gave rise to an unfair relationship under section 140A of the *CCA*; and

(2) determine the appropriate redress (if any) to offer to a complainant.

Definitions

App 3.1.5 E In this appendix:

(1) (a) at step 1, "historic interest" means the interest the complainant paid to the *firm* because a *payment protection contract* was added to a loan or credit product;

(b) at step 2, "historic interest" means in relation to any sum, the interest the complainant paid as a result of that sum being included in the loan or credit product;

(2) "simple interest" means a non-compound rate of 8% per annum; ~~and~~

(3) "claim" means a claim by a complainant seeking to rely upon the *policy* under the *payment protection contract* that is the subject of the *complaint*;

(4) "actual profit share" means a reasonable estimate of the profit share that was paid under profit share arrangements and that is notionally attributable to the *payment protection contract*;

(5) "anticipated profit share" means a reasonable estimate of the profit share which it was reasonably foreseeable at the time of sale would be paid over the relevant period or periods under profit share arrangements, and that would be notionally attributable to the *payment protection contract*;

(6) "commission" means the part of the total amount paid in relation to a *payment protection contract* that was not due to be passed to and retained by the *insurer*, excluding any sums which may be payable under profit share arrangements;

(7) "failure to disclose commission' means failure to make the disclosure

at *DISP* App 3.3A.2E;

(8) "profit share arrangements" means arrangements (including contractual) that *firms* have to potentially receive back some of the total amount paid in relation to a *payment protection contract* which had initially gone to the *insurer*. For example, these arrangements might include amounts paid to cover potential claims on policies, but which remain unspent after a fixed period, for example because actual claims did not exceed certain levels. Other arrangements might take account of variable factors other than claims, including, for example, the value of rebates paid upon early cancellations of *payment protection contracts*;

(9) "redress period" means, in relation to a regular premium *payment protection contract*, any period when the commission paid plus the amount representing actual profit share in respect of that period exceeded 50% (or such other percentage calculated under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* in respect of that period;

(10) "relevant period or periods" means:

(a) in relation to a single premium *payment protection contract*, the scheduled length of the contract;

(b) in relation to a regular premium *payment protection contract*, the period or periods over which commission was known or was reasonably foreseeable at the time of sale; and

(11) "total amount paid" means the total amount paid by the consumer in relation to a *payment protection contract*, including any Insurance Premium Tax payable.

App 3.1.6 G For the purposes of the definitions of "actual profit share", "anticipated profit share" and "commission", where the *firm* has no or incomplete records of the level of commission or profit share arrangements relevant to a particular *payment protection contract*, it should make reasonable efforts to obtain relevant information from third parties. Where no such information can be obtained, the *firm* may make reasonable assumptions based on, for example, commission levels or profit share arrangements in relation to which records are held, and general commercial trends in the industry during the period in question.

App 3.2 The assessment of a complaint

App 3.2.-1 G This section applies to both step 1 and step 2.

App 3.2.1 G The *firm* should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the *firm*, whether (at step 1) there was a breach or failing by the *firm* or (at step 2) whether there was a failure to disclose commission.

…

App 3.2.5 G If, during the assessment of the *complaint*, the *firm* uncovers evidence of a breach or failing, or a failure to disclose commission, that was not raised in the *complaint*, the *firm* should consider those other aspects as if they were part of the *complaint*, at step 1 or 2 as appropriate.

…

App 3.2.7 G The *firm* should consider all of its sales of *payment protection contracts* to the complainant in respect of re-financed loans that were rolled up into the loan covered by the *payment protection contract* that is the subject of the *complaint*. The *firm* should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales or, where relevant, any previous failures to disclose commission.

App 3.3 The approach to considering evidence at step 1

App 3.3.-1 G This section applies to step 1. However, *CCA lenders* should also consider it at step 2 to the extent that it is relevant to their consideration of unfairness.

…

After DISP App 3.3 (The approach to considering evidence at step 1), insert the following new DISP App 3.3A. All the text is new and is not underlined.

App 3.3A The approach to considering evidence at step 2

App 3.3A.1 E This section applies to a *CCA lender* at step 2.

Assessment of fairness of relationship

App 3.3A.2 E Where the *firm* did not disclose to the complainant in advance of a *payment protection contract* being entered into (and is not aware that any other *person* did so at that time):

(1) the anticipated profit share plus the commission known at the time of the sale; or

(2) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale; or

(3) the likely range in which (1) or (2) would fall;

the *firm* should consider whether it can satisfy itself on reasonable grounds that this did not give rise to an unfair relationship under section 140A of the

CCA. The *firm's* consideration of unfairness should take into account all relevant matters, including whether the non-disclosure prevented the complainant from making a properly informed judgement about the value of the *payment protection contract*.

App 3.3A.3 G *DISP* App 3.3A.2E reflects section 140B(9) of the *CCA* which provides (in summary) that, if the debtor alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.

Presumptions

App 3.3A.4 E (1) The *firm* should presume that failure to disclose commission gave rise to an unfair relationship under section 140A of the *CCA* if:

(a) the anticipated profit share plus the commission known at the time of the sale; or

(b) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale;

was:

(c) in relation to a single premium *payment protection contract*, more than 50% of the total amount paid in relation to the *payment protection contract*; or

(d) in relation to a regular premium *payment protection contract*, at any time in the relevant period or periods more than 50% of the total amount paid in relation to the *payment protection contract* in respect of the relevant period or periods.

(2) The *firm* should presume that failure to disclose commission did not give rise to an unfair relationship under section 140A of the *CCA* if the test in (1) is not satisfied.

App 3.3A.5 G The presumption that failure to disclose commission gave rise to an unfair relationship is rebuttable. Examples of factors which may contribute to its rebuttal include:

(1) the *CCA lender* did not know and could not reasonably be expected to know or foresee the level of commission and anticipated profit share; or

(2) the complainant could reasonably be expected to be aware of the level of commission and anticipated profit share (e.g. because they worked in a role in the financial services industry which gave them such awareness); or

(3) disclosure would have made no difference whatsoever to the complainant's judgement about the value of the *payment protection contract*. This factor is only likely to be relevant in limited

		circumstances. If the *firm* concludes that disclosure would have at least caused the complainant to question whether the *payment protection contract* represented value for money and whether it was a sensible transaction to enter into (regardless of whether they may or may not have ultimately gone ahead with the purchase), then the presumption is unlikely to be rebutted due to this factor.
App 3.3A.6	G	The presumption that failure to disclose commission did not give rise to an unfair relationship is also rebuttable. An example of a factor which may contribute to its rebuttal includes that the complainant was in particularly difficult financial circumstances at the time of the sale.
	Reasonably foreseeable commission	
App 3.3A.7	G	For the purposes of the provisions in this section, what is reasonably foreseeable should be determined with regard to all relevant factors, including, where relevant, any agreement specifying rate changes over the first years of the *payment protection contract's* life (as in some regular premium *payment protection contracts*), and the length of time over which the commission will be governed by the agreement between lender and *insurer* that is in place at the time of sale.

Amend the following as shown.

App 3.4	**Root cause analysis**	
<u>App 3.4.-1</u>	<u>G</u>	<u>This section applies to both step 1 and step 2, as appropriate.</u>

…

App 3.4.2	G	Where consideration of the root causes of *complaints* suggests recurring or systemic problems in the *firm's* sales practices for *payment protection contracts*, the *firm* should, in assessing an individual *complaint*, consider whether the problems were likely to have contributed <u>(at step 1)</u> to a breach or failing <u>or (at step 2) to a failure to disclose commission</u> in the individual case, even if those problems were not referred to specifically by the complainant.

…

App 3.5	**Re-assessing rejected claims <u>at step 1</u>**	
<u>App 3.5.-1</u>	<u>E</u>	<u>This section applies to step 1.</u>

…

App 3.6	**Determining the effect of a breach or failing <u>at step 1</u>**	
<u>App 3.6.-1</u>	<u>E</u>	<u>This section applies to step 1.</u>

…

App 3.7 Approach to redress at step 1

App 3.7.-1 E This section applies to step 1.

General approach to redress: all contract types

…

Interaction with step 2

App 3.7.16 E Where the *firm* is aware that another *firm* has previously paid redress at step 2, the *firm* may deduct this from the redress due under step 1.

After DISP App 3.7 (Approach to redress at step 1), insert the following new DISP App 3.7A. All the text is new and is not underlined.

App 3.7A Approach to redress at step 2

App 3.7A.1 E This section applies to a *CCA lender* at step 2.

Duty to remedy unfairness

App 3.7A.2 E Where the *firm* concludes in accordance with *DISP* App 3.3A that the non-disclosure has given rise to an unfair relationship under section 140A of the *CCA*, the *firm* should remedy the unfairness.

Redress for single premium payment protection contracts

App 3.7A.3 E In relation to a single premium *payment protection contract*, the *firm* should pay to the complainant a sum equal to:

(1) the commission actually paid; plus

(2) an amount representing actual profit share; minus

(3) 50% of the total amount paid (or other percentage as in *DISP* App 3.7A.4E).

The *firm* should also pay historic interest in relation to that sum, where relevant. It should also pay simple interest on the whole amount.

Redress for regular premium payment protection contracts

App 3.7A.3A E In relation to a regular premium *payment protection contract*, the *firm* should pay to the complainant in respect of each redress period a sum equal to:

(1) an amount appropriately representing the commission paid in respect of that period; plus

(2) an amount appropriately representing profit share in respect of that period; minus

(3) 50% of that amount (or other percentage as in *DISP* App 3.7A.4E).

A *firm* should pay the aggregate of those sums and also pay historic interest in relation to each of those sums, where relevant. It should also pay simple interest, where relevant.

Where the presumption against unfairness has been rebutted

3.7A.4 E In cases where the presumption that failure to disclose commission did not give rise to an unfair relationship (in *DISP* App 3.3A.4E(2)) has been rebutted and the *firm* has concluded that the non-disclosure gave rise to an unfair relationship under section 140A of the *CCA*, the *firm* should consider what level of commission plus anticipated profit share would not have given rise to unfairness in that case, and use that amount (expressed as a percentage) at *DISP* App 3.7A.3E(3) or *DISP* App 3.7A.3AE(3) as appropriate.

Where the complainant has received a rebate

App 3.7A.5 E If the complainant has received any rebate, the *firm* may calculate the amount of the rebate that represents commission and actual profit share sums paid up to the point of the rebate that were more than 50% (or such other percentage determined under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* and deduct this from the amount of redress otherwise payable to the complainant.

Where a single premium was added to a loan

App 3.7A.6 E Additionally, where a single premium policy was added to a loan:

(1) for live *policies*, where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be restructured (without charge to the complainant but using any applicable cancellation value) with the effect of ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the commission plus anticipated profit share was 50% (or such other percentage determined under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract*; or

(2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if a sum equal to that payable under *DISP* App 3.7A.3E (before historic or

simple interest) had not been added (plus simple interest) minus any applicable cancellation rebate value.

Where a regular premium policy is live

App 3.7A.7 E Additionally, for a regular premium *payment protection contract*, where the *policy* is live the *firm* should disclose the current level of known or reasonably foreseeable commission and currently anticipated profit share and give the complainant the choice of continuing with the *policy* without change or cancelling the *policy* without penalty.

App 3.7A.8 E For the purposes of *DISP* App 3.7A.7E, currently anticipated profit share should be read as requiring a projection forwards from the date of disclosure rather than from the date of the original sale.

App 3.7A.9 G The disclosure in *DISP* App 3.7A.7E may:

(1) be in the form of a range so long as it is sufficiently narrow to be clear and informative: and

(2) specify the current level of commission and currently anticipated profit share separately.

Where a claim was previously paid

App 3.7A.10 E Where a claim was previously paid on the *policy*, the *firm* should not deduct this from the redress paid.

Amend the following as shown.

App 3.8 Other appropriate redress <u>at steps 1 and 2</u>

<u>Step 1</u>

App 3.8.1 E The remedies in *DISP* App 3.7 are not exhaustive.

App 3.8.2 E When applying a remedy other than those set out in *DISP* App 3.7, the *firm* should satisfy itself that the remedy is appropriate to the matter complained of and is appropriate and fair in the individual circumstances.

<u>Step 2</u>

<u>App 3.8.3</u> <u>E</u> <u>The remedies in *DISP* App 3.7A are not exhaustive.</u>

<u>App 3.8.4</u> <u>E</u> <u>A *firm* should depart from the remedies set out in *DISP* App 3.7A if there are factors in a particular *complaint* which require a different amount or form of redress in order to remedy the unfairness found.</u>

App 3.9 Other matters concerning redress <u>at steps 1 and 2</u>

…

App 3.9.2 G In assessing redress, the *firm* should consider whether there are any other further losses that flow from its breach or failing <u>or from its failure to disclose commission (as applicable),</u> that were reasonably foreseeable as a consequence of the *firm's* breach or failing <u>or of its failure to disclose commission</u>, for example, where the *payment protection contract's* cost or rejected claims contributed to affordability issues for the associated loan or credit which led to arrears charges, default interest, penal interest rates or other penalties levied by the lender.

App 3.9.3 G Where, for single premium *policies*, there were previous breaches or failings <u>or previous failures to disclose commission</u> (see *DISP* App 3.2.7G) the redress to the complainant should address the cumulative financial impact.

App 3.10 Application: evidential provisions <u>and guidance</u>

<u>Step 1</u>

App 3.10.1 E The *evidential provisions* in this appendix <u>for step 1</u> apply in relation to *complaints* about sales that took place on or after 14 January 2005.

App 3.10.2 G <u>The *guidance* in this appendix for step 1 applies in relation to *complaints* about sales whenever the sale took place.</u> For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* in this appendix <u>for step 1</u> as if they were *guidance*.

<u>Step 2</u>

<u>App 3.10.2A</u> <u>E</u> <u>The *evidential provisions* and *guidance* for step 2 apply in relation to *complaints* received by *CCA lenders* about sales where the *payment protection contract* covers or covered or purported to cover (this includes partial coverage) a *credit agreement*.</u>

<u>Effect of contravention of evidential provisions</u>

…

<u>App 3.11 Obligation to write letters to certain rejected complainants</u>

<u>App 3.11.1</u> <u>R</u> <u>This section applies where:</u>

<u>(1)</u> <u>a complainant has made a *complaint* to a *firm* in relation to its sale of a *payment protection contract* which covered or purported to cover a</u>

credit agreement (this includes partial coverage);

(2) the *complaint* was rejected by the *firm* before 29 August 2017 in that the *firm* did not offer the complainant the redress they would have been offered had the *firm* concluded that the complainant would not have bought the *payment protection contract* they bought; and

(3) any referral of the *complaint* to the *Financial Ombudsman Service* has been concluded and did not result in the *firm* offering (or being required to pay) the complainant redress on the basis that the complainant would not have bought the *payment protection contract* they bought.

App 3.11.2	R	The *firm* (or, where applicable, a successor) must as soon as reasonably practicable, and no later than 29 November 2017, send a written communication to the complainant which:

(1) informs the complainant that, despite having already made a *complaint* in relation to the sale of a *payment protection contract*, they can make a further *complaint* against the *CCA lender* in relation to a failure to disclose commission;

(2) makes clear the identity of the *CCA lender*, where this is known to the seller or can be identified by them following reasonable steps;

(3) informs the complainant of the 29 August 2019 time limit;

(4) refers to the availability of relevant further information on the *FCA*'s website (whose address should be provided) or by contacting the *FCA*'s PPI contact centre (whose telephone number should be provided); and

(5) where the *firm* is also the *CCA lender*, informs the complainant of its arrangements for handling further *complaints* about a failure to disclose commission.

App 3.11.3	R	The obligation to send a written communication does not apply where, in relation to the relevant *payment protection contract* the *firm*, or where appropriate the *Financial Ombudsman Service*, has previously considered, or indicated to the complainant in writing that it will consider, a *complaint* on the basis of a failure to disclose profit share and/or commission.

Appendix 2
Examples supporting the Handbook text

Example 1

Single premium PPI on a loan. Undisclosed commission and anticipated profit share creates an unfair relationship. The loan and the PPI policy ran the full term.

As described in DISP App 3.7A.3E, the firm should pay the complainant a sum equal to the total commission paid by the complainant for the PPI plus an amount representing any profit share payment minus 50% of the total amount paid by the complainant for the PPI - including historic interest where relevant (plus simple interest on that amount).

In this example, this is the total PPI commission and profit share paid by the complainant through previous loan repayments minus 50% of the complainant's previous PPI loan repayments. Simple interest is calculated on each monthly PPI loan payment, from the time each payment was made to the time the compensation is paid.

Loan and policy details:

Total monthly loan repayments (including interest)	£150
Monthly amount of PPI loan payments (including interest)	£50
Commission rate plus profit share (as a percentage of the premium)	60%
Term of policy (in months)	60
Period from the start of the loan to date (in months)	72

Compensation calculation:

Total commission and profit share in monthly loan repayments (60% x £50)	£30
Total commission and profit share paid over term of policy (£30 x 60 months)	£1,800
50% of total PPI loan repayments over term of policy (£50 x 50% x 60 months)	£1,500
Compensation for commission and profit share in excess of 50% of PPI loan payments (£1,800 - £1,500)	£300

8% p.a. simple interest on each payment, calculated as:

- Interest on first payment made = £5 x 8% x 72/12
  (8% p.a. simple interest on £5 payment over 72 months (time since payment was made)) plus
- Interest on second payment made = £5 x 8% x 71/12 (etc)
- Total interest = £5 x 8% x (72 + 71 + … + 14 + 13)/12
  (Final payment on the loan was made 13 months ago)

Total interest	£85*
Total compensation	**£385**

Example 2

Single premium PPI on a loan. Undisclosed commission and anticipated profit share creates an unfair relationship. The loan was paid off early and the policy cancelled.

As described in DISP App 3.7A.3E, the firm should pay the complainant a sum equal to the total commission paid by the complainant for the PPI plus an amount representing any profit share payment minus 50% of the total amount paid by the complainant for the PPI - including historic interest where relevant (plus simple interest on that amount).

In this example, this is the total PPI commission and profit share paid by the complainant through previous loan repayments minus 50% of the complainant's previous PPI loan repayments. Simple interest is calculated on each monthly PPI loan payment, from the time each payment was made to the time the compensation is paid.

The firm should also make a payment to the consumer equal to the excess commission and profit share in the final payment the consumer paid to settle their loan plus simple interest on that amount from the time it was paid to the time the compensation is paid.

Loan and policy details:	
Loan amount	£4,700
PPI premium	£857
Total loan	£5,557
APR	10%
Commission rate plus profit share (as a percentage of the premium)	75%
Monthly loan payment (without PPI)	£100
Monthly amount of PPI policy loan payments (including interest)	£18
Term of PPI policy (in months)	60
Numbers of payments before the loan was redeemed (in months)	36
Duration since loan redemption and PPI policy cancellation (in months)	48
Cost of redeeming the loan at 36 months (gross of any PPI rebate)	£2,559
PPI rebate paid to loan at redemption (assuming that at 36 months the rebate is 14% of the original premium i.e. 14% of £857)	£120
Cost of redeeming the loan at 36 months (gross of any PPI rebate) if commission and profit share had been 50% of the PPI premium	£2,460
PPI rebate paid to loan at redemption (assuming commission and profit share was 50% of the premium and at 36 months the rebate was 14% of the premium)	£90

Redress is calculated in two parts: the monthly overpayments and the overpayment on redemption of the loan.

Monthly overpayments calculation:

Total commission and profit share in monthly loan repayments (75% x £18)	£13.50
Total commission and profit share paid to date of settlement (£13.50 x 36 months)	£486
50% of total PPI loan repayments to date of settlement (50% x £18 x 36 months)	£324
Compensation for commission and profit share in excess of 50% of PPI loan payments	£162

8% p.a. simple interest on each PPI payment in excess of 50% of PPI loan repayment since the month it was paid, calculated as follows:

- Interest on first payment made = £4.50 x 8% x 84/12
  (8% p.a. simple interest on £4.50 payment over 84 months) plus
- Interest on second payment made = £4.50 x 8% x 83/12 (etc)
- Total interest = £4.50x 8% x (84 + 83 + … + 49 + 48)/12

Total interest	£73.26*
Total compensation for monthly overpayments	**£235.26**

Overpayment on loan redemption calculation:

Actual net loan balance after rebate was deducted (£2,559 minus £120)	£2,439
Notional loan balance after rebate deducted (assuming commission and profit share was 50% of the premium i.e. £2,460 minus £90)	£2,370
Extra payment on redemption of the loan (£2,439 minus £2,370)	£69
Plus 8% p.a. simple interest over period since loan was redeemed which is 48 months:	£22.08*
Total compensation for overpayment on loan redemption:	**£91.08**
Total compensation (£235.26 + £91.08):	**£326.34**

Example 3

Single premium PPI on loans. Undisclosed commission and anticipated profit share creates an unfair relationship. The PPI was cancelled early when the loan was refinanced with a new loan. PPI was added to the second loan and undisclosed commission and anticipated profit share created an unfair relationship again. The second loan was also paid off early.

As described in DISP App 3.7A.3E, the firm should pay the complainant a sum equal to the total commission paid by the complainant for the PPI plus an amount representing any profit share payment minus 50% of the total amount paid by the complainant for the PPI - including historic interest where relevant (plus simple interest on that amount).

In this example, this is the total PPI commission and profit share paid by the complainant on both their loans minus 50% of the complainant's actual PPI loan repayments. It also includes the extra loan repayments the complainant paid on loan 2 because commission and profit share was carried over as part of the PPI from loan 1 to loan 2. Simple interest is calculated on each monthly PPI loan payment, from the time each payment was made to the time the compensation is paid. The compensation should also include the commission and profit share included in the final payment made by the complainant to repay their second loan.

First loan and policy details:	
Loan amount	£9,400
PPI premium	£1,700
Total loan	£11,100
Commission rate plus profit share (as a percentage of the premium)	80%
PPI premium (assuming 50% commission and profit share)	£1,190
Total loan (assuming 50% commission and profit share)	£10,590
APR	10%
Monthly loan payment (without PPI)	£200
Monthly PPI loan payments (including interest)	£36
Monthly PPI payments if commission/profit share had been 50% of the premium	£25.20
Term of loan and PPI policy (in months)	60
Duration of payments (in months)	12
Time since loan refinanced (in months)	72

Loan 1 - Redress is calculated in two parts for loan 1:

Historic monthly overpayments calculation for loan 1	
Total commission/ profit share in monthly loan repayments (80% x £36)	£28.80
Total commission/ profit share paid to date of settlement (£28.80 x 12 months)	£345.60
50% of total PPI loan repayments to date of settlement (50% x £36 x 12 months)	£216
Compensation for commission/ profit share in excess of 50% of PPI loan payments	£129.60
8% p.a. simple interest on each PPI payment in excess of 50% of PPI loan repayment since the month it was paid, calculated as follows: • Interest on first payment made = £10.80 x 8% x 84/12 (8% p.a. simple interest on £10.80 payment over 84 months) plus • Interest on second payment made = £10.80 x 8% x 83/12 (etc) • Total interest = £10.80 x 8% x (84 + 83 + … + 74 + 73)/12	
Total interest	£67.83*
Total compensation for monthly overpayments on loan 1	**£197.43**

Overpayment on loan redemption calculation for loan 1	
PPI rebate paid to loan at redemption (assuming that at 12 months the rebate is 59% of the original premium i.e. 59% of £1700)	£1,003
Actual redemption value of the loan after 12 months (after the PPI rebate)	£8,295.82
PPI rebate paid to loan at redemption (assuming commission/profit share was 50% of the premium and at 12 months the rebate was 59% of the premium)	£702.10
Notional redemption value of the loan after 12 months (if commission/profit share had been 50% of PPI premium, taking into account the rebate):	£8,169.48
The overpayment (actual redemption value - notional redemption value):	**£126.34**
This figure is refinanced into loan 2 so any further loss is calculated with reference to loan 2's duration and APR. 8% p.a. simple interest is not added. The amount is carried over into the loan 2 calculation.	

Second loan and policy details:	
Loan amount	£14,200
PPI premium	£2,800
Total loan	£17,000
Commission rate plus profit share (as a percentage of the premium)	75%
PPI premium (assuming 50% commission/profit share)	£2,100
Total loan (assuming 50% commission/profit share)	£16,300
APR	10%
Total monthly repayment (based on £16,300) including the following monthly PPI payments:	£361.20
- monthly PPI payments for loan 2	£59.49
- residual monthly PPI payments for loan 1 (see below for calculation)	£2.72
Monthly loan payment (assuming 50% commission/profit share on PPI on loan 2)	£346.33
Monthly loan payment (assuming 50% commission/profit share on PPI on loan 2 and smaller residual carried over from loan 1)	£343.61
Term of loan and PPI policy (in months)	60
Duration of payments (in months)	36
Time since loan repaid (in months)	48

Loan 2 - Redress is calculated in three parts for loan 2:

Monthly payments on the residual commission/profit share carried forward from loan 1 calculation	
The residual PPI on redemption of loan 1 as a % of loan 2 (Overpayment value of £126.34 / loan 2 amount of £14,200)	0.9%
Loan 2 monthly payment used towards paying off residual high commission/profit share on PPI on loan 1 (residual PPI of 0.9% x monthly payment without PPI on loan 2 of £301.71)	£2.72
Compensation for loan 2 payments as a result of high commission/profit share carried over from loan 1 (loan 1 residual PPI of £2.72 x duration of 36 months)	£97.92
8% p.a. simple interest on those payments	£43.52*
Total monthly overpayment compensation payable for residual loan 1	**£141.44**

Historic monthly overpayments calculation for loan 2	
Total commission/profit share in monthly loan repayments (75% x £59.49)	£44.62
Total commission/profit share paid to date of settlement (£44.62 x 36 months)	£1,606.32
50% of total PPI loan repayments to date of settlement (50% x £59.49 x 36 months)	£1,070.82
Compensation for commission/profit share in excess of 50% of PPI loan payments	£535.50
8% p.a. simple interest on each PPI payment in excess of 50% of PPI loan repayment since the month it was paid, calculated as follows: • Interest on first payment made = £14.87 x 8% x 108/12 (8% p.a. simple interest on £14.87 payment over 108 months) plus • Interest on second payment made = £14.87 x 8% x 107/12 (etc) • Total interest = £14.87 x 8% x (108 + 107 + … + 85 + 84)/12	
Total interest	£237.92*
Total compensation for monthly overpayments on loan 2	**£773.42**

Overpayment on loan redemption calculation for loan 2	
PPI rebate paid to loan at redemption (assuming that at 36 months the rebate is 14% of the original premium i.e. 14% of £2800)	£392
Actual redemption value of the loan after 36 months (after the PPI rebate)	£7,435.51
PPI rebate paid to loan at redemption (assuming commission/profit share was 50% of the premium and at 36 months the rebate was 14% of the premium)	£294
Notional redemption value of the loan after 36 months (if commission had not been carried forward from loan 1 and commission on PPI on loan 2 had been 50% of PPI premium, taking into account the rebate):	£7,211.2
The overpayment value (actual redemption value - notional redemption value):	£224.31
Plus 8% p.a. simple interest over period since loan was redeemed which is 48 months:	£71.78*
Total compensation for overpayment on loan redemption:	**£296.09**

Total compensation for overpayments to loan 1:	**£197.43**
Total compensation for overpayments to loan 2 (£141.44 + £773.42):	**£914.86**
Total compensation for extra payment to settle loan 2:	**£296.09**
Total compensation for unfair relationship on loan 1 and 2:	**£1408.38**

Example 4

Regular premium PPI on a credit card. Undisclosed commission and anticipated profit share creates an unfair relationship. Commission and profit share are stable. The credit card and PPI policy are live.

A detailed month-by-month example shows firms how they might reconstruct a complainant's credit card account to refund appropriately the extra the complainant was charged and/or paid each month because the actual commission and profit share was more than 50% of the total cost of each PPI premium (as described in DISP App 3.7A.3A).

Credit card and PPI policy details	
Calculation date	Month 20
Monthly interest rate	1.5%
PPI cost (per £100 of credit card balance)	£0.79

Commission	
Commission rate plus profit share (as a percentage of the premium)	72%
Difference between actual commission (72%) and 50%	22%
100% less 22%	78%
Revised cost of PPI premium (per £100 of credit card balance) (78% of £0.79)	£0.62

Compensation	
Difference between actual closing balance and reconstructed closing balance	£1.64
Cumulative difference between payments	£4.60
Simple interest	£0.15*
Total	**£6.39**

In addition, as described in DISP App 3.7A.7E, the firm should disclose the current level of known or reasonably foreseeable commission and currently anticipated profit share and give the complainant the choice of continuing with the policy without change or cancelling the policy without penalty.

Month	Opening balance	Spend	PPI	Interest	Fees	Payment	Closing balance	Opening balance	Spend	PPI	Interest	Fees	Payment	Closing balance	Difference between payments	Simple interest
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
1	£0.00	£23.75	£0.19	£0.00	£0.00	£0.00	£23.94	£0.00	£23.75	£0.15	£0.00	£0.00	£0.00	£23.90	£0.00	£0.00
2	£23.94	£24.30	£0.30	£0.36	£0.00	£10.00	£38.90	£23.90	£24.30	£0.24	£0.36	£0.00	£10.00	£38.79	£0.00	£0.00
3	£38.90	£25.05	£0.35	£0.58	£0.00	£20.00	£44.89	£38.79	£25.05	£0.28	£0.58	£0.00	£20.00	£44.70	£0.00	£0.00
4	£44.89	£125.10	£0.56	£0.67	£0.00	£100.00	£71.22	£44.70	£125.10	£0.44	£0.67	£0.00	£100.00	£70.91	£0.00	£0.00
5	£71.22	£25.75	£0.21	£1.07	£0.00	£71.22	£27.03	£70.91	£25.75	£0.17	£1.06	£0.00	£70.91	£26.98	£0.31	£0.03
6	£27.03	£47.80	£0.44	£0.41	£0.00	£20.00	£55.67	£26.98	£47.80	£0.34	£0.40	£0.00	£20.00	£55.53	£0.00	£0.00
7	£55.67	£52.35	£0.54	£0.84	£0.00	£40.00	£69.40	£55.53	£52.35	£0.43	£0.83	£0.00	£40.00	£69.14	£0.00	£0.00
8	£69.40	£71.00	£1.04	£1.04	£0.00	£10.00	£132.48	£69.14	£71.00	£0.81	£1.04	£0.00	£10.00	£131.99	£0.00	£0.00
9	£132.48	£99.20	£1.45	£1.99	£0.00	£50.00	£185.12	£131.99	£99.20	£1.14	£1.98	£0.00	£50.00	£184.30	£0.00	£0.00
10	£185.12	£21.65	£1.26	£2.78	£0.00	£50.00	£160.81	£184.30	£21.65	£0.98	£2.76	£0.00	£50.00	£159.70	£0.00	£0.00
11	£160.81	£250.00	£2.87	£2.41	£0.00	£50.00	£366.09	£159.70	£250.00	£2.24	£2.40	£0.00	£50.00	£364.34	£0.00	£0.00
12	£366.09	£346.40	£4.88	£5.49	£0.00	£100.00	£622.86	£364.34	£346.40	£3.82	£5.47	£0.00	£100.00	£620.03	£0.00	£0.00
13	£622.86	£13.95	£1.15	£9.34	£0.00	£500.00	£147.31	£620.03	£13.95	£0.89	£9.30	£0.00	£500.00	£144.16	£0.00	£0.00
14	£147.31	£110.45	£1.90	£2.21	£0.00	£20.00	£241.86	£144.16	£110.45	£1.47	£2.16	£0.00	£20.00	£238.25	£0.00	£0.00
15	£241.86	£21.15	£0.20	£3.63	£0.00	£241.86	£24.97	£238.25	£21.15	£0.15	£3.57	£0.00	£238.25	£24.88	£3.62	£0.12
16	£24.97	£39.95	£0.48	£0.37	£0.00	£5.00	£60.77	£24.88	£39.95	£0.37	£0.37	£0.00	£5.00	£60.57	£0.00	£0.00
17	£60.77	£452.85	£3.27	£0.91	£0.00	£100.00	£417.81	£60.57	£452.85	£2.57	£0.91	£0.00	£100.00	£416.90	£0.00	£0.00
18	£417.81	£11.75	£3.05	£6.27	£0.00	£50.00	£388.88	£416.90	£11.75	£2.39	£6.25	£0.00	£50.00	£387.29	£0.00	£0.00
19	£388.88	£24.60	£3.24	£5.83	£0.00	£9.32	£413.23	£387.29	£24.60	£2.54	£5.81	£0.00	£8.64	£411.60	£0.68	£0.00
														£1.64	£4.60	£0.15

Example 5

Regular premium PPI on a credit card. Undisclosed commission and anticipated profit share creates an unfair relationship. Commission and profit share vary. The credit card and PPI policy are live.

A detailed month-by-month example shows firms how they might reconstruct a complainant's credit card account to refund appropriately the extra the complainant was charged and/or paid each month because the actual commission and profit share was more than 50% of the total cost of each PPI premium (as described in DISP App 3.7A.3A).

Credit card and PPI policy details	
Calculation date	Month 20
Monthly interest rate	1.5%
PPI cost (per £100 of credit card balance)	£0.79

Commission		
Commission rate plus profit share (as a percentage of the premium)	54%	62%
Difference between actual commission and 50%	4%	12%
100% less difference	96%	88%
Revised cost of PPI premium (per £100 of credit card balance)	£0.76	£0.70

Compensation	
Difference between actual closing balance and reconstructed closing balance	£1.17
Cumulative difference between payments	£35.53
Simple interest	£1.18*
Total	**£37.89**

In addition, as described in DISP App 3.7A.7E, the firm should disclose the current level of known or reasonably foreseeable commission and currently anticipated profit share and give the complainant the choice of continuing with the policy without change or cancelling the policy without penalty.

Month	Opening balance	Spend	PPI	Interest	Fees	Payment	Closing balance	Opening balance	Spend	PPI	Interest	Fees	Payment	Closing balance	Difference between payments	Simple interest	Commission
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R
1	£0.00	£1,003.40	£7.93	£0.00	£0.00	£0.00	£1,011.33	£0.00	£1,003.40	£7.63	£0.00	£0.00	£0.00	£1,011.03	£0.00	£0.00	54%
2	£1,011.33	£2,788.55	£29.74	£15.17	£0.00	£50.00	£3,794.79	£1,011.03	£2,788.55	£28.61	£15.17	£0.00	£50.00	£3,793.35	£0.00	£0.00	54%
3	£3,794.79	£139.95	£30.59	£56.92	£0.00	£120.00	£3,902.25	£3,793.35	£139.95	£29.41	£56.90	£0.00	£120.00	£3,899.62	£0.00	£0.00	54%
4	£3,902.25	£93.20	£31.08	£58.53	£0.00	£120.00	£3,965.06	£3,899.62	£93.20	£29.88	£58.49	£0.00	£120.00	£3,961.19	£0.00	£0.00	54%
5	£3,965.06	£0.00	£27.84	£59.48	£0.00	£500.00	£3,552.38	£3,961.19	£0.00	£26.76	£59.42	£0.00	£500.00	£3,547.36	£0.00	£0.00	54%
6	£3,552.38	£0.00	£27.69	£53.29	£0.00	£100.00	£3,533.36	£3,547.36	£0.00	£26.60	£53.21	£0.00	£100.00	£3,527.18	£0.00	£0.00	54%
7	£3,533.36	£223.15	£29.31	£53.00	£0.00	£100.00	£3,738.82	£3,527.18	£223.15	£28.14	£52.91	£0.00	£100.00	£3,731.38	£0.00	£0.00	54%
8	£3,738.82	£69.00	£28.94	£56.08	£0.00	£200.00	£3,692.84	£3,731.38	£69.00	£27.79	£55.97	£0.00	£200.00	£3,684.14	£0.00	£0.00	54%
9	£3,692.84	£1,439.00	£38.61	£55.39	£0.00	£300.00	£4,925.85	£3,684.14	£1,439.00	£37.08	£55.26	£0.00	£300.00	£4,915.48	£0.00	£0.00	54%
10	£4,925.85	£10.55	£38.48	£73.89	£0.00	£140.00	£4,908.76	£4,915.48	£10.55	£34.02	£73.73	£0.00	£140.00	£4,893.78	£0.00	£0.00	62%
11	£4,908.76	£310.00	£40.62	£73.63	£0.00	£150.00	£5,183.01	£4,893.78	£310.00	£35.89	£73.41	£0.00	£150.00	£5,163.08	£0.00	£0.00	62%
12	£5,183.01	£346.40	£42.72	£77.75	£0.00	£200.00	£5,449.88	£5,163.08	£346.40	£37.71	£77.45	£0.00	£200.00	£5,424.63	£0.00	£0.00	62%
13	£5,449.88	£13.95	£39.86	£81.75	£0.00	£500.00	£5,085.43	£5,424.63	£13.95	£35.14	£81.37	£0.00	£500.00	£5,055.09	£0.00	£0.00	62%
14	£5,085.43	£112.30	£39.61	£76.28	£0.00	£260.00	£5,053.63	£5,055.09	£112.30	£34.88	£75.83	£0.00	£260.00	£5,018.10	£0.00	£0.00	62%
15	£5,053.63	£21.15	£0.77	£75.80	£0.00	£5,053.63	£97.72	£5,018.10	£21.15	£0.67	£75.27	£0.00	£5,018.10	£97.10	£35.53	£1.18	62%
16	£97.72	£39.95	£1.06	£1.47	£0.00	£5.00	£135.20	£97.10	£39.95	£0.93	£1.46	£0.00	£5.00	£134.44	£0.00	£0.00	62%
17	£135.20	£125.85	£1.29	£2.03	£0.00	£100.00	£164.36	£134.44	£125.85	£1.14	£2.02	£0.00	£100.00	£163.44	£0.00	£0.00	62%
18	£164.36	£0.00	£0.92	£2.47	£0.00	£50.00	£117.75	£163.44	£0.00	£0.81	£2.45	£0.00	£50.00	£116.70	£0.00	£0.00	62%
19	£117.75	£64.20	£0.90	£1.77	£0.00	£70.00	£114.62	£116.70	£64.20	£0.79	£1.75	£0.00	£70.00	£113.44	£0.00	£0.00	62%
														£1.17	£35.53	£1.18	

* These examples do not cover any potential tax liabilities arising from payment of compensation for an unfair relationship.

Financial Conduct Authority

PUB REF: 005237

25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk