Appendix 3 Handling Payment Protection Insurance complaints

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 set out how a *firm* which has received a *complaint* referred to in (1)(a) should assess:

(a) 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;

(b) whether any omission (other than the omission referred to in DISP App 3.3A.2E) to disclose either the existence of, or level of, commission and/or profit share made the relationship unfair under section 140A of the *CCA*;

(c) any other issue not dealt with in step 1 or step 2 set out in this appendix.

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 (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 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.

App3.1.3 G 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 3.6.2 E), the *firm* should presume that the complainant would not have bought the *payment protection contract* they bought; and

(2) for certain of those breaches or failings (see ■ DISP App 3.7.7 E), 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* they bought.

App3.1.4 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* they bought. *CCA lenders* should still go on to consider step 2 in such cases.

Step 2

App3.1.4A 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

App3.1.5 G 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;

(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.

3.2 The assessment of a complaint

App3.2.-1 G This section applies to both step 1 and step 2.

App3.2.1 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.

App3.2.2 G The *firm* should seek to establish the true substance of the *complaint*, rather than taking a narrow interpretation of the issues raised, and should not focus solely on the specific expression of the *complaint*. This is likely to require an approach to *complaint* handling that seeks to clarify the nature of the *complaint*.

App3.2.3 G A *firm* may need to contact a complainant directly to understand fully the issues raised, even where the *firm* received the *complaint* from a third party acting on the complainant's behalf. The *firm* should not use this contact to delay the assessment of the *complaint*.

App3.2.4 G Where a *complaint* raises (expressly or otherwise) issues that may relate to the original sale or a subsequently rejected claim then, irrespective of the main focus of the *complaint*, the *firm* should pro-actively consider whether the issues relate to both the sale and the claim, and assess the *complaint* and determine redress accordingly.

App3.2.5 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.

App3.2.6 G The *firm* should take into account any information it already holds about the sale and consider other issues that may be relevant to the sale identified by the *firm* through other means, for example, the root cause analysis described in ■ DISP App 3.4.

App3.2.7 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.

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.

App 3.3.1 G Where a *complaint* is made, the *firm* should assess the *complaint* fairly, giving appropriate weight and balanced consideration to all available evidence, including what the complainant says and other information about the sale that the *firm* identifies. The *firm* is not expected automatically to assume that there has been a breach or failing.

App 3.3.2 G The *firm* should not rely solely on the detail within the wording of a *policy's* terms and conditions to reject what a complainant recalls was said during the sale.

App 3.3.3 G The *firm* should recognise that oral evidence may be sufficient evidence and not dismiss evidence from the complainant solely because it is not supported by documentary proof. The *firm* should take account of a complainant's limited ability fully to articulate his *complaint* or to explain his actions or decisions made at the time of the sale.

App 3.3.4 G Where the complainant's account of events conflicts with the *firm's* own records or leaves doubt, the *firm* should assess the reliability of the complainant's account fairly and in good faith. The *firm* should make all reasonable efforts (including by contact with the complainant where necessary) to clarify ambiguous issues or conflicts of evidence before making any finding against the complainant.

App 3.3.5 G The *firm* should not reject a complainant's account of events solely on the basis that the complainant signed documentation relevant to the purchase of the *policy*.

App 3.3.6 G The *firm* should not reject a *complaint* because the complainant failed to exercise the right to cancel the *policy*.

App 3.3.7 G The *firm* should not consider that a successful claim by the complainant is, in itself, sufficient evidence that the complainant had a need for the *policy* or had understood its terms or would have bought it regardless of any breach or failing by the *firm*.

App 3.3.8 G The *firm* should not draw a negative inference from a complainant not having kept documentation relating to the purchase of the *policy* for any particular period of time.

App 3.3.9 G In determining a particular *complaint*, the *firm* should (unless there are reasons not to because of the quality and plausibility of the respective evidence) give more weight to any specific evidence of what happened during the sale (including any relevant documentation and oral testimony) than to general evidence of selling practices at the time (such as training, instructions or sales scripts or relevant audit or compliance reports on those practices).

App 3.3.10 G The *firm* should not assume that because it was not authorised to give advice (or because it intended to sell without making a recommendation) it did not in fact give advice in a particular sale. The *firm* should consider the available evidence and assess whether or not it gave advice or made a recommendation (explicitly or implicitly) to the complainant.

App 3.3.11 G The *firm* should consider in all situations whether it communicated information to the complainant in a way that was fair, clear and not misleading and with due regard to the complainant's information needs.

App 3.3.12 G In considering the information communicated to the complainant and the complainant's information needs, the evidence to which a *firm* should have regard includes:

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

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

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

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

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

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

App 3.3.13 G The *firm* should not reject a *complaint* solely because the complainant had held a *payment protection contract* previously.

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.

3.4 Root cause analysis

App 3.4.-1 G This section applies to both step 1 and step 2, as appropriate.

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

(1) the concerns raised by complainants (both at the time of the sale and subsequently);

(2) the reasons for both rejected claims and *complaints*;

(3) the *firm's* stated sales practice(s) at the relevant time(s);

(4) evidence available to the *firm* about the actual sales practice(s) at the relevant time(s) (this might include recollections of staff and complainants, compliance records, and other material produced at the time about specific transactions, for example call recordings and incentives given to *advisers*);

(5) relevant regulatory findings; and

(6) relevant decisions by the *Financial Ombudsman Service*.

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 (at step 1) to a breach or failing or (at step 2) to a failure to disclose commission in the individual case, even if those problems were not referred to specifically by the complainant.

App 3.4.3 G Where a *firm* identifies (from its *complaints* or otherwise) recurring or systemic problems in its sales practices for a particular type of *payment protection contract*, either for its sales in general or for those from a particular location or sales channel, it should (in accordance with *Principle* 6 (Customers' interests) and to the extent that it applies), consider whether it ought to act with regard to the position of *customers* who may have suffered detriment from, or been potentially disadvantaged by such problems but who have not complained and, if so, take appropriate and proportionate measures to ensure that those *customers* are given appropriate redress or a proper opportunity to obtain it. In particular, the *firm* should:

(1) ascertain the scope and severity of the consumer detriment that might have arisen; and

(2) consider whether it is fair and reasonable for the *firm* to undertake proactively a redress or remediation exercise, which may include contacting *customers* who have not complained.

3.5 Re-assessing rejected claims at step 1

App 3.5.-1 E This section applies to step 1.

App 3.5.1 E Where a *complaint* is about the sale of a *policy*, the *firm* should, as part of its investigation of the *complaint*, determine whether any claim on that *policy* was rejected, and if so, whether the complainant may have reasonably expected that the claim would have been paid.

App 3.5.2 G For example, the complainant may have reasonably expected that the claim would have been paid where the *firm* failed to disclose appropriately an exclusion or

limitation later relied on by the *insurer* to reject the claim and it should have been clear to the *firm* that that exclusion or limitation was relevant to the complainant.

3.6 Determining the effect of a breach or failing at step 1

App3.6.-1 E This section applies to step 1.

App3.6.1 E 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.

App3.6.2 E In the absence of evidence to the contrary, the *firm* should presume that the complainant would not have bought the *payment protection contract* he bought if the sale was substantially flawed, for example where the *firm*:

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

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

(3) made the sale without the complainant's explicit agreement to purchase the *policy*; or

(4) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the significant exclusions and limitations, i.e. those that would tend to affect the decisions of *customers* generally to buy the *policy*; or

(5) did not, for an advised sale (including where the *firm* gave advice in a non-advised sales process) take reasonable care to ensure that the *policy* was suitable for the complainant's demands and needs taking into account all relevant factors, including level of cover, cost, and relevant exclusions, excesses, limitations and conditions; or

(6) did not take reasonable steps to ensure the complainant only bought a *policy* for which he was eligible to claim benefits; or

(7) found, while arranging the *policy*, that parts of the cover did not apply but did not disclose this to the *customer*, in good time before the sale was concluded, and in a way that was fair, clear and not misleading; or

(8) did not disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading, the total (not just monthly) cost of the *policy* separately from any other prices (or the basis for calculating it so that the complainant could verify it); or

(9) recommended a single premium *payment protection contract* without taking reasonable steps, where the *policy* did not have a pro-rata refund, to establish whether there was a prospect that the complainant would repay or refinance the loan before the end of the term; or

(10) provided misleading or inaccurate information about the *policy* to the complainant; or

(11) sold the complainant a *policy* where the total cost of the *policy* (including any interest paid on the premium) would exceed the benefits payable under the *policy* (other than benefits payable under life cover); or

(12) in a sale of a single premium *payment protection contract*, failed to disclose to the complainant, in good time before the sale was concluded, and in a way that was fair, clear and not misleading:

(a) that the premium would be added to the amount provided under the credit agreement, that interest would be payable on the premium and the amount of that interest; or

(b) (if applicable) that the term of the cover was shorter than the term of the credit agreement and the consequences of that mismatch; or

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

App 3.6.3 E Relevant evidence might include the complainant's demands, needs and intentions at the time of the sale and any other relevant evidence, including any testimony by the complainant about his reasons at the time of the sale for purchasing the *payment protection contract*.

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

App 3.7.1 E Where the *firm* concludes in accordance with ■ DISP App 3.6 that the complainant would still have bought the *payment protection contract* he bought, no redress will be due to the complainant in respect of the identified breach or failing, subject to ■ DISP App 3.7.6 E.

App 3.7.2 E Where the *firm* concludes that the complainant would not have bought the *payment protection contract* he bought, and the *firm* is not using the alternative approach to redress (set out in ■ DISP App 3.7.7 E to ■ 3.7.15 E) or other appropriate redress (see ■ DISP App 3.8), the *firm* should, as far as practicable, put the complainant in the position he would have been if he had not bought any *payment protection contract*.

App 3.7.3 E In such cases the *firm* should pay to the complainant a sum equal to the total amount paid by the complainant in respect of the *payment protection contract* including historic interest where relevant (plus simple interest on that amount). If the complainant has received any rebate, for example if the *customer* cancelled a single premium *payment protection contract* before it ran full term and received a refund, the *firm* may deduct the value of this rebate from the amount otherwise payable to the complainant.

App 3.7.4 E Additionally, where a single premium was added to a loan:

(1) for live *policies*:

(a) subject to ■ DISP App 3.7.5 E, 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:

(i) removing amounts relating to the *payment protection contract* (including any interest and charges); and

(ii) ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the complainant had taken the loan without the *payment protection contract*; or

(b) where the *firm* is not able to arrange for the loan to be restructured (e.g. because the loan is provided by a separate *firm*), it should pay the complainant an amount equal to the difference between the actual loan balance and what the loan balance would have been if the *payment protection contract* (including any interest and charges) had not been added, deducting the current cancellation value. The *firm* should offer to pay any charges incurred if the complainant uses this amount to reduce his loan balance; and

(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 no premium had been added (plus simple interest) minus any applicable cancellation value.

App 3.7.5 E Where a claim was previously paid on the *policy*, the *firm* may deduct this from redress paid in accordance with ■ DISP App 3.7.3 E. If the claim is higher than the amount to be paid under ■ DISP App 3.7.3 E then the *firm* may also deduct the excess from the amount to be paid under ■ DISP App 3.7.4 E.

App 3.7.6 E Where the *firm* concludes that the complainant may have reasonably expected that a rejected claim would have been paid (see ■ DISP App 3.5) then:

(1) if the value of the claim exceeds the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant only the value of the claim (and simple interest on it as appropriate); and

(2) if the value of the claim is less than the amount of the redress otherwise payable to the complainant for a breach or failing identified in accordance with this appendix, the *firm* should pay to the complainant the value of that redress.

Alternative approach to redress: single premium policies

App 3.7.7 E Where the only breach or failing was within ■ DISP App 3.6.2 E (9) and/or ■ DISP App 3.6.2 E (12), and in the absence of evidence to the contrary, the *firm* may presume that instead of buying the single premium *payment protection contract* he bought, the complainant would have bought a regular premium *payment protection contract*.

App 3.7.8 E If a *firm* chooses to make this presumption, then it should do so fairly and for all relevant complainants in a relevant category of sale. It should not, for example, only use the approach for those complainants it views as being a lower underwriting risk or those complainants who have cancelled their *policies*.

App 3.7.9 E Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract*, the *firm* should offer redress that puts the complainant in the position he would have been if he had bought an alternative regular premium *payment protection contract*.

App 3.7.10 E The *firm* should pay to the complainant a sum equal to the amount in ■ DISP App 3.7.3 E less the amount the complainant would have paid for the alternative regular premium *payment protection contract*.

App 3.7.11 E The *firm* should consider whether it is appropriate to deduct the value of any paid claims from the redress.

App 3.7.12 E Additionally, where a single premium was added to a loan, ■ DISP App 3.7.4 E applies except that in respect of ■ DISP App 3.7.4 E (1)(a) the cancellation value should only be used if the complainant expressly wishes to cancel the *policy*.

App 3.7.13 E The *firm* should, for the purposes of redressing the *complaint*, use the value of £9 per £100 of benefits payable as the monthly price of the alternative regular premium *payment protection contract*. For example, if the monthly repayment amount in relation to the loan only is to be £200, the price of the alternative regular premium *payment protection contract* will be £18.

App 3.7.14 E Where the *firm* presumes that the complainant would have purchased a regular premium *payment protection contract* and if the complainant expressly wishes it, the existing cover should continue until the end of the existing *policy* term. The complainant should pay the price of the alternative regular premium *payment protection contract* (at ■ DISP App 3.7.13 E) and should be able to cancel at any time. This pricing does not apply where ■ DISP App 3.7.4 E (1)(b) applies.

App 3.7.15 E So that the complainant can make the decision on the continuation of cover from an informed position, the *firm* should:

(1) offer to provide details of the existing *payment protection contract*;

(2) inform the complainant that he may be able to find similar cover more cheaply from another provider in the event that he chooses to cancel the *policy* and take an alternative but remind the complainant that if his

circumstances (for example, his health or employment prospects) have changed since the original sale, he may not be eligible for cover under any new *policy* he buys;

(3) make the complainant aware of the changes to the cancellation arrangements if cover continues;

(4) explain how the future premium will be collected and the cost of the future cover; and

(5) refer the complainant to www.moneyadviceservice.org.uk as a source of information about a range of alternative *payment protection contracts*.

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.

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 the amount appropriately representing the total amount paid in respect of that period (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

App 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.

3.8 Other appropriate redress at steps 1 and 2

Step 1

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.

Step 2

App 3.8.3 E The remedies in ■ DISP App 3.7A are not exhaustive.

App 3.8.4 E 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.

3.9 Other matters concerning redress at steps 1 and 2

App 3.9.1 G Where the complainant's loan or credit card is in arrears the *firm* may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit

card balance, if the complainant accepts the *firm's* offer of redress. The *firm* should act fairly and reasonably in deciding whether to make such a payment.

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 or from its failure to disclose commission (as applicable), that were reasonably foreseeable as a consequence of the *firm's* breach or failing or of its failure to disclose commission, 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 or previous failures to disclose commission (see ■ DISP App 3.2.7 G) the redress to the complainant should address the cumulative financial impact.

App 3.9.4 G The *firm* should make any offer of redress to the complainant in a fair and balanced way. In particular, the *firm* should explain clearly to the complainant the basis for the redress offered including how any compensation is calculated and, where relevant, the rescheduling of the loan, and the consequences of accepting the offer of redress.

3.10 Application: evidential provisions and guidance

Step 1

App 3.10.1 E The *evidential provisions* in this appendix for step 1 apply in relation to *complaints* about sales that took place on or after 14 January 2005.

App 3.10.2 G The *guidance* in this appendix for step 1 applies in relation to *complaints* about sales whenever the sale took place. For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* in this appendix for step 1 as if they were *guidance*.

Step 2

App 3.10.2A E 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*.

Effect of contravention of evidential provisions

App 3.10.3 E Contravention of an *evidential provision* in this appendix may be relied upon as tending to establish contravention of ■ DISP 1.4.1 R.

3.11 Obligation to write letters to certain rejected complainants

Definitions

App 3.11.-1 R In this section:

(1) "purported complaint" means an expression of dissatisfaction which would have been a *complaint*, had it related to an activity which comes under the jurisdiction of the *Financial Ombudsman Service*;

(2) "recurring non-disclosure of commission" means any omission of the kind described at ■ DISP App 3.1.1G(3)(b); and

(3) "non-disclosure of commission" means "failure to disclose commission" as defined at ■ DISP App 3.1.5G(7) or recurring non-disclosure of commission.

Letters required to be sent by 29 November 2017

App 3.11.1 R ■ DISP App 3.11.2R and ■ DISP App 3.11.3R apply where:

(1) 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 *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.

Letters required to be sent by 29 April 2019

App 3.11.4 R ■ DISP App 3.11.5R and ■ DISP App 3.11.6R apply where, in relation to the sale of a *payment protection contract* which covers, covered or purported to cover a *credit agreement* (this includes partial coverage) a complainant has made:

(1) (in relation to a regular premium *payment protection contract*) a *complaint* to the *CCA lender* that was rejected before 30 January 2019 in that:

(a) it was considered under step 2 of ■ DISP Appendix 3 but redress on the basis that an unfair relationship under section 140A of the *CCA* had arisen was not offered; or

(b) it was not considered under step 2 of ■ DISP Appendix 3 because the *complaint* was treated as a purported complaint that did not come under the jurisdiction of the *Financial Ombudsman Service*; or

(2) a purported complaint to the selling *firm* that would otherwise have fallen to be considered under step 1 of ■ DISP Appendix 3 but was rejected before 30 January 2019 by that *firm* on the basis that it did not come under the jurisdiction of the *Financial Ombudsman Service*.

App 3.11.5 R The *firm* that rejected the *complaint* or purported complaint (or, where applicable, its successor) must as soon as reasonably practicable, and no later than 29 April 2019, send a written communication to the complainant which:

(1) in a case falling within ■ DISP App 3.11.4R(1), informs the complainant they can make a *complaint* against the *CCA lender* in relation to recurring non-disclosure of commission;

(2) in a case falling within■ DISP App 3.11.4R(2), informs the complainant they can make a *complaint* against the *CCA lender* in relation to non-disclosure of commission;

(3) where the firm is not the *CCA lender*, makes clear the identity of the *CCA lender* where this is known or can be identified by the *firm* by following reasonable steps;

(4) where the *firm* is the *CCA lender*, informs the complainant of its arrangements for handling *complaints* about non-disclosure of commission;

(5) informs the complainant of the 29 August 2019 time limit; and

(6) 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 (the telephone number of which should be provided).

App 3.11.6 R The obligation to send a written communication does not apply where:

(1) the *firm* is otherwise required to send such a written communication is the *CCA lender*, and knows that no non-disclosure of commission has occurred during a time which falls within the jurisdiction of the *Financial Ombudsman Service*;

(2) the complainant has already been offered or paid redress in respect of the *payment protection contract* (either on the basis that the complainant would not have bought the *payment protection contract* they bought or on the basis that an unfair relationship under section 140A of the *CCA* had arisen) by 29 April 2019;

(3) the *CCA lender* or the *Financial Ombudsman Service* has indicated to the complainant in writing that it will consider or reconsider the *complaint* or purported complaint and that consideration is not completed by 29 April 2019; or

(4) the *CCA lender* has, when considering or reconsidering a *complaint* or purported complaint, already considered recurring non-disclosure of commission and not offered redress on the basis that an unfair relationship under section 140A of the *CCA* had arisen.