Chapter 2A

The Consumer Duty



#### 2A.10 Redress or other appropriate action

## Purpose

2A.10.1 G The purpose of this section is to set out the conduct required of *firms* where they identify foreseeable harm has been caused to retail customers.

# Appropriate action

2A.10.2 R Where a *firm* is considering what action may be appropriate under ■ PRIN 2A.2.5R:

- (1) if a complaint or MiFID complaint has been received a firm shall follow the rules in DISP as applicable;
- (2) if no complaint or MiFID complaint has been received the following rules and guidance apply with the modifications set out below:
  - (a) DISP 1.1A.20R as if it read:

Once foreseeable harm has been identified by a MiFID investment firm, the firm must:

- (1)investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2)assess fairly, consistently and promptly:
  - (a) the subject matter of the foreseeable harm;
  - (b) [does not apply]
  - what remedial action or redress (c) (or both) may be appropriate;
  - if appropriate, whether it has reas-(d) onable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;
- (3)comply promptly with any offer of remedial action or redress accepted by the retail customer.
- (b) DISP 1.1A.21G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under DISP 1.1A.20R(2) include the following:

(1)	all the evidence available and the particular circumstances of the foreseeable harm;
(2)	similarities with complaints received by the firm and with other instances in which fore-seeable harm has been caused without a complaint;
(3)	relevant guidance published by the FCA, other relevant regulators, the Financial Ombudsman Service or former schemes; and
(4)	appropriate analysis of decisions by the Financial Ombudsman Service concerning complaints which were similar in their fact pattern or outcomes to the circumstances which led to the foreseeable harm in question.

### (c) ■ DISP 1.4.1R as if it read:

Once foreseeable harm has been identified by a firm, it must:

- (1) investigate the circumstances which led to the foreseeable harm competently, diligently and impartially, obtaining additional information as necessary;
- (2) assess fairly, consistently and promptly:
  - (a) the subject matter of the foreseeable harm;
  - (b) [does not apply]
  - (c) what remedial action or redress (or both) may be appropriate;
  - (d) if appropriate, whether it has reasonable grounds to be satisfied that another *firm* may be solely or jointly responsible for causing the foreseeable harm;

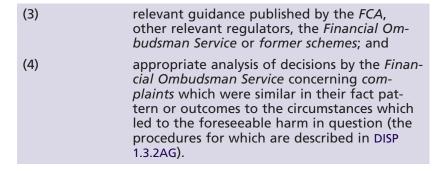
taking into account all relevant factors.

- (3) offer redress or remedial action when it decides this is appropriate;
- (4) explain to the *retail customer* promptly and in a way that is fair, clear and not misleading that harm has been identified, its assessment of the harm, its decision as to what action is appropriate and the fact that the *retail customer* has a right to make a *complaint* if it is not satisfied with that decision:
- (5) comply promptly with any offer of remedial action or redress accepted by the *retail customer*.

### (d) ■ DISP 1.4.2G as if it read:

Factors that may be relevant in the assessment of the foreseeable harm under DISP 1.4.1R(2) include the following:

- (1) all the evidence available and the particular circumstances of the foreseeable harm;
- (2) similarities with complaints received by the firm and with other instances in which foreseeable harm has been caused without a complaint;



- 2A.10.3 A firm, MiFID investment firm or third country investment firm which identifies that it has caused retail customers foreseeable harm but which does not have a client relationship with that customer or the means to contact them shall take all reasonable steps to notify a customer of the matters in ■ DISP 1.4.1R as modified by ■ PRIN 2A.10.2R(2).
- 2A.10.4 G Reasonable steps for the purposes of ■2A.10.3R might include (among other things) contacting the distributor of the relevant product and asking whether information can be passed on to the retail customer.
- 2A.10.5 Where a firm, MiFID investment firm or third country investment firm identifies that a retail customer has been caused harm but concludes that another firm in the distribution chain was the sole or joint cause of that harm, it shall promptly notify that other firm and provide appropriate information about the harm caused.