

**DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION
INSURANCE) (AMENDMENT No 3) INSTRUMENT 2018**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the power in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ('the Act').

Commencement

- B. This instrument comes into force on 8 November 2018.

Amendments to the Handbook and other guidance

- C. The Dispute Resolution: Complaints sourcebook (DISP) is amended in accordance with Annex A to this instrument.
- D. The guidance at Annex B to this instrument is issued.

Citation

- E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 3) Instrument 2018.

By order of the Board
25 October 2018

Annex A

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Appendix 3 Handling Payment Protection Insurance complaints**App 3.1 Introduction**

Application

3.1.1G ...

(3) It does not ~~require firms to~~ 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) ...

...

Annex B

Non-Handbook guidance

What is RND?

Recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share (RND) is a kind of omission or omissions that can make a credit relationship unfair for the purposes of s140A Consumer Credit Act 1974 (CCA).

When do firms need to assess RND?

The need to assess RND applies equally to regular premium PPI on restricted credit and on non-restricted credit.

Any RND on or after 6 April 2007 would bring a complaint about restricted credit within scope of our complaint handling rules in DISP (provided the credit agreement is in scope of s140A CCA), so that the RND after that date would need to be assessed. This will be the case even if the PPI was sold, and credit relationship entered into, before that date.

Firms do not have to consider RND if they decide under our Plevin rules and guidance ('Step 2' in DISP App 3) that not disclosing the existence or level of commission and/or profit share at the point of sale gave rise to an unfair relationship under s140A CCA, and redress the complaint accordingly. Nor do firms have to assess RND if they decide under our rules and guidance concerning mis-selling ('Step 1' in DISP App 3) that the PPI was mis-sold and provide full redress.

Firms should assess whether any RND makes the relationship unfair under s140A CCA even if the complaint does not expressly mention non-disclosure of commission (whether at point of sale or later).

How should firms assess RND?

Firms should adopt a fair and consistent approach to making these assessments of RND, including taking into account what they learn from the decisions of the Financial Ombudsman Service.

Our view is that in assessing and, where appropriate, redressing complaints involving RND, firms should take account of all relevant factors. In many cases it may be reasonable for firms to draw from our rules and guidance on non-disclosure of commission at point of sale. This is because, in our view, such non-disclosure has much in common with the issues around RND, so that, sensibly applied, this approach would tend to provide for fair outcomes in many complaints involving RND.

(Expressions in the text in Annex B which are defined in the Glossary to the FCA Handbook of rules and guidance have the meanings given in those definitions, unless the context otherwise requires. "PPI" means "payment protection contract", as defined in the Glossary.)

[*Editor's note:* We will not publish the text in Annex B in the Handbook, but in a separate Policy Statement.]