

DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 4) INSTRUMENT 2019

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 139A (Power of the FCA to give guidance); and
 - (4) paragraph 13 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 on 30 January 2019.

Amendments to the Handbook

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

Non-Handbook guidance

- E. The non-Handbook guidance at Annex B to this instrument is issued.

Citation

- F. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 4) Instrument 2019.

By order of the Board
24 January 2019

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

3.1.1 G ...

- (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).

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App 3.11 Obligation to write letters to certain rejected complainants

Definitions

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

3.11.1 R ~~This section applies~~ *DISP* App 3.11.2R and *DISP* App 3.11.3R apply where:

...

...

Letters required to be sent by 29 April 2019

- 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*.
- 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).

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.

Annex B

Non-Handbook guidance

1. The four boxes below describe the criteria that we consider put a previous complainant into one of four populations, including as relevant to:

- a supplementary mailing for sellers under our existing Plevin mailing rule in DISP 3.11.2R (Box 1)
- our new mailing requirement in DISP App 3.11.5R (as it applies to lenders) in relation to the recurring non-disclosure(s) of the existence of, or level of, commission and/or profit share (RND) (Box 2)
- our new mailing requirement in DISP App 3.11.5R (as it applies to PPI sellers (including brokers)) in relation to RND (Box 3) and Plevin (Box 4)

2. In the scenarios in each box, the seller may or may not be the same firm as the lender.

3. DISP App 3.11.5R treats the cases in Boxes 3 and 4 as equivalent, in that both should be told by a letter that they can make a new complaint about non-disclosure of commission (which could be in light of RND or Plevin, depending on the circumstances).

Box 1 Cases requiring supplementary mailing under existing Plevin mailing rule

The existing Plevin mailing obligation (DISP App 3.11.2R) requires the seller to write to consumers who made previous mis-selling complaints which it rejected on the merits as not mis-sold (if the credit agreement remained in force at 6 April 2008 and so is in scope of s140A Consumer Credit Act 1974 (CCA)).

We consider that the supplementary mailing required under the Plevin mailing rule will be relevant to the following classes of previous regular premium PPI complaint, where firms did not include these in their previous mailing.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was in a relevant Ombudsman predecessor scheme then, but the lender wasn't.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was in a relevant Ombudsman predecessor scheme then (with the lender's status then irrelevant as all restricted credit acts and omissions in that period are out of jurisdiction).

The credit agreement was entered and the PPI sold between 14 January 2005 and 6 April 2007 (with the seller's status then irrelevant as all PPI sales in that period are in jurisdiction, and the lender's status then irrelevant as all restricted credit acts and omissions in that period are out of jurisdiction).

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was in a relevant Ombudsman predecessor scheme then, but the lender wasn't.

In practice, we will not now insist on firms mailing those among these cases where the firm is also the lender and knows that there was no RND on or after 6 April 2007. This is because those cases would involve no loss on or after 6 April 2007 that needed to be redressed.

Box 2 - Cases where a previous Plevin complaint has been rejected but a new complaint could be made in light of RND

We consider that DISP App 3.11.5R as it applies to lenders will be relevant to the following classes of previous regular premium PPI complaint.

- a. Complaints about restricted or non-restricted credit PPI that have been rejected on the merits – eg the non-disclosed commission at point of sale was under the tipping point and it wasn't reasonably foreseeable then that it would go above the tipping point.

We would expect the firm to write to such cases about RND where commission had gone up after point of sale. We would expect this not only where it had gone above the 50% presumptive tipping point, as there may be some cases where a lower tipping point might apply in the particular recipient's circumstances.

- b. Complaints about restricted or non-restricted credit PPI that have been rejected as out of jurisdiction. This would be relevant to:

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the lender was not in a relevant Ombudsman predecessor scheme then.

The credit agreement was entered and the PPI sold between 1 December 2001 and 6 April 2007. The lender's status then is irrelevant because all restricted credit acts and omissions in that period are out of jurisdiction.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and
- there is RND on or after 6 April 2007, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the lender was not in a relevant Ombudsman predecessor scheme then.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and
- there is RND on or after 1 December 2001, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Box 3**Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about Plevin, but they can make an RND complaint that is in jurisdiction**

We consider that DISP App 3.11.5R as it applies to sellers will be relevant to the following classes of previous regular premium PPI complaint.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and neither the seller nor lender was in a relevant Ombudsman predecessor scheme then.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was not in a relevant Ombudsman predecessor scheme then. The lender's status then is irrelevant because all restricted credit acts and omissions in that period are out of jurisdiction.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA, and
- there is RND on or after 6 April 2007, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and neither the seller nor lender was in a relevant Ombudsman predecessor scheme then.

These consumers can make a new complaint in light of RND if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140 CCA, and
- there is RND on or after 1 December 2001, so that an RND complaint made in response to the mailing would be in DISP jurisdiction

Box 4**Cases where a previous mis-selling complaint had been rejected as out of jurisdiction and so the consumer had not been mailed about Plevin, but they can make a Plevin complaint in jurisdiction**

We consider that DISP App 3.11.5R as it applies to sellers will be relevant to the following classes of previous complaint about regular premium PPI or single premium PPI.

Restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was not in a relevant Ombudsman predecessor scheme then, but the lender was.

These consumers can make a new complaint in light of Plevin that would be in DISP jurisdiction if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA

Non-restricted credit

The credit agreement was entered and the PPI sold before 1 December 2001 and the seller was not in a relevant Ombudsman predecessor scheme then, but the lender was.

The credit agreement was entered and the PPI sold between 1 December 2001 and 14 January 2005, and the seller was not in a relevant Ombudsman predecessor scheme then. The lender's status then is irrelevant as non-restricted credit in that period is all in jurisdiction.

These consumers can make a new complaint in light of Plevin that would be in DISP jurisdiction if:

- the credit agreement remained in force at 6 April 2008 and so is in scope of s140A CCA

(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" and "Ombudsman predecessor scheme" means "former scheme", as defined in the Glossary.)