

Appendix 3

Handling Payment Protection Insurance complaints

3.1 Introduction

Application

App3.1.1 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

App3.1.1A 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.

App3.1.1B 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

App3.1.2 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.

App3.1.6 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.