

Appendix 3

Handling Payment Protection Insurance complaints

3.3 The approach to considering evidence at step 1

- App3.3.-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.
- App3.3.1** **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.
- App3.3.2** **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.
- App3.3.3** **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.
- App3.3.4** **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.
- App3.3.5** **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*.

- App3.3.6** **G** The *firm* should not reject a *complaint* because the complainant failed to exercise the right to cancel the *policy*.
- App3.3.7** **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*.
- App3.3.8** **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.
- App3.3.9** **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).
- App3.3.10** **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.
- App3.3.11** **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.
- App3.3.12** **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.

App3.3.13 G The *firm* should not reject a *complaint* solely because the complainant had held a *payment protection contract* previously.