

The Consumer Duty

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]
 - (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;
- (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 foreseeable 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*;

- (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 (the procedures for which are described in DISP 1.3.2AG).

2A.10.3 **R** 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 **R** 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.