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7 December 2018

By email: cp18-33@fca.org.uk

Dear Mr Watts,

CP 18/33 Regular premium PPI complaints and recurring non-disclosure of commission – Feedback on CP18/18, final guidance, and consultation on proposed mailing requirements

The Financial Services Consumer Panel welcomes the opportunity to respond to the FCA's consultation on 'Regular premium PPI complaints and recurring non-disclosure of commission – Feedback on CP18/18, final guidance, and consultation on proposed mailing requirements'.

The Panel's responses to the questions posed are set out below.

Q1: Do you agree with our assessment of the rationale for the proposed mailing requirements?

Q2: Do you agree with our description (in Annex 4) of the kinds of previously rejected complaints that would potentially fall within the proposed mailings?

Q3: Do you agree with our assessment of the scale, proportionality and feasibility of the proposed mailings?

Q4: Do you agree with our proposed approach to mailings by firms that were not the CCA lender?

The FCA should introduce new Handbook guidance to make clear that firms, when handling PPI complaints about regular premium PPI, should assess Regular Non-Disclosure (RND) of commission and whether it makes the relationship unfair under s.140A of the CCA. Letting details "emerge" from firms' experience with the FOS risks inconsistencies and some firms not paying attention to FOS rulings. It would be better for the FCA to propose rules and guidance about how to assess RND in PPI complaints

As noted in our previous responses to [CP 15/39](#) and to [CP 16/20](#), where the RND of commission makes the relationship unfair the firm should refund all of the commission paid and not just the portion over the FCA's 50% tipping point. The FCA's current approach has no justification given court rulings and consideration of what is fair and reasonable for the consumer. The FCA should reassess its approach.

The response rates for the existing Plevin mailing exercises (for consumers who have already had a complaint rejected) are low and we calculate that consumers are likely to suffer around £400 million of harm if the FCA continues with its flawed approach. Given this, the FCA's proposal that consumers should have to complain again (possibly for the third time) to have their complaint assessed properly and the RND of commission considered seem very unfair and likely

to have a disproportionate impact on vulnerable consumers and groups with a protected characteristic. As the FCA noted, some groups who bought PPI products affected by the proposed guidance have lower than average incomes, and may have lower financial confidence. As identified in the Equality Impact Assessment, this may make them less likely to complain.

Instead of being proactive, the FCA seeks to impose a burden on consumers to complain again when they will have absolutely no knowledge about the issue of RND or the fact that their complaint has previously been rejected unfairly. Only a small proportion of consumers who have had their complaint rejected will have gone to FOS. The FCA continues to expect some consumers to complain about PPI multiple times before they are treated fairly and get proper redress.

Instead of the mailing the FCA should require all consumers which it proposes to be covered by the mailing to have their cases assessed or reassessed automatically and for redress to be paid where necessary. This would be a far more efficient approach and would ensure that the harm caused by the inadequacies of the current approach is minimised.

In addition, we continue to hold the view expressed in our response to CP 15/39 and CP 16/20 that the FCA should require firms to reassess automatically all previously rejected complaints to determine if they are in scope of the new Plevin guidance.

Q5: What are your views of the equality and diversity implications of our proposed mailing requirements? Are there additional steps we could take in respect of relevant affected consumers?

The assessment of the equality and diversity implications is inadequate as it fails to consider options such as requiring firms to automatically reassess complaints for RND of commission. Customers with lower financial confidence and capability and those with protected characteristics may be less likely to respond to the mailing. The FCA's current approach will cause detriment to these customers which the FCA fails to take account of in its assessment. The FCA should produce an assessment of the detriment caused to these consumers and share it with the FCA Board.

Q6: Do you agree with our assessment of the costs and benefits of the proposed mailing requirements?

We note that the FCA continues to place no value on the time of the consumer in having to make another complaint. The FCA has not made an assessment of the detriment caused to consumers who do not respond to the mailing. This assessment should be completed and reported to the FCA Board.

The cost benefit analysis is also inadequate as it fails to consider the costs and benefits of alternative options such as requiring firms to automatically reassess complaints. The FCA seems to have not done or not published the "high level cost benefit analysis" used to help the FCA choose between several options.¹

Yours sincerely,

Sue Lewis
Chair, Financial Services Consumer Panel

¹ <https://www.fca.org.uk/publication/corporate/how-analyse-costs-benefits-policies.pdf>