Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Dear Lauren/Julian,

CP15/39 Rules and guidance on payment protection insurance complaints

The Financial Services Consumer Panel welcomes the opportunity to comment on the proposals set out in CP15/39.

Banks mis-sold PPI policies on an industrial scale, with £35.8 billion set aside for redress so far. A time bar on complaints risks the banks being let off the hook. It is in everyone's interest to draw a line under PPI, but this should not be allowed to happen until every consumer mis-sold a policy has had the redress to which they are entitled. Anything less will ensure consumer trust in the industry remains at rock bottom.

The mis-selling problem was compounded by an approach to redress which saw valid complaints rejected; very high uphold rates at the FOS; bank challenges to the regulatory rules; and widespread misconduct within several banks. This has resulted in thousands of consumers losing out on fair redress. The complaints-led approach also resulted in the significant growth of Claims Management Companies (CMCs). Although CMCs can help consumers through the complaints process, they take a significant chunk of any compensation in fees. As banks failed to contact consumers with PPI, and rejected legitimate claims, CMCs encouraged all consumers to complain and to take their case to FOS, regardless of whether or not they even had PPI in the first place. This has increased overall administrative costs and resulted in delays for consumers with legitimate complaints.

Overall, we do not consider that the FCA has made the case for the introduction of a PPI deadline. However, if the FCA is to proceed with the deadline then it is important that:

- All banks should send their PPI customers a letter explaining the individual deadline that will apply to their complaint – whether or not they have already done this - and highlighting the new right of redress from banks' failure to disclose commissions.

- The FOS and the FCA should publish data outlining how many consumer complaints are turned down by the banks citing "no PPI policy", but who the FOS confirm do actually have a policy when the complaint is referred.

- The proposed deadline should not apply to complaints about PPI claims that their bank has rejected because the claimant was ineligible to claim or because of a policy exclusion. Applying the deadline to complaints about claims would leave thousands of vulnerable consumers and their families facing significant financial

hardship precisely at the moment when they need to be protected by their insurance.

- Banks should be required to accept complaints by email and develop a simple tool for consumers to submit their complaint quickly and efficiently. The FCA could also host such a tool on the online "hub" it will develop as part of the communications campaign or link to existing tools provided by consumer groups.

- The FCA should continue with close supervision of banks' PPI complaint handling and take enforcement action against any that fail to treat customers fairly. This should include action against the senior executives responsible for overseeing complaint handling within firms and use the full range of enforcement tools available to the FCA, including bans from the industry and significant fines. This would require the FCA to overturn the FSA's stated policy that those responsible for overseeing complaints handling within firms would not be subject to enforcement action. If those responsible for poor complaints procedures are not held to account, there is no incentive for them to change.

- The FCA should use its powers under S404 of FSMA to establish as wide as possible redress scheme for complaints about undisclosed commission as a result of the Plevin judgment. Continuing with a complaints-led approach is inefficient, and the main beneficiaries are the CMCs.

- The threshold for undisclosed commission which creates an 'unfair relationship' under Plevin should be set much lower than the 50% being proposed. The Panel considers a figure of around 30% may be more appropriate. Even 30% would be almost twice the estimated genuine costs of distributing PPI, and way above the levels of commission which exist for other insurance markets, eg 10% for motor insurance[1] The FCA should carry out research into commission rates and how these might influence consumers' decisions before forming a view. Regardless of the figure, if the threshold is exceeded then the entire commission should be refunded, not just the proportion over the threshold.

- All complaints received by banks or the FOS after 12th November 2014 should be assessed (or re-assessed) under the two step approach.

Answers to specific questions

Q1: Do you agree with our assessment of the PPI landscape and trends, and that we should now seek to draw the PPI issue to an orderly close through the proposed deadline and proposed consumer communications campaign?

The fact that banks are paying compensation to consumers on 97% of complaints from their proactive contact exercises indicates that there was widespread, systematic mis-selling of PPI and that many of the 67% of consumers who have not yet responded to the letters are likely to have a valid complaint.[2] In some banks as few as 25% of consumers have responded to the proactive contact exercise[3]. It is disappointing that the FCA's research did not include a measure of the number of people who had PPI but were still not aware of it.

Banks which dealt with PPI complaints unfairly by either limiting or delaying the scope of their contact exercises will undoubtedly benefit the most from a deadline. If banks had

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[1] http://londoneconomics.co.uk/wp-content/uploads/2011/09/70-Research-into-Payment-Protection-Insurance-in-the-UK.pdf

[2] Para 2.13

[3] Taken from Consumer Panel analysis of bank annual reports

conducted comprehensive consumer contact exercises soon after the conclusions of the judicial review (or even when problems with PPI first arose in 2008/09) then the vast majority of consumers would already be time barred. Instead banks stalled on action, rejected complaints unfairly and challenged regulatory action. FOS uphold rates have been very high for a large number of banks ever since the 2011 judicial review. The fact that a number of smaller banks and building societies have achieved FOS uphold rates in single digits demonstrates that many larger banks have been dealing inadequately with complaints for years. Instead of levying an appropriate penalty on these banks and ensuring that consumers get fair redress the FCA is letting them off the hook.

The introduction of a deadline would also set a dangerous precedent. Instead of dealing with complaints fairly, firms would continue to delay contacting consumers and weak standards of complaint handling would go unpunished,, in the hope that a universal time bar would be introduced for other products.

There is likely to be a gap between people's stated intentions to complain and their actual behaviour. Although many consumers might state that the introduction of a deadline would lead them to complain this might not be borne out in practice.

Further, the introduction of a deadline will limit the ability of consumers to raise Plevin-related complaints. The consequences of the Plevin judgement have not yet been communicated to consumers as part of any contact exercise. Under the FCA's current approach the overwhelming majority of PPI complaints regarding the issues raised by Plevin are likely to come from CMCs.

The deadline would undoubtedly bring the PPI issue to a conclusion and would reduce uncertainty for firms about their long-term PPI liabilities, benefiting firms and their shareholders. However, this would be at the expense of millions of consumers who are yet to receive fair redress. There seems to be little evidence that it will improve public trust or result in the emergence of alternative products.

Overall, we consider that the FCA's approach poses significant risks to its statutory objectives and will lead to both significantly increased administration costs for firms and many consumers losing out on receiving fair redress.

Q2: Do you agree with the proposed nature, date and scope of the proposed deadline?

We do not agree that the case has been made for a deadline, so the date is not relevant**.** The FCA has not produced convincing evidence that all consumers entitled to redress will get it under its proposed time bar, and that is the only acceptable outcome.

If the FCA does introduce a deadline, it should not apply to complaints about PPI claims that the bank has rejected because the claimant was ineligible to claim or because of a policy exclusion. Applying the deadline to complaints about claims would leave thousands of vulnerable consumers and their families facing significant financial hardship precisely at the moment when they need to be protected by their insurance. It could also risk some consumers who have a complaint about a claim on mortgage PPI rejected losing their homes. Data from the FOS suggests that 99% of PPI complaints received are about sales and advice. Allowing complaints about claims to continue would protect a vulnerable group.

We agree that the deadline should not apply to complaints about matters that are unrelated to the sale such as administration and delays in claims handling.

Q3: Do you agree with the proposed aims of the proposed consumer communications campaign?

The proposed public information campaign risks confusing consumers. Stating that there is a deadline of say, spring 2018, will not be possible because many of the 5.5 million consumers with complaints will already be time barred before then. At least 3 million consumers will be time barred by the end of 2016 and a further 1.2 million by the end of 2017. Promoting a single deadline would mislead those consumers and could lead to some of them putting off complaining and losing the right to redress.

We are also not convinced that a centralised communication campaign would be more effective in raising awareness about PPI than CMCs. A deadline would lead to a CMC feeding frenzy, with people being pestered to act now or lose their right to complain. The FCA proposes to communicate a lot of information as part of this campaign, which may require different techniques, channels and messages. It may be more appropriate to direct people to centralised hubs operated by existing consumer groups rather than recreate this information under the FCA brand.

Additional interventions

The banks should also be required to play their part in communicating with consumers. It is disappointing that the FCA only required banks to send one letter to their PPI customers, and failed to implement the same approach that it took for endowment mortgages, which required lenders to send their customers a further reminder when they were six months away from their individual deadline.

The FCA should require firms to write to all their PPI customers. Banks should send initial letters to those not yet captured by a customer contact exercise and additional reminders for the 67% of the 5.5 million "high-risk" (ie early deadline) customers who have not already complained. These letters should refer to the general deadline, or the specific deadline applying to that individual. This would ensure that as many consumers as possible get specific information that is relevant to them. This is important as only one third of consumers who know that they have or have had PPI say that they have known this all along, and half who are unsure if they have had PPI are unlikely to check whether they have or not. Receiving information that they certainly had PPI could help prompt action. The FCA should dictate the content of letters to ensure they are clear and in a standard format.

Sending additional reminders to the "high-risk" customers is justified by the fact that two-thirds have so far failed to respond to the letter and that 97% of these complaints from these high-risk groups are currently being upheld.

Banks' communications should also raise awareness of the consequences of the Plevin case and the fact that there is now a new ground for complaint for many consumers. We note that the FCA's own research found that providing consumers with information about Plevin "does have a noticeable impact on likelihood to complain – around one in five of those previously either not intending to complain or not knowing whether they intended to complain (17%) now intend to complain after hearing information about Plevin."[4]

We believe the FCA should also introduce new rules requiring banks to accept complaints via email and develop simple complaints tools which enable consumers to select quickly and easily which grounds for complaint are relevant to them. Again, it may be more appropriate for a centralised hub to host such a tool.

[4] Comres, Payment Protection Insurance Research, November 2015, page 12

Q4: Do you agree with the proposed audience, channels, and cost of the proposed consumer communications campaign?

No comment

Q5: Do you agree with our proposed fee rule for allocating the costs of the proposed consumer communications campaign?

We support the proposed allocation of the cost of the public awareness campaign on the basis of the number of PPI complaints and for the cost to only be allocated to firms which have received more than 100,000 complaints about PPI.

Q6: Do you agree with our rationale for proposing rules and guidance now concerning the handling of PPI complaints in light of *Plevin*, and that it is preferable in the circumstances that we, not the Ombudsman service, take the lead in this?

It is important for banks to be required by the FCA to take a fair and consistent approach to handling Plevin complaints. We therefore agree that the FCA should introduce rules and guidance concerning how banks should handle Plevin complaints.

Q7: Do you agree with the scope of our proposed rules and guidance concerning the handling of PPI complaints in light of *Plevin*?

We agree.

It is important that banks are required to consider whether there was non-disclosure of commission regardless of whether this was specifically raised by the consumer. It is not proportionate to expect consumers to realise that they should have grounds for complaint regarding something that they were not told about during the PPI sale.

The complaints forwarding rules contain a loophole that the firm "may" forward on the complaint to the other party. We would prefer an approach where the lender or PPI seller is required to forward on the complaint if they reject it.

Q8: Do you agree with our proposed structuring of the new rules and guidance concerning *Plevin* as a separate 'second step' within our existing PPI complaint handling rules and guidance?

We agree.

Q9: Do you agree with our proposed definition of 'commission' for the purposes of handling PPI complaints in light of *Plevin*?

As we have said above, it is important that the FCA takes a broad approach to the definition of commission. The FCA's approach is very different to that taken by the Judge in the case of *Brookman v Welcome Financial Services Limited*. In this case the Judge noted that, from the total commission paid, Welcome Finance received standard commission of 45%, a further 20% paid into an "equalisation fund" (described as being "an advance payment on its anticipated profit share"); and another 24.25%, unless this amount was used to pay subsequent claims. The claimant was awarded a refund of their premiums minus an amount to cover the costs of the actual insurance. Under the FCA's preferred approach consumers in a position such as Mr Brookman would not receive any redress.

Q10: Do you agree with our proposal of a single 50% commission 'tipping point' at which firms should presume, for the purposes of handling PPI complaints, that the failure to disclose commission gave rise to an unfair relationship under s.140A?

It is important that the FCA takes a broad approach to the definition of commission. This should include the payment of commission over the entire length of the contract. We are disappointed that the FCA has not sought to include the additional commission that distributors receive if claims do not exceed a particular threshold.

We do not agree with the 50% threshold for considering whether an unfair relationship exists. It is disappointing that the FCA has failed to conduct any consumer research to inform its choice of threshold. A rate of 50% is excessive and far above the estimated genuine distribution costs of 16% (including a reasonable profit margin) of the major PPI distributors. We believe it would be difficult for the FCA to argue that disclosure of a 50% commission would not have affected the consumer's decision to purchase the PPI.

We think the threshold should be much lower. Around 30%, for example, would still be almost twice the estimated genuine costs of distributing PPI and way above the levels of commission which exist for other insurance markets, eg 10% for motor insurance[5].

We are also concerned that firms may rely on the factors listed in the guidance which can be used to "rebut" the presumption of an unfair relationship if the commission was, or had the potential to be, above the threshold. Banks may use these factors to reject complaints from those who work in the financial services sector or try to claim that disclosure would have made no difference to the complainant's judgment about the value of the PPI. Factors which could lead to an unfair relationship even if the commission was below the threshold level should be clarified to include circumstances where the complainant was refinancing existing debt. The FCA may also need to clarify what is meant by the complainant being in "particularly difficult financial circumstances".

Q11: Do you agree with our proposed examples of circumstances in which the presumptions might reasonably be rebutted? Are there other such circumstances which could usefully be specified as examples?

No comment

Q12: Do you agree with the key elements of our proposed approach to redress at Step 2 of our proposed rules and guidance concerning PPI complaint handling in light of *Plevin*?

No. In circumstances where the level of commission exceeds the threshold amount the consumer should receive the full amount of commission as redress. Under the FCA's proposed approach a bank charging a consumer £10,200 for a PPI policy would still be able to retain over £5,000 in commission.

Paying the full amount of commission as redress would be consistent with the redress received by Plevin. If this approach is not taken then there is a significant risk that CMCs will direct consumers to complain through the Courts. This would add to the fees incurred by consumers as well as adding risk and increasing the administrative costs paid by banks.

[5] http://londoneconomics.co.uk/wp-content/uploads/2011/09/70-Research-into-Payment-Protection-Insurance-in-the-UK.pdf

Q13: Do you agree with our proposed approaches to the other elements of redress at Step 2? Do you perceive any particular practical or operational difficulties in our proposed approach to these elements?

No comment

Q14: Do you agree that consumers who have previously made rejected PPI complaints that did not mention undisclosed commission, and whose credit agreements fall within the scope of s.140A-B, should be able to raise this additional issue with the lender and have this assessed under our proposed new rules and guidance?

We are disappointed that the FCA is dis-applying its own 'root cause' rules to the issues raised by Plevin. Where the root cause rules apply, firms should be required to proactively refund consumers rather than waiting for them to complain.

The fact that the FCA is still refusing to use a S404 scheme for the issues raised by Plevin is also very disappointing. The FCA has not indicated what proportion of Plevin related complaints could be dealt with by a S404 scheme and has failed to undertake a full cost-benefit analysis. The FCA's proposed complaints-led approach will increase administrative costs for both consumers and banks. It will also provide a windfall benefit to CMCs and a corresponding loss to consumers. As the subjects and issues covered are so complex and unknown to individual consumers the vast majority of complaints generated will come from CMCs. This is also likely to result in a large number of unjustified complaints prompted by CMCs and more CMSs directing consumers to make a claim in the Courts, thereby increasing costs.

Previously rejected complaints

It is important that consumers are informed about their new right of complaint about non-disclosure of commission through the contact exercise we recommend above. Consumers who have had a previously submitted complaint rejected should be able to apply to have that complaint reconsidered. This should apply regardless of whether commission issues were mentioned in their original complaint.

If the FCA persists with its proposed approach of not allowing people to complain if they have already raised a complaint mentioning the non-disclosure of commission then it should set a clear timetable for this. For example a consumer who submitted their complaint and included mention of the non-disclosure of commission in December 2014 and had it rejected should have it reassessed under the two-stage approach when that complaint reaches the FOS. When the FCA clarifies its guidance then banks and the FOS should reassess all complaints received since 12th November 2014 under the 2-step approach.

Q15: Do you agree with our proposed approach of handling *McWilliam*-type PPI complaints under our existing high level (non-PPI specific) complaints handling rules only?

No comment

Q16: Do you have any comments on our cost benefit analysis? Do you agree with our initial assessment of the impacts of our various proposals on the protected groups and vulnerable consumers? Are there any other potential impacts we should consider?

The FCA assumes that consumers' time is costless and do not take it into account when considering the possible options. This is inconsistent with the approach taken in other

sectors such as transport. Consumers' time clearly has a value and the different options considered by the FCA will result in different impacts on it. For example, a complaints-led approach is likely to result in significant additional time being expended by consumers in completing the complaints and dealing with CMCs.

The FCA should make redress as efficient as possible. The aim should be to ensure that consumers get fair redress with the lowest possible level of time expended and administrative cost.

We are also concerned that the FCA has failed to consider the significant additional administrative costs which will be incurred by banks under the complaints-led approach compared to those which would be incurred through the use of a S404 scheme or the application of the root-cause analysis rules. This is because there will be a need for additional correspondence with the consumer; a complaints-led approach will generate millions of additional complaints from CMCs, regardless of whether a consumer's PPI is covered by the Plevin judgment or even whether the consumer had a PPI policy in the first place. It is also likely that these complaints will also be referred to the FOS by CMCs. Extra administrative cost will also be incurred as the FCA's proposed approach to Plevin will also result in many genuine complaints being taken to Court.

The overall impact of these extra administrative costs is likely to be significant. A complaints-led approach also increases uncertainty for firms about when complaints will need to be dealt with – increasing the overall resource commitment. By contrast the amount of work involved in a redress scheme can be estimated in advance and completed over a reasonable period of time.

The FCA should also calculate an estimate of the likely loss to consumers due to the imposition of a time bar. Whilst we agree that the introduction of a time bar is likely to lead to a short-term spike in complaints – particularly those generated by CMCs – overall the introduction of a time bar will lead to a lower level of overall complaints and a lower level of redress received by consumers.

The stated benefit of reducing the shocks to banks' cost of capital by gaining certainty over their PPI liabilities is likely to be very small given the level of shocks from PPI in relation to all of the other potential shocks to banks. There is also no evidence that certainty about PPI liabilities will increase the number of corporate restructurings in the banking sector.

Distributional impacts of the proposed deadline on banks will also have a negative impact on overall welfare. As we said above, banks which have treated consumers unfairly will gain at the expense of those banks who tried to comply with both the letter and the spirit of the rules.

Q18: Do you have any comments on our compatibility statement? In particular, do you have any comments on any issues relating to mutual societies that you believe would arise from our proposals?

No comment

Yours sincerely

Sue Lewis
Chair, Financial Services Consumer Panel