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Paul McCarron
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(*by e mail only*)

22 July 2019

Dear Paul

POTENTIAL PPI OPERATIONAL QUESTIONS AFTER THE 29 AUGUST DEADLINE

Some among your member firms have begun raising with us their provisional operational plans for the post-deadline period. Our dialogue with those firms has led us to identify some considerations that we thought it would be helpful to share in good time with you and your membership more widely.

i) Winding down operations for handling PPI Information Requests (PIRs)

We understand that firms are unlikely to see a need to keep their PIR handling processes in place. However, any winding down should be done in a fair and reasonable manner and tempo, including in light of the facts that:

- it may take some time after the deadline for firms to work through and carry out auto-conversion (where needed) of any large volume of PIRs made shortly before the deadline
- the PIR process was developed as a voluntary efficient alternative to Data Subject Access Requests (DSARs) from consumers or CMCs interested only in PPI, but firms will still have an obligation under data protection legislation (which is unaffected by our deadline) to respond to DSARs
- firms will still need to comply with their obligations under DISP in respect of handling PPI complaints and in some cases (see ii and iii below) that will still involve checking for PPI

ii) Communications about post-deadline PPI complaint handling process

Some of your member firms will have already received the FCA's post-deadline key messages (for both our website and consumer helpline) and web copy, recently shared with the Campaigns Industry Working Group (which can be shared with others on request). In addition to this content, we consider that messaging after 29 August should continue to mention that:

a) there may be exceptional circumstances that would cause a complaint about PPI to still be in time

b) complaints about rejected claims on live PPI policies, or about administrative matters not connected to the sale, will still generally be in time

c) (where relevant) complaints (of any kind) about PPI sold after 29 August 2017 will still be in time

Messaging should also make clear how such complaints can be submitted (which might, for some firms, continue to be through a dedicated PPI website and phone line for a residual period, or might, for others, now be through the general (non-PPI specific) complaints channels).

iii) PPI complaint handling post-deadline

Firms' DISP obligations in respect of PPI will continue after the deadline.

Where a complaint about PPI is received by a firm after the deadline (and does not fall into b) or c) in ii above) the firm should assess whether the exceptional circumstances exception applies (namely whether the failure to comply with the deadline was as a result of exceptional circumstances) and, in making such assessment, should take close heed of the Ombudsman Service's approach and decisions in this area.[1] As part of that, the firm may ask the complainant to explain clearly, with reasonable supporting evidence, what circumstances had caused them to complain after the deadline and why they considered those circumstances to be exceptional.

Where the firm reasonably assesses that the exceptional circumstances exception does not apply (having made reasonable enquiries as necessary), it should issue a final response to the complainant which clearly explains the firm's view on this and gives Ombudsman Service referral rights. This final response must also indicate whether or not the firm consents to waive the 29 August deadline and to the Ombudsman Service considering the complaint if it is referred there.[2]

Subject to the above, where the firm is not consenting, it may send such final response without having done any prior check of whether the complainant had PPI, or any prior assessment of the merits of their complaint.

Where the firm is consenting, it should issue a final response to the complainant which indicates this, and which clearly explains the firm's decision on the merits and any redress offered.

The firm should adapt appropriately the wordings in DISP 1 Annex 3 as necessary when indicating in its final responses whether or not it consents to waive the 29 August deadline and to the Ombudsman Service considering the complaint if it is referred there. If a firm does provide that consent, we note that it would be unfair for that firm to subsequently withdraw that consent (compare DISP 2.8.2AR).

Where the firm assesses that the exceptional circumstances exception does apply, then it must assess the merits of the complaint. It should issue a final response to the complainant that clearly explains the firm's view of the exceptional circumstances, decision on the merits and any redress offered.

Firms will remain under an obligation, where PPI complaints are upheld, to pay fair redress.

iv) Post-deadline PPI complaint reporting

The question has been raised of how, for DISP purposes, firms should record and report PPI complaints that are received after the deadline and where the firm finds that there were exceptional circumstances, or that there weren't.

If the consumer is an eligible complainant who has expressed dissatisfaction about PPI, then there is a complaint to be reported. That reportable status is not affected by the fact that the complaint

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[1] As we noted in PS17/3 (March 2017): "The Ombudsman Service already provides helpful examples of exceptional circumstances on its website, and already applies exceptional circumstances, narrowly and reasonably, in cases where our various existing time limits in DISP are relevant."

[2] For the avoidance of doubt, we have published the following "Legislative Note" under DISP 1.6.2R(f): **Note**: *respondents* are reminded of their obligations under regulation 19 of the *ADR Regulations*, which requires *respondents* to provide equivalent messaging in respect of the time limit in *DISP 2.8.9R* (Payment protection insurance complaints).

was made after the deadline and can thus be rejected by the firm without consideration of the merits (if it does not belong to categories a) b) or c) in ii above).

(We recognise that if a firm assesses there were no exceptional circumstances and responds to this effect without having checked whether the consumer in fact had PPI or not, then the firm's reported rejected complaints will likely include both cases where there was PPI and cases where there was not (without the firm differentiating or knowing which are which). Thus, the firm's reported numbers for post-deadline complaints will not be directly comparable to those it reported pre-deadline, where 'No PPI' complaints were typically distinguished and separately reported.)

v) Litigation

Some concern has been expressed that there may in future be a growing number of PPI litigation cases in the courts, where our complaints deadline will not apply, and that this might threaten the fair and orderly closure of the PPI issue that we had aimed for.

In our policy documents about the PPI deadline, we made clear that we weren't seeking (or empowered) to cut off the court route, which remains open, subject to its own limitation periods. We do not agree, therefore, that consumers continuing to use the court route to make claims about PPI, where they are still in time to do so, is a risk to our objectives or likely source of harm.

However, to the extent CMCs participate in generating or transferring potential court claims, they will need to comply with our relevant CMCOB requirements and ensure that they are authorised by the FCA if undertaking regulated activity.

vi) PPI data retention

We are aware that some firms are minded to consider that, once all pre-deadline complaints have been decided and their Ombudsman Service referral rights expired, it would be disproportionate to continue to retain all records of PPI, given these firms' view that there are likely to be few PPI complaints with exceptional circumstances in the future that would need their merits assessed. These firms are thus contemplating, subject to consideration of other factors such as potential future claims in court, beginning in due course the orderly disposal of PPI records, in reversion to business as usual retention/disposal policies.

We note that it is not for us to approve firms' proposed approaches in this area and it will remain the responsibility of each firm to consider its approach to PPI record retention and disposal. The general position under our Handbook is likely to be that insurance intermediaries ought to:

a) retain records of matters and dealings which are subject of requirements and standards under the regulatory system, and records sufficient to enable the regulator to monitor compliance with requirements under the regulatory system, in particular with obligations with respect to clients

b) maintain those records in accordance with the general principle that records should be retained for as long as is relevant for the purposes for which they are made (in addition to retaining records of complaints for 3 years – see DISP 1.9.1R(2))

In considering its approach, a firm will want to have regard to, among other things:

- Principles for Businesses 3 and 11, SYSC 3.2.20R(1), SYSC 3.2.21G, SYSC 9.1.1AR, SYSC 9.1.5G, and ICOBS 2.4, in our Handbook

- potential future litigation, which in respect of these records is likely to be "relevant for the purposes for which those records are made" (though the potential time limits on future claims in court - for example in respect of mis-selling, or under s140A CCA - may also be relevant)

- its continuing obligation to handle future PPI complaints not caught by our deadline

- its continuing need to be able to provide the Ombudsman Service with information relevant to resolving PPI complaints that were submitted to the firm before the deadline (or for which the firm has consented to waive the deadline and to the Ombudsman Service considering)

- the General Data Protection Regulation

The firm would need to be able to justify any records deletions after the deadline as compliant with the above provisions and obligations and as reasonable in light of other relevant considerations.

vii) Outstanding redress offers

We have been asked our view of how a firm should proceed fairly in the scenarios where it has previously sent PPI complainants redress cheques but some of these were not cashed, or it has previously made a redress offer to the complainant but this was not accepted (nor declined), such that some unclaimed balances will persist (typically as provisions) after the deadline.

Our view is as follows. Firms should carefully assess and consider the reasons for the uncashed cheque or non-accepted redress offer (e.g. stale address or other data, or particular aspects of the firm's approach that may have confused the consumer or had other behavioural impacts). Firms should then consider whether they have taken all reasonable steps in each case to try to remedy these reasons or circumstances, for example, by paying for tracing checks and potentially contacting the consumer to remind them of the redress offer made or cheque sent previously and to check whether they would prefer redress to be paid in a different way.

More broadly, firms should consider any consumers who subsequently seek to cash a redress cheque, or otherwise claim previously proffered redress, on a case by case basis in light of the consumer's circumstances and reasons for delay.

Yours sincerely

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