DISPUTE RESOLUTION: COMPLAINTS (PAYMENT PROTECTION INSURANCE) (AMENDMENT No 2) INSTRUMENT 2017

Powers exercised

A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ('the Act'):

(1) section 137A (FCA's general rule-making power);
(2) section 137T (General supplementary powers);
(3) section 138C (Evidential provisions);
(4) section 139A (Power of the FCA to give guidance);
(5) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority); and
(6) paragraphs 13(1), (2) and (4) of Schedule 17 (FCA's rules).

B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

C. This instrument comes into force as follows:

Annex	Date comes into force
Annex A	29 August 2017
Annex B	31 March 2017
Annex C	29 August 2017

Amendments to the Handbook

D. The modules of the FCA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Fees manual (FEES)	Annex B
Dispute Resolution: Complaints sourcebook (DISP)	Annex C

Citation

E. This instrument may be cited as the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 2) Instrument 2017.

By order of the Board
1 March 2017

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

CCA lender has the same meaning as "creditor" under section 140C of the *CCA* which is, in summary:

(a) a "creditor" is a *person* who provides the debtor with credit of any amount;

(b) references to a "creditor" include:

(i) a *person* to whom their rights and duties under the credit agreement have passed by assignment or operation of law;

(ii) where two or more *persons* are the creditor to any one or more of those *persons*.

Amend the following definitions as shown.

commission (other than in *DISP* Appendix 3) any form of commission or remuneration, including a benefit of any kind, offered or given in connection with:

(a) *designated investment business* (other than commission equivalent);

(b) *insurance mediation activity* in connection with a *non-investment insurance contract*; or

(c) the sale of a *packaged product*, that is offered or given by the *product provider*.

credit agreement (1) (other than in *DISP* Appendix 3) in accordance with article 60B of the *Regulated Activities Order*, an agreement between an *individual* ("A") and any other *person* ("B") under which B provides A with *credit* of any amount;

(2) (in *DISP* Appendix 3) has the same meaning as "credit agreement" for the purposes of sections 140A to 140C of the *CCA* which is, in summary, an agreement which meets the

following conditions:

(a) it is between an individual (the "debtor") and any other *person* (the "creditor") under which the creditor provides the debtor with credit of any amount; and

(b) an order under section 140B of the *CCA* could be made in relation to it. In summary, orders can be made under section 140B of the *CCA* in relation to credit agreements except where:

(i) the exclusion under section 140A(5) of the *CCA* applies (this relates to *regulated mortgage contracts* and regulated *home purchase plans*); or

(ii) the agreement was made before 6 April 2007 and became a completed agreement before 6 April 2008.

For the avoidance of doubt, the reference in (2)(b) to agreements in relation to which orders may be made under section 140B is a reference to such agreements as affected by amendments to enactments that took effect up to and including 1 March 2017.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text unless otherwise stated.

3 Application, Notification and Vetting Fees

…

3.2 Obligation to pay fees

…

3.2.7 R Table of application, notification, vetting and other fees payable to the FCA

Part 1: Application, notification and vetting fees		
(1) Fee payer	(2) Fee Payable (£)	Due date
…		
(zv) Any *firm* that meets the test in *FEES* 3 Annex 10C(1)R(1) (PPI campaign fees).	The amount set out in *FEES* 3 Annex 10C(1) R(2).	Within 30 *days* of the date of the invoice.
…		

…

After FEES 3 Annex 10BR (Designated Credit Reference Agencies and Finance Platforms Fee), insert the following new Annex. The text is not underlined.

3 Annex 10C PPI campaign fees

(1) R (1) A *firm* must pay a PPI campaign fee calculated in accordance with (2) if it has:

(a) reported over 100,000 *complaints* cumulatively under question 17(A) (payment protection insurance – advising, selling and arranging) of the complaints return form in *DISP* 1 Annex 1R; and

(b) reported those *complaints* from 1 August 2009 up to and including 1 August 2015.

(2) The PPI campaign fee is calculated by multiplying the number of *complaints* cumulatively reported to the *FCA* under question 17(A) of *DISP* 1 Annex 1R for the *firm* from 1 August 2009 up to and including 1 August 2015 by £3.64.

(2) R (1) A *firm's* PPI campaign fee will be a proportion of the total amount of costs the *FCA* has estimated it will incur in running the consumer communications campaign highlighting the introduction of the two-year PPI complaints deadline.

(2) (a) The *FCA* will invoice the PPI campaign fee in equal amounts over two years.

(b) The *FCA* will invoice the first part of the fee during the *month* following *FEES* 3 Annex 10C coming into force and will invoice the second part one calendar year later.

(3) The *FCA* will write to each *firm* that meets the test at *FEES* 3 Annex 10C(1)R(1) before sending out its first invoice, setting out:

(a) the number of *complaints* reported to the *FCA* under question 17(A) of *DISP* 1 Annex 1R for that *firm* from 1 August 2009 up to and including 1 August 2015; and

(b) the basis on which it has calculated the PPI campaign fee for that *firm*.

(4) Any amounts raised that are in excess of the actual cost of the PPI consumer communications campaign will be refunded to fee payers under *FEES* 3 Annex 10C on a pro rata basis.

(3) R References in this annex to question 17A in the complaints return form at *DISP* 1 Annex 1R are to that question as it existed on 1 August 2015, and to any corresponding question in previous versions of that form.

Annex C

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

In this Annex, underlining indicates new text, and striking through indicates deleted text, unless otherwise stated.

1.4 Complaints resolution rules

…

Payment protection insurance complaints

1.4.6 G *DISP* App 3 sets out the approach which *respondents* should use in assessing *complaints* relating to the sale of *payment protection contracts* and determining appropriate redress where a *complaint* is upheld. It also requires *firms* to send a written communication to complainants in certain circumstances (see *DISP* App 3.11).

2.8 Was the complaint referred to the Financial Ombudsman Service in time?

…

Payment protection insurance complaints

2.8.8 G If a *complaint* relates to the sale of a *payment protection contract*, knowledge by the complainant that there was a problem with the sale of the *payment protection contract* generally (for example where there has been a rejection of a claim on the grounds of ineligibility or exclusion, or the complainant has received a customer contact letter explaining that they may have been mis-sold) would not in itself ordinarily be sufficient to establish for the purposes of the three-year time period in *DISP* 2.8.2R(2) that the complainant had become aware (or ought reasonably to have become aware) that he or she had cause for complaint in respect of a failure to make the disclosure set out at *DISP* App 3.3A.2E (relating to failure to disclose commission).

2.8.9 R (1) In addition to *DISP* 2.8.1R and *DISP* 2.8.2R, unless one or more of the conditions in (2) below is met, the *Ombudsman* cannot consider a *complaint* which:

(a) relates to the sale of a *payment protection contract* that took place on or before 29 August 2017; and

(b) expresses dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling or administrative

matters such as taking the incorrect amount of premium).

(2) The conditions are that:

(a) the complainant referred the *complaint* to the *respondent* or to the *Financial Ombudsman Service* on or before 29 August 2019 and has a written acknowledgement or some other record of the *complaint* having been received; or

(b) in the view of the *Ombudsman*, the failure to comply with the time limit in (2)(a) was as a result of exceptional circumstances; or

(c) the *respondent* has consented to the *Ombudsman* considering the *complaint* where the time limit in (2)(a) has expired (but this does not apply to a "relevant complaint" within the meaning of section 404B(3) of the *Act*); or

(d) the *complaint*:

(i) is made on or after 29 August 2019;

(ii) relates to the sale of a *payment protection contract* that was live as at 29 August 2017;

(iii) is made following a full or partial rejection of a claim on or after 29 August 2017 on the grounds of ineligibility, exclusion or limitation

and this condition applies only to the extent that the *complaint* relates to those grounds of rejection.

2.8.10 G Where a *complaint* meets the requirements of *DISP* 2.8.9R(2)(d), those parts of the *complaint* that relate to the grounds of rejection of the claim are not subject to the restriction in *DISP* 2.8.9R(1) on an *Ombudsman* considering the *complaint*.

…

Appendix 3 Handling Payment Protection Insurance complaints

App 3.1 Introduction

Application

App 3.1.1 G (1) This appendix sets out how:

(a) a *firm* should handle *complaints* relating to the sale of a *payment protection contract* by the *firm* which express dissatisfaction about the sale, or matters related to the sale, including where there is a rejection of claims on the grounds

of ineligibility or exclusion (but not matters unrelated to the sale, such as delays in claims handling); and

(b) a *firm* that is a *CCA lender* and which has received such a *complaint* should consider whether there was a failure to disclose commission in relation to the sale of a *payment protection contract* which covers or covered or purported to cover a *credit agreement* (this includes partial coverage).

(2) It relates to the sale of any *payment protection contract* whenever the sale took place and irrespective of whether it was on an advised or non-advised basis; conducted through any sales channel; in connection with any type of loan or credit product, or none; whether the *insurer* was in the same *group* as the *firm* or not; whether the premium was financed by the credit product or not; and for a regular premium or single premium payment. It applies whether the *policy* is currently in force, was cancelled during the *policy* term or ran its full term.

(3) It does not require *firms* to assess whether the *firm's* conduct of the sale was in breach of a fiduciary duty where there has been a failure to disclose either the existence of, or the level of, any commission and/or profit share paid. *Complaints* concerning such issues should be dealt with under *DISP* 1.4.1R.

(4) It requires *firms* to send written communications to complainants in certain circumstances where their previous *complaint* in relation to the sale of a *payment protection contract* did not result in the *firm* offering (or being required to pay) redress on the basis that the complainant would not have bought the *payment protection contract* that they bought (see *DISP* App 3.11).

(5) There are further provisions on the application of this appendix in *DISP* App 3.10.

Two-step approach

App 3.1.1A E This appendix provides for a two-step approach to handling *complaints*. *Firms* should apply it as follows:

(1) a *firm* which is not a *CCA lender* should only consider step 1;

(2) a *CCA lender* which did not sell the *payment protection contract* should only consider step 2, but does not have to do so if it knows the complainant has already made a *complaint* about a breach or failing in respect of the same contract and the outcome was that the *firm* which considered that *complaint* concluded that the *complainant* would not have bought the *payment protection contract* they bought;

(3) a *CCA lender* which also sold the *payment protection contract* should:

(a) consider step 1 unless-

(i) it has already considered step 1, or

(ii) after considering *DISP* App 3.2.2G and *DISP* App 3.2.3G, it is clear that the true substance of the *complaint* is only about a failure to disclose commission; and

(b) consider step 2 in cases where it has not concluded at step 1 that the complainant would not have bought the *payment protection contract* they bought.

App 3.1.1B G In the case of a *complaint* described in *DISP* 2.8.9R(2)(d), the *firm* need only consider step 1 and only to the extent of the relevant grounds of rejection of the claim.

Step 1

App 3.1.2 G ~~The~~ At step 1, the aspects of *complaint* handling dealt with in this appendix are how the *firm* should:

(1) assess a *complaint* in order to establish whether the *firm's* conduct of the sale failed to comply with the *rules*, or was otherwise in breach of the duty of care or any other requirement of the general law (taking into account relevant materials published by the *FCA*, other relevant regulators, the *Financial Ombudsman Service* and *former schemes*). In this appendix this is referred to as a "breach or failing" by the *firm*;

(2) determine the way the complainant would have acted if a breach or failing by the *firm* had not occurred; and

(3) determine appropriate redress (if any) to offer to a complainant.

App 3.1.3 G ~~Where~~ At step 1, where the *firm* determines that there was a breach or failing, the *firm* should consider whether the complainant would have bought the *payment protection contract* in the absence of that breach or failing. This appendix establishes presumptions for the *firm* to apply about how the complainant would have acted if there had instead been no breach or failing by the *firm*. The presumptions are:

(1) for some breaches or failings (see *DISP* App 3.6.2E), the *firm* should presume that the complainant would not have bought the *payment protection contract* ~~he~~ they bought; and

(2) for certain of those breaches or failings (see *DISP* App 3.7.7E), where the complainant bought a single premium *payment protection contract*, the *firm* may presume that the complainant would have bought a regular premium *payment protection contract* instead of the *payment protection contract* ~~he~~ they bought.

App 3.1.4 G There may also be instances where a *firm* concludes after investigation at step 1 that, notwithstanding breaches or failings by the *firm*, the complainant would nevertheless still have proceeded to buy the *payment protection contract* ~~he~~ they bought. *CCA lenders* should still go on to consider step 2 in such cases.

Step 2

App 3.1.4A G At step 2, the aspects of *complaint* handling dealt with in this appendix are how a *CCA lender* should:

(1) assess a *complaint* to establish whether failure to disclose commission gave rise to an unfair relationship under section 140A of the *CCA*; and

(2) determine the appropriate redress (if any) to offer to a complainant.

Definitions

App 3.1.5 E In this appendix:

(1) (a) at step 1, "historic interest" means the interest the complainant paid to the *firm* because a *payment protection contract* was added to a loan or credit product;

(b) at step 2, "historic interest" means in relation to any sum, the interest the complainant paid as a result of that sum being included in the loan or credit product;

(2) "simple interest" means a non-compound rate of 8% per annum; ~~and~~

(3) "claim" means a claim by a complainant seeking to rely upon the *policy* under the *payment protection contract* that is the subject of the *complaint*;

(4) "actual profit share" means a reasonable estimate of the profit share that was paid under profit share arrangements and that is notionally attributable to the *payment protection contract*;

(5) "anticipated profit share" means a reasonable estimate of the profit share which it was reasonably foreseeable at the time of sale would be paid over the relevant period or periods under profit share arrangements, and that would be notionally attributable to the *payment protection contract*;

(6) "commission" means the part of the total amount paid in relation to a *payment protection contract* that was not due to be passed to and retained by the *insurer*, excluding any sums which may be payable under profit share arrangements;

(7) "failure to disclose commission' means failure to make the disclosure

at *DISP* App 3.3A.2E;

(8) "profit share arrangements" means arrangements (including contractual) that *firms* have to potentially receive back some of the total amount paid in relation to a *payment protection contract* which had initially gone to the *insurer*. For example, these arrangements might include amounts paid to cover potential claims on policies, but which remain unspent after a fixed period, for example because actual claims did not exceed certain levels. Other arrangements might take account of variable factors other than claims, including, for example, the value of rebates paid upon early cancellations of *payment protection contracts*;

(9) "redress period" means, in relation to a regular premium *payment protection contract,* any period when the commission paid plus the amount representing actual profit share in respect of that period exceeded 50% (or such other percentage calculated under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* in respect of that period;

(10) "relevant period or periods" means:

(a) in relation to a single premium *payment protection contract,* the scheduled length of the contract;

(b) in relation to a regular premium *payment protection contract,* the period or periods over which commission was known or was reasonably foreseeable at the time of sale; and

(11) "total amount paid" means the total amount paid by the consumer in relation to a *payment protection contract*, including any Insurance Premium Tax payable.

App 3.1.6 G For the purposes of the definitions of "actual profit share", "anticipated profit share" and "commission", where the *firm* has no or incomplete records of the level of commission or profit share arrangements relevant to a particular *payment protection contract*, it should make reasonable efforts to obtain relevant information from third parties. Where no such information can be obtained, the *firm* may make reasonable assumptions based on, for example, commission levels or profit share arrangements in relation to which records are held, and general commercial trends in the industry during the period in question.

App 3.2 The assessment of a complaint

App 3.2.-1 G This section applies to both step 1 and step 2.

App 3.2.1 G The *firm* should consider, in the light of all the information provided by the complainant and otherwise already held by or available to the *firm*, whether (at step 1) there was a breach or failing by the *firm* or (at step 2) whether there was a failure to disclose commission.

…

App 3.2.5 G If, during the assessment of the *complaint*, the *firm* uncovers evidence of a breach or failing, or a failure to disclose commission, that was not raised in the *complaint*, the *firm* should consider those other aspects as if they were part of the *complaint*, at step 1 or 2 as appropriate.

…

App 3.2.7 G The *firm* should consider all of its sales of *payment protection contracts* to the complainant in respect of re-financed loans that were rolled up into the loan covered by the *payment protection contract* that is the subject of the *complaint*. The *firm* should consider the cumulative financial impact on the complainant of any previous breaches or failings in those sales or, where relevant, any previous failures to disclose commission.

App 3.3 The approach to considering evidence at step 1

App 3.3.-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.

…

After DISP App 3.3 (The approach to considering evidence at step 1), insert the following new DISP App 3.3A. All the text is new and is not underlined.

App 3.3A The approach to considering evidence at step 2

App 3.3A.1 E This section applies to a *CCA lender* at step 2.

Assessment of fairness of relationship

App 3.3A.2 E Where the *firm* did not disclose to the complainant in advance of a *payment protection contract* being entered into (and is not aware that any other *person* did so at that time):

(1) the anticipated profit share plus the commission known at the time of the sale; or

(2) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale; or

(3) the likely range in which (1) or (2) would fall;

the *firm* should consider whether it can satisfy itself on reasonable grounds that this did not give rise to an unfair relationship under section 140A of the

CCA. The *firm's* consideration of unfairness should take into account all relevant matters, including whether the non-disclosure prevented the complainant from making a properly informed judgement about the value of the *payment protection contract*.

App 3.3A.3 G *DISP* App 3.3A.2E reflects section 140B(9) of the *CCA* which provides (in summary) that, if the debtor alleges that the relationship between the creditor and the debtor is unfair to the debtor, it is for the creditor to prove to the contrary.

Presumptions

App 3.3A.4 E (1) The *firm* should presume that failure to disclose commission gave rise to an unfair relationship under section 140A of the *CCA* if:

(a) the anticipated profit share plus the commission known at the time of the sale; or

(b) the anticipated profit share plus the commission reasonably foreseeable at the time of the sale;

was:

(c) in relation to a single premium *payment protection contract,* more than 50% of the total amount paid in relation to the *payment protection contract*; or

(d) in relation to a regular premium *payment protection contract,* at any time in the relevant period or periods more than 50% of the total amount paid in relation to the *payment protection contract* in respect of the relevant period or periods.

(2) The *firm* should presume that failure to disclose commission did not give rise to an unfair relationship under section 140A of the *CCA* if the test in (1) is not satisfied.

App 3.3A.5 G The presumption that failure to disclose commission gave rise to an unfair relationship is rebuttable. Examples of factors which may contribute to its rebuttal include:

(1) the *CCA lender* did not know and could not reasonably be expected to know or foresee the level of commission and anticipated profit share; or

(2) the complainant could reasonably be expected to be aware of the level of commission and anticipated profit share (e.g. because they worked in a role in the financial services industry which gave them such awareness); or

(3) disclosure would have made no difference whatsoever to the complainant's judgement about the value of the *payment protection contract*. This factor is only likely to be relevant in limited

circumstances. If the *firm* concludes that disclosure would have at least caused the complainant to question whether the *payment protection contract* represented value for money and whether it was a sensible transaction to enter into (regardless of whether they may or may not have ultimately gone ahead with the purchase), then the presumption is unlikely to be rebutted due to this factor.

App 3.3A.6 G The presumption that failure to disclose commission did not give rise to an unfair relationship is also rebuttable. An example of a factor which may contribute to its rebuttal includes that the complainant was in particularly difficult financial circumstances at the time of the sale.

Reasonably foreseeable commission

App 3.3A.7 G For the purposes of the provisions in this section, what is reasonably foreseeable should be determined with regard to all relevant factors, including, where relevant, any agreement specifying rate changes over the first years of the *payment protection contract's* life (as in some regular premium *payment protection contracts*), and the length of time over which the commission will be governed by the agreement between lender and *insurer* that is in place at the time of sale.

Amend the following as shown.

App 3.4 Root cause analysis

App 3.4.-1 G This section applies to both step 1 and step 2, as appropriate.

…

App 3.4.2 G Where consideration of the root causes of *complaints* suggests recurring or systemic problems in the *firm's* sales practices for *payment protection contracts*, the *firm* should, in assessing an individual *complaint*, consider whether the problems were likely to have contributed (at step 1) to a breach or failing or (at step 2) to a failure to disclose commission in the individual case, even if those problems were not referred to specifically by the complainant.

…

App 3.5 Re-assessing rejected claims at step 1

App 3.5.-1 E This section applies to step 1.

…

App 3.6 Determining the effect of a breach or failing at step 1

App 3.6.-1 E This section applies to step 1.

…

App 3.7 Approach to redress at step 1

App 3.7.-1 E This section applies to step 1.

General approach to redress: all contract types

…

Interaction with step 2

App 3.7.16 E Where the *firm* is aware that another *firm* has previously paid redress at step 2, the *firm* may deduct this from the redress due under step 1.

After DISP App 3.7 (Approach to redress at step 1), insert the following new DISP App 3.7A. All the text is new and is not underlined.

App 3.7A Approach to redress at step 2

App 3.7A.1 E This section applies to a *CCA lender* at step 2.

Duty to remedy unfairness

App 3.7A.2 E Where the *firm* concludes in accordance with *DISP* App 3.3A that the non-disclosure has given rise to an unfair relationship under section 140A of the *CCA*, the *firm* should remedy the unfairness.

Redress for single premium payment protection contracts

App 3.7A.3 E In relation to a single premium *payment protection contract*, the *firm* should pay to the complainant a sum equal to:

(1) the commission actually paid; plus

(2) an amount representing actual profit share; minus

(3) 50% of the total amount paid (or other percentage as in *DISP* App 3.7A.4E).

The *firm* should also pay historic interest in relation to that sum, where relevant. It should also pay simple interest on the whole amount.

Redress for regular premium payment protection contracts

App 3.7A.3A E In relation to a regular premium *payment protection contract*, the *firm* should pay to the complainant in respect of each redress period a sum equal

to:

(1) an amount appropriately representing the commission paid in respect of that period; plus

(2) an amount appropriately representing profit share in respect of that period; minus

(3) 50% of that amount (or other percentage as in *DISP* App 3.7A.4E).

A *firm* should pay the aggregate of those sums and also pay historic interest in relation to each of those sums, where relevant. It should also pay simple interest, where relevant.

Where the presumption against unfairness has been rebutted

3.7A.4 E In cases where the presumption that failure to disclose commission did not give rise to an unfair relationship (in *DISP* App 3.3A.4E(2)) has been rebutted and the *firm* has concluded that the non-disclosure gave rise to an unfair relationship under section 140A of the *CCA*, the *firm* should consider what level of commission plus anticipated profit share would not have given rise to unfairness in that case, and use that amount (expressed as a percentage) at *DISP* App 3.7A.3E(3) or *DISP* App 3.7A.3AE(3) as appropriate.

Where the complainant has received a rebate

App 3.7A.5 E If the complainant has received any rebate, the *firm* may calculate the amount of the rebate that represents commission and actual profit share sums paid up to the point of the rebate that were more than 50% (or such other percentage determined under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract* and deduct this from the amount of redress otherwise payable to the complainant.

Where a single premium was added to a loan

App 3.7A.6 E Additionally, where a single premium policy was added to a loan:

(1) for live *policies*, where there remains an outstanding loan balance, the *firm* should, where possible, arrange for the loan to be restructured (without charge to the complainant but using any applicable cancellation value) with the effect of ensuring the number and amounts of any future repayments (including any interest and charges) are the same as would have applied if the commission plus anticipated profit share was 50% (or such other percentage determined under *DISP* App 3.7A.4E) of the total amount paid in relation to the *payment protection contract*; or

(2) for cancelled *policies*, the *firm* should pay the complainant the difference between the actual loan balance at the point of cancellation and what the loan balance would have been if a sum equal to that payable under *DISP* App 3.7A.3E (before historic or

simple interest) had not been added (plus simple interest) minus any applicable cancellation rebate value.

Where a regular premium policy is live

App 3.7A.7 E Additionally, for a regular premium *payment protection contract*, where the *policy* is live the *firm* should disclose the current level of known or reasonably foreseeable commission and currently anticipated profit share and give the complainant the choice of continuing with the *policy* without change or cancelling the *policy* without penalty.

App 3.7A.8 E For the purposes of *DISP* App 3.7A.7E, currently anticipated profit share should be read as requiring a projection forwards from the date of disclosure rather than from the date of the original sale.

App 3.7A.9 G The disclosure in *DISP* App 3.7A.7E may:

(1) be in the form of a range so long as it is sufficiently narrow to be clear and informative: and

(2) specify the current level of commission and currently anticipated profit share separately.

Where a claim was previously paid

App 3.7A.10 E Where a claim was previously paid on the *policy*, the *firm* should not deduct this from the redress paid.

Amend the following as shown.

App 3.8 Other appropriate redress <u>at steps 1 and 2</u>

<u>Step 1</u>

App 3.8.1 E The remedies in *DISP* App 3.7 are not exhaustive.

App 3.8.2 E When applying a remedy other than those set out in *DISP* App 3.7, the *firm* should satisfy itself that the remedy is appropriate to the matter complained of and is appropriate and fair in the individual circumstances.

<u>Step 2</u>

<u>App 3.8.3 E The remedies in *DISP* App 3.7A are not exhaustive.</u>

<u>App 3.8.4 E A *firm* should depart from the remedies set out in *DISP* App 3.7A if there are factors in a particular *complaint* which require a different amount or form of redress in order to remedy the unfairness found.</u>

App 3.9 Other matters concerning redress at steps 1 and 2

…

App 3.9.2 G In assessing redress, the *firm* should consider whether there are any other further losses that flow from its breach or failing or from its failure to disclose commission (as applicable), that were reasonably foreseeable as a consequence of the *firm's* breach or failing or of its failure to disclose commission, for example, where the *payment protection contract's* cost or rejected claims contributed to affordability issues for the associated loan or credit which led to arrears charges, default interest, penal interest rates or other penalties levied by the lender.

App 3.9.3 G Where, for single premium *policies*, there were previous breaches or failings or previous failures to disclose commission (see *DISP* App 3.2.7G) the redress to the complainant should address the cumulative financial impact.

App 3.10 Application: evidential provisions and guidance

Step 1

App 3.10.1 E The *evidential provisions* in this appendix for step 1 apply in relation to *complaints* about sales that took place on or after 14 January 2005.

App 3.10.2 G The *guidance* in this appendix for step 1 applies in relation to *complaints* about sales whenever the sale took place. For *complaints* about sales that took place prior to 14 January 2005, a *firm* should take account of the *evidential provisions* in this appendix for step 1 as if they were *guidance*.

Step 2

App 3.10.2A E The *evidential provisions* and *guidance* for step 2 apply in relation to *complaints* received by *CCA lenders* about sales where the *payment protection contract* covers or covered or purported to cover (this includes partial coverage) a *credit agreement*.

Effect of contravention of evidential provisions

…

App 3.11 Obligation to write letters to certain rejected complainants

App 3.11.1 R This section applies where:

(1) a complainant has made a *complaint* to a *firm* in relation to its sale of a *payment protection contract* which covered or purported to cover a

credit agreement (this includes partial coverage);

(2) the *complaint* was rejected by the *firm* before 29 August 2017 in that the *firm* did not offer the complainant the redress they would have been offered had the *firm* concluded that the complainant would not have bought the *payment protection contract* they bought; and

(3) any referral of the *complaint* to the *Financial Ombudsman Service* has been concluded and did not result in the *firm* offering (or being required to pay) the complainant redress on the basis that the complainant would not have bought the *payment protection contract* they bought.

App 3.11.2 R The *firm* (or, where applicable, a successor) must as soon as reasonably practicable, and no later than 29 November 2017, send a written communication to the complainant which:

(1) informs the complainant that, despite having already made a *complaint* in relation to the sale of a *payment protection contract*, they can make a further *complaint* against the *CCA lender* in relation to a failure to disclose commission;

(2) makes clear the identity of the *CCA lender*, where this is known to the seller or can be identified by them following reasonable steps;

(3) informs the complainant of the 29 August 2019 time limit;

(4) refers to the availability of relevant further information on the *FCA*'s website (whose address should be provided) or by contacting the *FCA*'s PPI contact centre (whose telephone number should be provided); and

(5) where the *firm* is also the *CCA lender*, informs the complainant of its arrangements for handling further *complaints* about a failure to disclose commission.

App 3.11.3 R The obligation to send a written communication does not apply where, in relation to the relevant *payment protection contract* the *firm*, or where appropriate the *Financial Ombudsman Service*, has previously considered, or indicated to the complainant in writing that it will consider, a *complaint* on the basis of a failure to disclose profit share and/or commission.