MoneySavingExpert.com

Response to FCA consultation on rules and guidance on PPI complaints

Executive Summary

A PPI complaints time-bar would be a gross injustice, stripping consumers of the right to complain for being mis-sold to in Britain's largest ever reclaim process. It is staggering that there have been no prosecutions for fraud after this £22 billion racket – and now even the regulator wants to brush it under the carpet. This is an anti-consumer move.

Yet banks haven't just mis-sold PPI, they've mishandled PPI complaints. There is still an almost 70% uphold rate for those who are unsatisfied by the banks' handling of their case and who go on to the Ombudsman. Banks clearly use an initial rejection as a tactic to avoid paying out, knowing many consumers won't take it all the way. There should be no time-bar for any bank with an uphold rate above 20%.

Worse still. As part of this consultation a brand new and complex regulation over the Plevin case is due to come in, which could mean potentially hundreds of thousands if not millions more people are due to get their money back, and yet against all natural justice the FCA plans to put a time-bar on this too, even before it's started. This is plainly ridiculous and even if a time-bar is imposed Plevin cases should not be covered by it.

However, as it is well known this consultation is a farce in terms of the time-bar – it is going to happen anyway – we also need to address the way to limit the damage of this move.

It is absolutely imperative that for a time-bar to happen it is communicated to everyone who may be owed their money back.

A mass media campaign is crucial – but that is only one element of the communication plan. Many people are unaware they have PPI, as one core way it was mis-sold was adding it when people refused. Therefore for a time-bar to work, every single person who has had PPI must be written to by their bank to inform them of the details. Without their working in conjunction, the only thing this time-bar will do is be a liability limiter for the banks and building societies which mis-sold this product, at the cost of the people who were defrauded.

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?

No. The consultation paper presents a series of assumptions, and fails to present convincing evidence to support the introduction of a time-bar for PPI complaints.

This question contains several elements, each of which we respond to below.

The FCA assessment of the PPI landscape and trends is unfairly weighted against the consumer

The deadline is premised on an urgent need to avoid a long tail of PPI complaints. While a gradual reduction in the number of PPI complaints is likely, the consultation paper frames this forecast pattern of complaints as bad for consumers and bad for the market.

A gradual reduction in complaints occurs partly due to consumers' legitimate reasons to delay, such as consumers not being aware they were sold the product, or having multiple complaints to make. A time-bar ignores the rights of consumers to complain when it is best for them to do so. Rather than the interests of PPI victims, it would prioritise those of the PPI mis-sellers who, for decades, widely mis-sold potentially worthless cover to unsuspecting customers. Alarmingly, it would also set a dangerous precedent about the standing of consumers' rights in future misconduct issues.

MoneySavingExpert.com has previously argued that a time-bar would be an undeserved resolution for firms to an issue of their own making. While this criticism is acknowledged in the consultation, we are disappointed no answer is provided.

As the consultation paper explains, firms are expected to add 8% simple interest to any redress sum they pay to a consumer in respect of a PPI complaint. Astonishingly, firms have used this to argue to the FCA that consumers may "deliberately put off complaining about PPI in order to gain further years of 8% interest on their potential redress". While firms' shocking attitude toward their customers is yet to improve, it is wrong to limit their responsibility to correcting past behaviour, and an early resolution to their mis-selling is undeserved.

Worse still, a time-bar on complaints would best reward the firms which have dragged their feet the most. This is against all ethical standards and creates a dangerous situation of moral hazard. In future scandals firms would perceive it as rational to reject and delay complaints and lobby for a deadline.

This is the wrong time for this intervention – many still don't know they had PPI

There is a fundamental assumption in the consultation that those who had PPI either know they did, or are unsure if they did (and that these people need a push to go ahead and check if they had PPI, or to actually make their complaint). But we are frequently contacted by people who were adamant they did not have PPI – but then found out they did.

Examples of comments we regularly receive from our users include:

> *"Just found out that Halifax put PPI on my credit cards without my knowledge."*

"I received £1,200 in compensation from Barclays. I categorically DID NOT ask for PPI!"

*"I had a loan through Virgin Money around 2005, and as I was in the military **I was very specific about having no PPI** as due to my job I definitely did not need it. The loan was for £16,500 and my payment was £350 per month and was done over the phone. The loan was redeemed in 2007 from a house sale. In October last year I had a letter from MBNA who handled the loan for Virgin Money saying they believe I was mis-sold PPI. I sent it back saying thanks for the letter, but I did not have PPI and **was very adamant that I did not ask for it** due to my employment. Four weeks later **I received a cheque for £7,526 as it had been put on my loan**. Please use this as an example for people to query every loan and credit card even when they did not think they had it."*

"Just heard that Lloyds have upheld husband's claim for mis-selling PPI on his overdraft. Never given a choice but told he had to pay it to have the OD facility. Almost £4,000 on its way. Thanks Martin."

The FCA's quantitative consumer research is heavily based on just the adults who know they have had PPI (22%) and those who are 'unsure if they ever had PPI or may have had PPI' (11%). It is assumed the remaining majority of 67% are adamant they didn't have PPI and so they do not appear to have been questioned about their potential intended actions if the time-bar is introduced.

It must not be assumed that none of these people had PPI (and consequently that none were mis-sold) – though this is what the consultation does. These people will be denied justice by the time-bar, for not knowing what they do not know, and the FCA will have failed to protect them.

This is the wrong time for this intervention – too many complaints are still upheld at the Ombudsman

The uphold rate for PPI complaints at the Ombudsman is still averaging almost 70%. This is a red flag that the FCA should not ignore. A time-bar should be off the table as long as lenders are still not handling PPI complaints properly. It should only be considered for individual firms whose average uphold rate at the Ombudsman over the past 12 months has fallen below 20%, as this would indicate that it is handling PPI complaints properly.

The reason we say 20% is we accept 20% of complaints may be complex enough to mean the Ombudsman may need to overturn a decision. The fact we have seen some firms with a 90% uphold rate is indicative of a potential systemic problem in complaints handling and must not be rewarded.

This is the wrong time for this intervention – firms have failed to contact high-risk customers

Firms have still not completed sending targeted redress offers or contact letters to identified high-risk non-complainants as requested of them in 2010. The consultation paper explains that 4.8m of 5.5m letters to high-risk non-complainants have been sent. While the consultation frames this as success, over five years, after being asked, firms have still failed to reach 700,000 affected customers.

Without closure of this process firms do not deserve to be rewarded with a time-bar. In fact, completing this process properly would bring forward more complaints and weaken further the

justification for a time-bar. As the consultation highlights, a reasonable number of people have responded to the targeted letters and the uphold rate is encouraging.

A time-bar will not result in an "orderly close" – it will send people to take action in the courts

While everyone wishes mass PPI mis-selling didn't happen, a time-bar would be a crude attempt to brush it under the carpet. It will not result in an "orderly close", as consumers who miss it will be denied the right to complain and seek redress. Moreover, as the time-bar will not apply in the courts, more cases will return to the judicial route. This route will be more difficult and will lead to more people using claims firms. It will tilt the balance of justice away from those who do not have their own resources.

A time-bar is not the solution to annoying cold calls

There are huge issues regarding cold calls about PPI by claims management companies (CMCs), which have annoyed and frustrated millions of people for years. There has been a plague of cold callers, following a plague of PPI.

A deadline will inevitably see this activity ramped up, as the CMCs seek to get every last drop of commission. Of course, this is redress that consumers can keep themselves if they complain directly.

A clampdown on annoying cold calls is vital, but a PPI time-bar is not the solution. These are two separate issues and they should not be wrapped up into one blanket. It is wrong to let one set of leaches off the hook to get rid of another and the callers would simply find a new subject when the time-bar has ended.

We welcome a recent Department for Culture, Media and Sport consultation on cold callers and urge for action to be taken to end these calls instead of trying to control them by introducing the time-bar for PPI complaints.

Firms that have paid out promptly could protest

Some firms have cooperated and processed complaints better than others. These would be disadvantaged by a time-bar which would disproportionately help the lenders that are worst at resolving complaints. This is a moral problem and will also unfairly distort competition in the market. Our concern is in future scandals firms would delay paying out – this creates a situation of moral hazard.

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

The nature of a deadline is crude

The consultation argues that the deadline will apply to all consumers, who it will be assumed will have been reached by the planned FCA-led communications campaign. The onus will be on consumers to investigate their own situations and to complain if appropriate.

Yet although PPI has already been very widely covered by all media for years, many still do not know they were mis-sold. A communications campaign may help some, but the deadline will also hit some victims who are simply in the position of not knowing what they do not know. A deadline will let firms which mis-sold to these consumers off the hook.

Rather than a deadline, proactive intervention by firms is required

The complaints-driven process has specific problems, which would be overcome or reduced by a proactive client contact process:

- A significant number of people do not know how to complain – due to literacy, mental health or capacity problems.
- A substantial number of people do not know they were sold PPI. It was added without them being told and they are not aware they have paid for it.
- Many rejected complaints do not go to the Ombudsman – though uphold rates indicate that many of these would have been successful.

For these reasons, mechanisms for firms to proactively contact clients would achieve a fairer aggregate outcome than a client complaint process. A proactive client contact process means:

- **Firms must first finish sending letters to those at high risk of being mis-sold PPI**

  This practice should have taken place years ago and cannot be ignored again. The consultation paper says that 700,000 remain to be sent. Finishing this job will bring forward thousands of complaints, without having to resort to imposing a deadline.

- **Firms must proactively contact ALL customers who were sold PPI as a matter of the highest importance**

  Many people are unaware they have PPI, as one core way it was mis-sold was adding it when people refused. Therefore for a time-bar to work, every single person who has had PPI must be written to by their bank to inform them of the details. Without that, the only thing this time-bar will do is be a liability limiter for the banks and building societies which mis-sold this product, at the cost of the people who were defrauded.

  This is a fundamental requirement to balance the benefit to businesses of introducing the time-bar.

  It does not matter how extensive the communication campaign is, people who do not know they had PPI will still not be reached without this specific action.

  Letters must be in plain English and answer two specific questions:
    1) Who is my lender?
    2) Did I have PPI?

  The letters must be sent by recorded delivery or acknowledged by consumers, so that it is known the letters have been received.

  To fully close off the issue and compensate for past poor behaviour, the letters should also be sent to all customers who have already complained and whose complaints were rejected or incorrectly handled. This is so they are given the option to escalate their complaints to the Ombudsman if they have not already done so. Anyone who has complained since 2011 should be able to go straight to the Ombudsman.

If a letter is not sent to each individual customer who may be owed PPI redress, going back over the full time PPI policies were sold, this process has been a carve up to protect firms' interests at the cost of consumers.

If the recommendation for proactive letters is rejected, we will be very disappointed, but at the very least, consumers who ask firms whether they had PPI from them should be told the answer promptly and for free.

- **Measures to increase trust must be implemented**

  Many people don't trust letters from their firm. We have learnt this from the CCP redress scheme, to which only 33% of people responded. Firms must put in place measures to increase trust – such as sending letters by recorded delivery and using their online banking secure messaging systems where they exist.

  We accept that telling people they had PPI is something that lenders should do, but due to consumers' lack of trust in them, telling people what can be done should not be left to the banks. One solution is for the letters to include an impartial leaflet from consumer groups. MoneySavingExpert.com would be happy to help the regulator implement this.

The deadline date is too soon

The justification provided in the consultation paper for choosing a two-year deadline is based on an untenable assumption that three years is too long, one year is too short, and so therefore two years is just right. Alarmingly this goes against the findings of the FCA's own consumer research.

FCA consumer research found that a three-to-five year deadline would be preferable. This would give consumers time to explore their own PPI situation, as well as give them time to make multiple complaints if necessary. If a time-bar is to be introduced it will curtail consumers' rights, so it is vital that the recommendations of consumers are heeded.

Sadly the consultation paper argues against a three-year deadline – and ignores anything longer than this. Yet as is acknowledged, this length of deadline would provide a longer period of forewarning and opportunity to consumers, and a reduction in the risk of a complaint spike and operational strain on firms. This length of time-bar would reduce detriment to consumers.

If a time-bar is implemented it must be at least three years from the date after all proactive time-bar intervention letters have been sent to those who may be able to complain. This also meets the current rules – that people have three years from the date on which they become aware of their right to complain.

The scope of the deadline is too broad

The scope should be narrowed to protect consumers who are unaware of it or unable to complain in time. Specifically, the deadline must not apply to:

- consumers in vulnerable circumstances (eg. those with mental health problems, or learning difficulties, or those who are visually impaired or experiencing a life event which makes them vulnerable);
- those who have been out of the country;

- customers of any firm fined by the regulator for poor PPI practice during the time-bar period.

There must be a flexible and broad understanding of exceptional circumstances in which the time-bar does not apply. In 2015 the FCA began a dialogue on vulnerable consumers in its Occasional Paper No. 8, and we expect it to ensure vulnerable consumers are properly protected.

While those at the top of firms make positive noises about wanting to behave properly toward people in vulnerable situations, there is often a real gap between this intention and outcomes for vulnerable consumers.

If a deadline is imposed, how vulnerable consumers are treated will be a real test for firms – but also an opportunity to demonstrate that they are serious about their duty toward vulnerable consumers. We expect the FCA will be monitoring this treatment very closely.

There must be a blanket fairness test to protect against 'unknown unknowns'

It is not possible to predict the future, and so it is not possible to specify every reason for legitimate complaints to be accepted after the deadline has passed. There should therefore be a blanket fairness test against the unknown unknown.

Anyone who has been mis-sold PPI but was unable to complain before the deadline for a good reason should have their complaint considered. When a bank rejects a complaint due to the passing of the deadline, they should tell the customer that if they have extenuating circumstances they can take their complaint to the Ombudsman.

Extra operational measures must be put in place

The complaints process must be made easier and simpler for people without the need to use a CMC. Consumers turn to CMCs because they perceive the process to be complicated. Essential extra measures to protect consumers are:

- *Complaints must be accepted across a variety of media*
  Consumers should be able to choose how to complain, including via phone, email, letter and third party online complaining tool.

- *Firms must ensure they have enough staff to handle complaints within eight weeks*
  They must also cause no unreasonable delays to the complaints handling process. The FCA will need to monitor that sufficient resources are put in place to deal with the increase in complaints.

- *Firms should provide the finance needed for the Ombudsman to handle complaints within six months of receipt*
  PPI complaints account for the majority of the Ombudsman's workload, and it often takes a long time for a decision to be made. Firms should cover the cost of ensuring the time-bar does not result in an even longer delay when consumers choose to escalate their complaint.

- *The six-year time limit after which a firm can destroy old records must be removed for any PPI products*
  As time passes complaints become harder to prove, as records are discarded. Although PPI mis-selling took place for many years, firms can destroy records just six years after an

account has been closed. Firms must not be let off the hook for the mis-selling of older products.

- *All rejected complainants must also be given the option of being automatically referred to the Ombudsman*
  This is regardless of the means of complaint, so that consumers who complain without the use of a claims handler are not disadvantaged. The fees for firms would need to be amended appropriately.

- *The six-month time limit to escalate complaints to the Ombudsman must be removed*
  Consumers must be able to escalate new complaints at any point during the time-bar and anyone rejected in the past must be able to reopen their case. If consumers see an FCA advertising campaign telling them the deadline is three years away they may not realise that a rejected complaint must be taken to the Ombudsman within six months under current rules. Of course, a complaint submitted on the last day of the deadline must still be given the full six months to be taken to the Ombudsman.

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

The campaign must have a measure of success, upon which the deadline is dependent. The reference in the consultation that, “The campaign budget has been set to deliver effective audience reach and contact frequency” is too vague. If the campaign is unsuccessful in reaching as many people as is intended, or bringing forward complaints, then the deadline should be postponed. We agree that flexibility regarding the communications campaign should be built in to the proposals, and it should also be built in to the deadline mechanism.

A general communication campaign is important as one of the avenues to reach people, but it should not just be about awareness raising. An aim must also be about raising trust in the process and legitimatising the proactive contact letters.

The communication campaign should complement the letter by explaining that firms will be writing to people who were sold PPI. When someone gets a letter from their lender they will then be more likely to know that it is trustworthy and that they do not need a CMC to help them, and that they can do this by themselves for free.

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

We do not agree with all the elements of the proposed consumer communications campaign.

The communication campaign must learn lessons from the failures and wastage of other publicly funded websites

When the Money Advice Service launched £50m was spent on marketing a portal which replicated information already provided elsewhere. That spending brought in 20m ‘annual users’ which is a meaningless figure (using the same method MoneySavingExpert.com would have 290m users, many times the population of the UK).

Ofgem's website Be An Energy Shopper (goenergyshopping.co.uk) again spends vast resources to replicate what is provided elsewhere, and again gets very low traffic. We encourage the FCA to consider its statistics – including the bounce rate as people lost due to extra clicks.

It is alarming, therefore, that the consultation proposes to set up a new portal and then advertise it using various media.

The space for PPI information on the web is cluttered – the FCA should not add to this

This space already has fierce competition. There are two search markets: natural search and pay per click, but an FCA consumer website on mis-sold PPI would not work in either.

The proposed website cannot work in natural search because websites, including MoneySavingExpert.com and Which?, have been providing clear information on PPI mis-selling to consumers for years. Through the quality of its content, MoneySavingExpert.com ranks top. It is unrealistic to expect the FCA-made site to rank well in internet search results.

The proposed website cannot work in pay-per-click search because this expensive method is swamped by CMCs. The FCA should not attempt to compete with them for pay-per-click, which would be several pounds for every click.

The FCA should work with good players

There are already good websites giving clear information on how to complain about PPI for free.

Examples of feedback we regularly receive from our users include:

> *"Thank you!!!!*
>
> *"A few years ago I sent a request to claim back my mis-sold PPI which was rejected. This time I followed your steps which were so easy. Including to try again.*
>
> *"Within two weeks I received £660 back from an old credit card and a whopping £6,000 back from my previous loan. I couldn't have achieved it without your easy guides, thank you!!!"*

> *"Thanks to your website I managed to claim back over £23,000 of mis-sold PPI dating back to 2003! I would never have known how to claim this money back if it wasn't for Martin's money tips email – thank you!"*

> *"Dear Money Saving Expert.*
>
> *"Thank you for your recent newsletter article on making DIY PPI claims. Last week I used your website and looked up PPI claim info on Egg cards. I had an Egg card which was transferred to Barclaycard. I used the link on the Barclaycard website to fill in an online claim and only a week later received a letter from Barclays upholding my claim and awarding me £1,439.*
>
> *"I am over the moon!*

"It was much easier than I expected and I never thought I would get that amount back so thank you very much."

"Just received a cheque. I reclaimed PPI on a car purchase from 2004 to 2007. Many thanks for your tips to claim! I would never have thought to claim otherwise."

"I became debt-free (apart from mortgage) through a £10,000 PPI reclaim - great help from @MoneySavingExp, changed my life after years of debt."

The FCA should work with good players, like MoneySavingExpert.com, which are already at the top of natural search. One way it could do this would be to create a "regulator message box" which could be hosted in relevant parts of those sites. This would be far cheaper and reach many more people.

A helpline could provide PPI answers for free

The helpline proposal is a good idea as this would provide people with answers on their PPI questions. Currently people call CMCs to ask PPI questions and then if they do go on and have a successful claim through the company, they lose a big part of their redress to the CMC. People want someone on their side to help, who is not taking some of their money.

Hard-to-reach consumers must be included

The campaign aim should be to identify and reach consumers who cannot or do not access existing sources of information.

Face-to-face help is crucial for some vulnerable consumers. Part of the campaign budget needs to pay for advice sector staff to help vulnerable consumers, as per Pension Wise. Many, for example people with some mental health conditions, will not be able to phone the helpline or fill in forms. They will need face-to-face help to assist them through the process. Without this the deadline will deny them their redress.

Direct marketing must include personalised letters

Very little information is given on what "direct marketing" is planned, but this should be one of the key avenues used in the campaign. This should take the form of personalised letters to all customers who were sold PPI, with details of their policy, as explained above.

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

The rule should also allow for the collection of more money in the case that an overspend is necessary in order to reach everyone and meet the aims of the campaign. The costs to firms will amount to far less than the potential full liability of paying redress on all mis-sold PPI that they will be saving with the introduction of a time-bar.

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?

We agree that the regulator should set the rules now, but these must be fair and based on the court's decision. The Plevin judgment means many more than originally thought are due a refund for a PPI premium they have paid in the past. Therefore the impact of Plevin on FCA rules should be settled first, before a time-bar is introduced – not at the same time. We object to the implementation of Plevin forming part of the wider PPI deadline consultation.

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

The fact the rules and guidance will apply broadly to any PPI sale will lead to clarity and consistency in the handling of complaints, which we support.

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?

No, we do not agree with the proposed structure.

The Plevin judgment regards a matter of fact of undisclosed commission. Although we disagree with the FCA's proposed tipping point, if the eventual tipping point were breached, then redress under Plevin should be automatically activated. Letters should be sent to affected customers detailing how much they are entitled to under the Plevin refund rule and say that more redress may be due if the consumer chooses to make a mis-selling complaint, and it is upheld.

Firms should be made to process this step first – it should not be a second step. This would mean that consumers do not need to chase a refund of the commission that was unfairly taken from them. This proactive contact from the firms should take place as long as the firm has the customer's contact details.

The consumer can then go on to complain under the current dispute resolution complaints sourcebook rules. To avoid "double dipping" – receiving redress twice when it is only owed once – the firms would simply need to subtract any redress already paid under the Plevin rules when DISP rules are applied.

This should not be beyond the capacity of firms to manage effectively. In the case of the lender and PPI seller being different firms, the consultation proposes a mechanism to mitigate this risk. If the risk can be mitigated when two firms are involved, it can certainly be mitigated where only one firm is involved.

If the decision is taken against this automatic payout for breaches of the commission threshold, then consumers should be able to complain directly about Plevin first, and then later about other mis-selling.

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

We do not have a view on this question.

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?

No, we do not agree. This proposal is not based on convincing evidence. The Supreme Court in Plevin said that 71.8% commission was a "long way beyond" the tipping point for unfairness. Yet 50% is still a long way beyond what we consider reasonable.

The consultation explains that the FCA has taken into account the Manchester County Court consideration in *Yates and Lorenzelli v. Nemo Personal Finance* that commission over 50% should be disclosed. While the consultation acknowledges this is "only one of a number of approaches that may be taken", no argument is made why this is the best option.

As the FCA consultation paper says, the Competition Commission estimates genuine distribution costs including a reasonable profit margin to be around 16%. We recommend the extreme tipping point be no higher than 20%. This gives firms a reasonable headroom for higher costs – though not the "very substantial headroom" which would be provided by a 50% tipping point. Such a high tipping point is unnecessary, undeserved and unfair.

Furthermore, the proposed approach to redress seeks to establish 50% commission as a precedent. A 50% tipping point will inevitably lead to commission rising to this figure, which effectively results in the FCA controlling prices in the market. Since the payday loan cap was set as 0.8% per day, this has now become the industry standard. A 50% tipping point would have the same effect on the sales commission of payment protection products – and at such a high amount this worries us.

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?

We are concerned that firms may exploit the opportunity to rebut complaints where commission was above the tipping point but the consumer was not informed. Situations in which firms can rebut complaints on this basis must be clearly defined and closely monitored – so that firms are not exploiting this to consumers' detriment.

If the exceptions are kept, the wording should be tightened up. A reasonable expectation that a complainant was aware of the commission level (for example because they worked in a relevant

position in financial services) should be upgraded to a very high expectation and the individual working in a very senior position. The current definition could capture many people who worked in retail banking, whether or not it was their day job to think about commission.

The FCA should monitor any rebuttals of complaints about commission above the tipping point extremely closely. If this is regarded as a loophole to be exploited by firms it would delay many complaints, which would then have to go to the Ombudsman, and potentially go against the Plevin rules and guidance.

On the other hand, it is good that firms should find a relationship unfair in certain circumstances even if the commission was below the threshold. We recognise these circumstances are described in broad terms in the consultation paper – and firms should interpret them as such.

However, as firms are considering the Plevin rules and guidance without complainants necessarily raising commission as an issue, firms should enquire as to whether the complainant was in particularly difficult financial circumstances. Without making these enquiries with the complainant, complainants' financial circumstances – difficult or not – would be unknown to firms.

Again, the FCA must monitor this closely to make sure the intended outcomes for consumers are being achieved.

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?

As we have stated above, a 50% level of commission is too high. If the tipping point is lowered to a more reasonable no-more-than 20% we agree with the proposed approach to pay the difference between the commission paid and the tipping point plus interest. However, if the tipping point stays at 50% we do not agree to the proposed approach.

It is also concerning that firms, which initially find at Step 1 that a mis-sale did not take place, will be responsible for deciding whether the non-disclosure of commission at Step 2 was the 'straw that broke the back' and a full refund should be given. We expect the FCA to pay very close attention to make sure firms actually do this.

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?

We agree with the proposed approaches apart from on interaction with alternative redress procedures. If a firm has decided that alternative redress is due at Step 1, and redress is also due at Step 2, then the payment should include both the amount of alternative redress plus the amount of unfair commission paid for the replacement regular premium policy. This would total more than the higher of Step 1 or Step 2.

If this is too difficult for firms to administer then both redress sums should be paid – rather than the proposed higher of the two.

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 agree with this but reiterate that there should be a requirement for firms to proactively contact consumers. In this instance, where consumers have already complained, the data that firms hold on them is more likely to be accurate (such as address details).

The Plevin case is extremely complicated and most consumers will be unaware of the specifics and that they may yet be owed redress, even if they have previously had a complaint rejected. Crucially, most consumers will be completely unaware of the level of commission they have paid. However the firms that failed to disclose high levels of commission do understand the implications of Plevin – the onus must be on them to write to affected consumers.

Again, if this recommendation is rejected then consumers should be able to complain directly about Plevin first, and then later about other mis-selling.

We disagree, however, with the view that Principle 6 should only apply to credit agreements that were entered into after, or were outstanding on, 1 April 2014. Regulated firms should have always treated customers fairly in everything they do and not applying Principle 6 to regulated firms before this date lets them off on a technicality.

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?

We agree that the FCA should continue to monitor the situation and should not rule out making new rules and guidance in relation to other court decisions in future.

Q16: Do you have any comments on our cost benefit analysis?

There are too many assumptions in this consultation to believe that the time-bar will work and achieve the benefits assigned to consumers in the consultation.

The consultation does not convincingly show that there will be more redress paid in aggregate with a time-bar than without a time-bar. As banks have already been calling for a shorter deadline than two years, it seems they agree that the value of the complaints cut off will be greater than the value of the complaints brought forward. In any case, with this level of uncertainty, it would be anti-consumer to proceed with a time-bar.

The consultation admits that the costs and benefits cannot reasonably be estimated and that the overall conclusion cannot be guaranteed. The costs and benefits of the time-bar need to be

measurable and constantly reviewed throughout the time-bar period. If the benefits in the CBA do not outweigh the costs then the deadline must be abandoned or at least extended.

Q17: 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?

Before a decision is made a full Equality Impact Assessment should be carried out, based on research focused on protected groups. Several groups of people with protected characteristics are on lower-than-average incomes, therefore more likely to have taken out credit and been mis-sold PPI. We are therefore concerned that groups with protected characteristics may potentially be discriminated against and expect more thorough research and an EIA to be conducted so this can be avoided.

We agree the deadline could have a worse impact for vulnerable consumers than other consumers, and agree this should be taken into account when designing the communications campaign.

In addition, consumer vulnerability must be regarded as an exceptional circumstance to allow a complaint to be assessed after the deadline has passed. The same should be true for consumers who have experienced discrimination due to a protected characteristic.

About MoneySavingExpert.com

MoneySavingExpert.com is the UK's biggest consumer website dedicated to saving people money on anything and everything by finding the best deals, beating the system and campaigning for financial justice. It's based on detailed journalistic research and cutting edge tools, and has one of the UK's top ten social networking communities.

During January 2016 the site had 15.7 million users visiting the site almost 27.1 million times and looking at more than 69.2 million pages. 11 million people have opted to receive our free weekly email and more than 1.4 million users have registered on the forum.