



Financial
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‘ask the ombudsman’ payment protection insurance

21 July 2011



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Tony Boorman
principal ombudsman
& decisions director

- **about today**
- **a simple five-step action plan**
- **operations update**
- **break!**
- **the ombudsman and complaints handling**
- **questions**

where we all are

- **greater operational clarity now achieved with waivers in place**
 - **but significant operational pressures/challenges for many players**
 - **behaviours of some causing delays, costs and disruption for all**
 - **“goodwill” offers on past complaints distort underlying position on merits**
 - **immediate focus on redress issues**
- **need to move to substantive merits issues**
 - **there will be a mix of outcomes when we establish “normal” operations**
 - **neither the JR nor PS10/12 make a significant difference to the established position of the ombudsman**
 - **standard and ill-considered representations will not achieve the “success” they may have in the past**

- **considerable public focus**
- **ombudsman position public**
- **steps required**
 - 1. recognise CMCs have a role**
 - 2. talk**
 - 3. stop mis-selling and/or provide more automatic redress**
 - 4. improve bank complaint processes and emphasise free services**
 - 5. better professional standards and regulation**

CMC professionalism and regulation

- **freedom to be a professional advocate**
- **need to build stronger sense of self regulatory professional standards**
- **but**
 - **advertising and cold calling**
 - **clarity of charges**
 - **up front fees**
 - **links with debt management and other financial services**

CMCs and ombudsman service

- need to tackle mass problems – like “no PPI”
- Ombudsman service will report areas of poor performance by CMCs to relevant regulator
- in some cases we may dismiss cases for other compelling reasons (or on merits) if we cannot be confident of professionalism of advocacy
- build better links with firms to ensure smooth operational transactions and early identification of problem areas
- want to build your knowledge of our approach and professional working relationship
- issues for consideration
 - procedural safeguards and restrictions
 - legislative change
 - charges generally
 - fees for those that impose particular costs



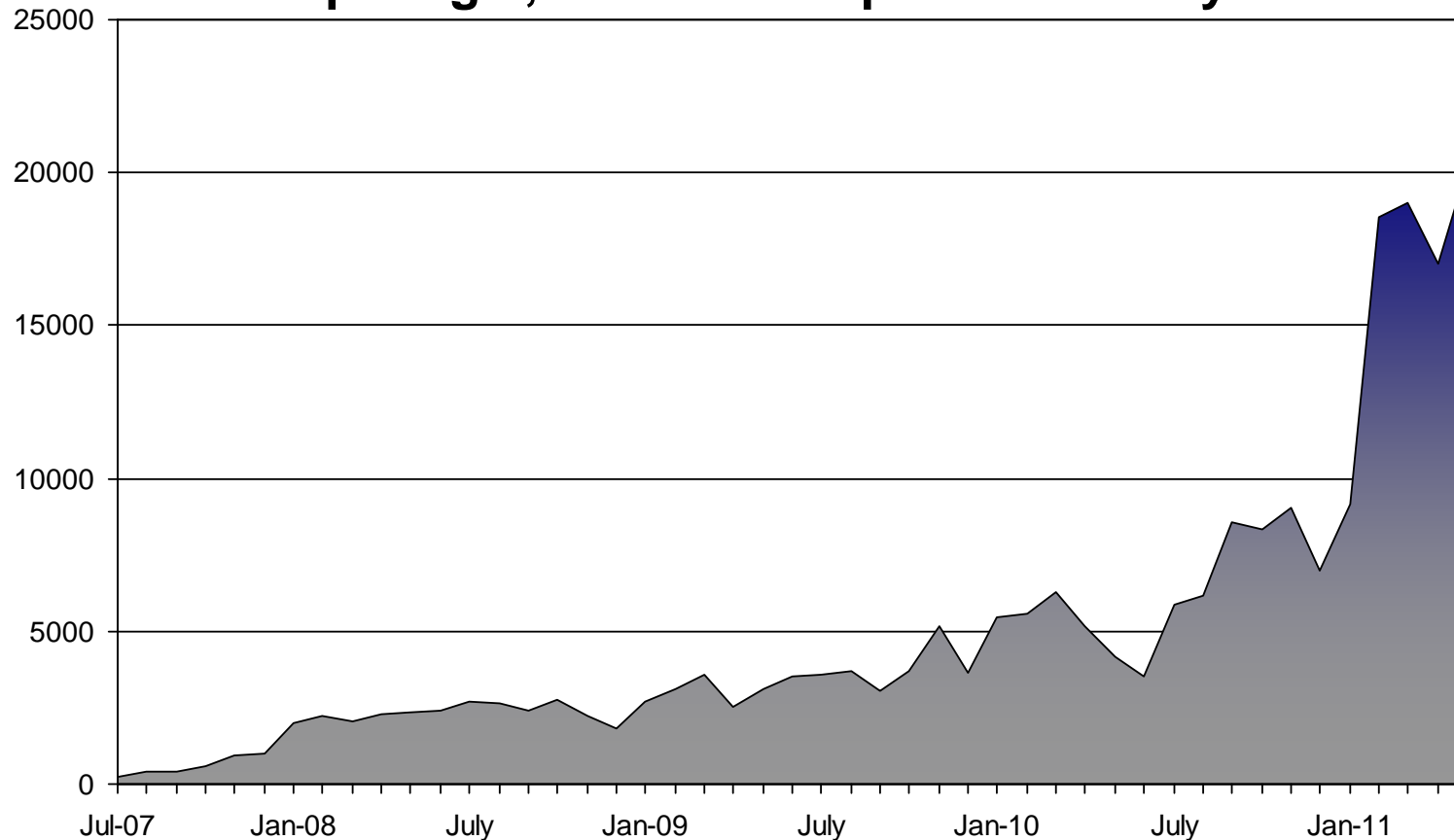
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operations update

Nathan Horner
head of casework teams for PPI

new PPI complaints – per month

- 20,000 new complaints received in June 2011
- anticipating 6,000 new complaints for July 2011



challenges ahead

- **actions / operational capability of businesses**
- **resourcing plans and impact of waivers – anticipating increased activity from September? *(your feedback appreciated)***
- **your impact – how you present your complaints**
 - **PPI consumer questionnaire**
 - **no PPI**

temporary extension for some PPI complaints

- **June 2011 – the FSA announced a timetable for Barclays, Lloyds Banking Group, RBS – and subsequently HSBC**
- **the extension agrees a timeframe for businesses to deal with the complaints put on hold**
- **additional time to deal with PPI complaints received since the end the judicial review**
- **we continue to accept complaints issued with ‘*proper*’ final responses and from businesses not mentioned above**

where we are at today...

- **we will continue to keep you updated**
- **offers**
 - **if a business is now prepared to settle your complaint, we will let you know**
 - **if you have queries then talk to the business first**
 - **if you are unable to resolve we will look into the matter**
 - **if a business contacts you direct with an offer, please let us know**
- **where no offer is made we will assess the complaint as normal**

PPI consumer questionnaire

- understand that claims managers will want to *help* the consumer when they complete the consumer questionnaire
- however, it is important that the consumer has the opportunity to tell us about their complaint in their own words
- designed to gather as many relevant facts – answers short in detail not helpful, eg ‘sick pay, savings, etc’
- *can’t remember* answers give little “evidential weight” but keep the questionnaire accessible
- http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi/guide-to-PPI-forms.html

- **doesn't help: us, you or the businesses**
- **carefully considered completion of consumer questionnaire will help to avoid these cases**
- **give the business as much information as possible to help trace the sale, before bringing the complaint to us – eg**
 - **any other loans/accounts that may help trace the consumer**
 - **address at the time of the sale**
 - **DOB**
 - **change of name?**
- **if you then bring the complaint to us you must make it clear from the information provided what we are being asked to consider – otherwise we may decline to handle the case**



questions



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PPI complaint handling

Caroline Wayman
principal ombudsman
& legal director

how the outcome of the judicial review changes what we do?

- it doesn't
- judgment in favour of the approach taken to date by the ombudsman service and FSA
- Ombudsman must decide what is fair and reasonable
- law, rules, regulations, industry practice etc
- careful balancing of these factors
- including FSA high level principles

how PS 10/12 changes the ombudsman's general approach?

- it doesn't
- overall, in assessing a case, we normally need to consider whether:
 - the firm that sold the PPI gave its customer information that was clear, fair and not misleading –in order to put the customer in a position where they could make an informed choice about the transaction that they were entering into and the insurance that they were buying; and
 - whether in giving any advice or recommendation, the firm took adequate steps to ensure that the product it recommended was suitable for that customer's needs.
- taking account of these considerations, the ombudsman needs to reach a fair and reasonable conclusion in all the circumstances of the case.

how DISP App 3 fits in with the ombudsman's approach?

we consider:

- **whether things happened as they should have done.**
- **if they didn't, did that affect the consumer's position (would the consumer have acted differently if things had happened as they should)?**
- **and if so, how should fair compensation be calculated in those circumstances)?**

how DISP App 3 fits in with the ombudsman's approach?

DISP App3

- firms assess whether there were substantial flaws
- where substantial sales flaws, firms should presume that that consumer would not have bought the policy (unless evidence to the contrary)
- *but* these presumptions are rebuttable – firms should consider whether consumer would have bought original policy anyway or acted in some other way

In essence, the same considerations, expressed in regulatory language

DISP App 3 – anything new?

- broadly speaking, no
- evidential standards in line with long established approach of ombudsman service and FSA
- usual '*causation*' considerations reflected in '*rebuttable presumptions*'
- one new area - alternative (*aka* 'comparative') redress

FSA guidance for businesses – alternative redress when?

where the business:

- **recommended a non pro-rata refund SPP without taking reasonable steps to establish whether the consumer might repay or refinance the loan.**

and/or

- **failed to disclose that the consumer would not receive a pro-rata refund in the event of early repayment, refinancing or cancellation.**

or

- **failed to disclose that the premium would be added to the loan, attracting interest and the amount of the interest:**

or

- **failed to disclose that the term of the policy was shorter than the term of the loan and made no other errors in sale**

FSA guidance for businesses – alternative redress what does it involve?

- moving the consumer to a regular payment arrangement:
 - a backward looking comparison to compensate the consumer for the losses already incurred.
 - and, where the PPI policy remains in force and the consumer wants to continue with existing cover, putting in place forward looking payment arrangements.
- assume the it would have cost £9 per £100 of benefit payable – the referent price.
- we will consider carefully whether offer is fair in the individual circumstances



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Redress in credit card mis-sales

- **exact approach will depend on the overall circumstances of the individual complaint.**

The key considerations are:

- **Status of the card account (and policy):**
 - **card and policy in force**
 - **card but not policy in force**
 - **card paid-off policy cancelled**
 - **arrears?**
- **minimum payment make-up – i.e. collects PPI premium or not**

redress – standard approach

- **typically involves hypothetical account reconstruction.**
- **compare current (or closing) balance, with hypothetical current (or closing) balance.**
- **pay consumer the difference (cash or possibly balance reduction) with interest (if calculated to date in the past).**
- **pay separate interest on credit balance for period consumer would have been in credit.**



questions



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