

consultation amendment to rules –changes to the time limits for PPI complaints

16 June 2017

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A. Draft instrument – Dispute Resolution: Payment Protection Insurance Complaints (Voluntary jurisdiction) (Financial Ombudsman Service) Instrument 2017

responses

We welcome your feedback on these amendments to our voluntary jurisdiction. Please send your views and comments – to reach us by 5pm on 12 July 2017 – to:

consultations@financial-ombudsman.org.uk

Or write to:

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Stakeholder team – consultation responses
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We may want to publish the responses we receive to this consultation paper. In the interests of transparency, we encourage non-confidential responses.

If you do send us a confidential response, it would be helpful if you could tell us why you consider the information confidential. We cannot guarantee that confidentiality can always be maintained. We will not regard an automatic confidentiality disclaimer generated by your IT system, of itself, as binding.

We are subject to the Freedom of Information Act 2000, so information provided in response to this consultation may be subject to publication, disclosure or release to other parties.

introduction

This consultation sets out the amendments that we propose to make to our standard terms affecting businesses subject to our voluntary jurisdiction.

background

The ombudsman service currently has two jurisdictions –

- the compulsory jurisdiction (CJ):
 - covers financial businesses regulated by PRA and FCA;
 - covers activities specified in rules made by FCA; and
 - is mainly restricted to services provided in or from the UK.

- the voluntary jurisdiction (VJ):
 - covers financial businesses that volunteer to join it;
 - covers activities specified in rules made by the ombudsman service with the approval of FCA; and
 - covers services directed at the UK from the European Economic Area, as well as services provided in or from the UK.

The FCA is responsible for making the rules for the CJ and the ombudsman service is responsible for making the rules and standard terms for the VJ with the FCA's approval.

In November 2015 the FCA published proposed changes to its rules and guidance for businesses about handling PPI complaints for consultation, in light of recent legal developments. It consulted on a new rule that would set a deadline by which consumers would – other than in limited circumstances – need to make their PPI complaints to firms or the ombudsman service or else lose their right to have them assessed by firms or by the ombudsman service.

In December 2015, the ombudsman service consulted on making the same changes the FCA was proposing for the CJ to our VJ. No responses were submitted to the ombudsman consultation.

Since then the FCA has consulted for a second time on the PPI time limit rule and proposed guidance on the application of DISP 2.8.2R(2) to complaints about payment protection contracts. The FCA published its final rules and guidance on PPI complaints on 2 March 2017.

It remains our view that it would be appropriate to amend the VJ to mirror the FCA's changes to the CJ time limits, subject to the FCA's approval. As the final rules and guidance published by the FCA differed significantly from the changes we consulted on in December 2015, we are inviting comments on the proposed changes.

proposed amendments

The changes to the time limits set out at DISP 2.8 will mean that prospective complainants will have to submit their PPI complaint by a specific date, or lose the right to have their complaint assessed by the firm or us. There will be an FCA-led communications campaign designed to prompt consumers to make a decision about complaining in advance of the deadline.

We anticipate that we will not be able to consider complaints about the sale of PPI made after the deadline other than in limited circumstances.

To keep the VJ aligned with the CJ and to avoid consumer and business confusion following the communications campaign about the deadline, we think it would be appropriate to amend the VJ in line with the FCA's changes to the CJ. We currently deal with a small, but not insignificant number of PPI sales complaints (predominantly against overseas insurers) under the VJ and any changes to the VJ time limits will have an impact on those businesses and their customers.

We also propose to adopt to the VJ the guidance on the application of DISP 2.8.2R(2) to complaints about payment protection contracts.

The Annex contains the draft instrument to implement this proposal.

We currently expect the changes to take effect on 29 August 2017 in line with when the FCA's rules take effect.

**DISPUTE RESOLUTION: PAYMENT PROTECTION INSURANCE COMPLAINTS
(VOLUNTARY JURISDICTION) (FINANCIAL OMBUDSMAN SERVICE)
INSTRUMENT 2017**

Powers exercised by the Financial Ombudsman Service Limited

- A. The Financial Ombudsman Service Limited fixes and varies the standard terms for the Voluntary Jurisdiction as set out in the Annex to this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:
- (a) section 225 (the scheme and the scheme operator);
 - (b) paragraph 8 (Guidance) of Schedule 17;
 - (c) paragraph 18 (Terms of reference to the scheme) of Schedule 17; and
 - (d) paragraph 22 (Consultation) of Schedule 17.
- B. The fixing and varying of the standard terms is subject to the approval of the Financial Conduct Authority.

Approval by the Financial Conduct Authority

- C. The Financial Conduct Authority approves standard terms fixed and varied by the Financial Ombudsman Service Limited in this instrument.

Commencement

- D. This instrument comes into force on 29 August 2017.

Amendments to the Handbook

- E. The Dispute Resolution: Complaints sourcebook (DISP) is to be amended in accordance with the Annex to this instrument.

Citation

- F. This instrument may be cited as the Dispute Resolution: Payment Protection Insurance Complaints (Voluntary Jurisdiction) (Financial Ombudsman Service) Instrument 2017.

By order of the Board of the Financial Ombudsman Service Limited
[DATE] 2017

Approved by the Board of the Financial Conduct Authority
[DATE] 2017

Annex

Amendments to the Dispute Resolution: Complaints sourcebook (DISP)

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

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

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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*.

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