



A package of measures announced recently to strengthen CMR enforcement capability includes a tightening of the CMC conduct rules, a new power to issue financial penalties for non compliance and additional CMR resources. This special PPI bulletin complements that initiative by highlighting recent developments in the PPI claims sector, and provides advice and guidance on areas where we are finding common failings by some CMCs that result in poor quality services being provided to customers.

Financial Ombudsman six-month time limit

PPI complaints that CMCs refer to the Financial Ombudsman (FOS) must be made within six months of the date of any final response letter from the financial business. FOS cannot consider a complaint if it is referred to them outside the six-month time limit (and the financial business raises an objection) unless there are exceptional circumstances.

If you therefore fail to handle PPI cases rejected by financial businesses in a proper and timely way, there is potential to cause significant detriment to customers.

Further information about the FOS six-month time limit can be found on their website at - <http://www.financial-ombudsman.org.uk/publications/technical-notes/six-month-time-limit.htm>

Alternative redress

Some banks have been making offers on an 'alternative redress' basis/calculation on PPI complaints since early 2013. This is sometimes also referred to as 'comparative redress' or 'partial upheld'.

These offers need to be properly assessed and instructions from clients should be obtained about whether the offer is appropriate. Some CMCs have been either failing to identify these offers or treating them in the same way as full offers.

Further information about alternative redress offers can be found on the FOS website at - <http://www.financial-ombudsman.org.uk/publications/technical-notes/ppi/redress.html>

Action required

You should conduct a review to ensure you identify any mishandled PPI cases (related to FOS six-month time limit and alternative redress offers) and seek to remedy this without delay. You should also inform those clients likely to be affected of the position and what action you propose to take.

Mishandling of PPI claims could put you in breach of your contract with clients and in breach of the conduct rules set out below:

General Rule 2 – you must conduct yourself responsibly

General Rules 3 and 4 – you must be directed by people with, and ensure your staff have, necessary competence

General Rule 5 – you must observe all relevant laws and regulations. This includes The Supply of Goods and Services Act 1982 which requires you to provide the service with reasonable care and skill and within a reasonable time

Client Specific Rules 1(a) – (c) – you must act fairly and reasonably in dealings with clients, ensure the service offered is one that meets the needs of the client and ensure all information given to the client is clear, transparent, fair and not misleading.

Any failure in respect of the above and also failing to advise those clients affected of the position, will also be in breach of:

Client Specific Rule 18 – you must keep the client informed of the progress of the claim.

Enforcement action

We have already warned several CMCs about malpractice in these particular areas and have commenced a number of investigations. We are closely monitoring compliance in this area and will take action where needed.

Presenting PPI claims

FOS issued an open letter to all CMCs in September as a reminder of the basic expectations when referring a complaint to FOS. The letter can be viewed here - http://www.financial-ombudsman.org.uk/publications/technical_notes/ppi/ppi-Open-letter-to-CMCs.pdf

FOS requires you to provide accurate, specific and as complete as is possible information about each individual complaint.

We expect you to provide the same standard of information to the financial business when starting a claim (before it is referred to FOS).

Failure to provide accurate and specific information to the financial business means that additional resources and time will be taken up during the claims process. This resource could otherwise be used to efficiently process genuine and accurately presented claims.

In particular, CMCs should ensure that any information obtained from clients is presented fully and accurately to the financial business or FOS to enable them to investigate the claim.

Failure to provide accurate and specific information about the individual complaint will constitute a breach of **General Rule 2** which requires you to conduct yourself responsibly.

Please also note that we are consulting on changes to the conduct Rules that make clear the obligations CMCs have when claiming on behalf of consumers

The consultation closes on 9 Jan 2014 - details can be found here - <https://www.gov.uk/government/consultations/proposals-to-amend-the-conduct-of-authorised-persons-rules-the-financial-services-perspective>

Pre-contract information

(i) Time for client to consider pre-contract information

Client Specific Rule 11 requires you to provide certain information before you enter into a contract with a client. The Provision of Services Regulations 2009 requires businesses to provide certain information *'in good time before the conclusion of a contract ...'*

You will be in breach of the rules if you:

- Fail to give prospective clients a reasonable time to consider pre-contractual information before seeking to enter into a contract with them
- Enter into the agreement during your initial contact with clients or very soon after providing the pre-contract information.

This includes for example the situation where CMCs market their services by telephone or in person e.g. using shopping centre stands or by employing agents to take paperwork to a client's home for signing.

Please note that this requirement does not just apply to CMCs who take an upfront fee for their services.

We have already taken action against several CMCs for such rule breaches and will shortly be updating our Rule 11 guidance and reissuing this to all CMCs.

(ii) Customer complaint procedures

CMCs must also provide clients with the procedures to follow in the event of a complaint as part of the pre-contract information (**Client Specific Rule 11(j)**).

To simply signpost clients to a website or request them to make contact to obtain details about how to complain is not sufficient, and would constitute a breach of Client Specific Rule 11(j).

If your pre-contract information fails to comply with Client Specific Rule 11(j), you must update it immediately.

(iii) CMC fee examples

Pre-contract information must include examples of the fees or charges you make. This must be typical and representative of likely redress sums. If you use details of average settlement figures in marketing or other paperwork, the examples used in your pre-contract information must be similar to those sums.

Client Specific Rule 11(e) requires you to indicate the percentage with a typical example of the actual cost in pounds. Providing an example to illustrate the fees which differs significantly from your usual redress amount may also be deemed misleading and in breach of **Client Specific Rule 1(c)**.

You must also give more than one example if you have different fee structures depending on the circumstances of your client i.e. where a client is in arrears.

Further advice can be found under “*Transparency of fees*” in our re-issued general PPI claims handling guidance at - <http://www.justice.gov.uk/downloads/claims-regulation/handling-ppi-claims.pdf>

Updating clients

One of the most common complaints we receive is about clients not being updated on the progress of their claim. These are often clients whose case has been referred to FOS.

Clients’ instructions should be obtained before referring their case to FOS and they should be advised how long it may take for the claim to be considered. We expect you to update your client, even if you have heard nothing further from FOS at reasonable intervals until the decision is made. You should not be unnecessarily chasing FOS in order to provide your client with an update.

Failure to keep clients informed about the progress of their claim is a breach of **Client Specific Rule 18**.

Client money

It is important that you provide us with accurate information about whether you handle client money.

If you do handle client money but have not made us aware, you are in breach of **General Rule 16** as well as the **Client Account Rules 2006**.

If you have declared that you handle client money then you must provide us with an Accountant’s Report each year in accordance with the Client Account Rules 2006.

If you do not handle client money, then your paperwork must reflect this. For example, you should not include instructions in your Letter of Authority for financial businesses to pay redress to you directly if you do not operate client accounts.

You must ensure that any documentation you use accurately reflects your process.

Direct marketing

CMCs should not rely solely on assurances of their data providers that the necessary consent to contact consumers has been obtained and/or that the data has been cleaned against the Telephone Preference Service (“TPS”) register. Where you are the instigator of calls, you must ensure that you have appropriate due diligence processes in place to satisfy yourself, and us, that you are using data in a compliant manner.

If you market directly to consumers without the necessary consent or having TPS screened, you will be in breach of The Privacy and Electronic Communication Regulations 2003 and consequently **General Rule 5** as well as **Client Specific Rule 4**.

Please familiarise yourself with the rules around marketing and consult the guidance at: <http://www.justice.gov.uk/downloads/claims-regulation/cmr-marketing-advertising-guidance.pdf>

How to contact us

Call us on 0333 200 1320

Email: business@claimsregulation.gov.uk

Web: www.justice.gov.uk/claims-regulation