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16 February 2016

Dear Lauren and Julian

Re: NFDA response to FCA Consultation CP15/39 Rules and guidance on payment protection insurance complaints CP15/39

About the NFDA

The National Franchised Dealers Association (NFDA) is a federated association of the Retail Motor Industry Federation and represents the interests of franchised vehicle dealers in the UK. The NFDA represents 80% of the UK's 4,800 franchised car sales outlets who in turn, represent circa 40 manufacturer franchises. In 2015, UK franchised dealers sold 2.63 million new cars and approximately 3.30 million used cars. Dealers offer a number of services to consumers and businesses including vehicle sales, servicing, repair and maintenance of vehicles, the supply of replacement parts and mediation of finance and insurance products.

Franchised Dealers and Payment Protection Insurance

Franchise dealers do not commonly sell Payment Protection Insurance (PPI), despite being a prevalent practice in previous years. Nevertheless, dealers have been inundated with PPI complaints from Claims Management Companies (CMC) investigating historic claims, with claims beginning during the mid 2000's. Although some of these complaints are valid, many are not and are purely an exercise in 'fishing' for data. Over time, the quality of complaints has deteriorated as claims management companies (CMC) proactively 'seek out' complaints from consumers. These cases often lack evidence and a ground upon which to file the complaint.

The NFDA accepts that there may be less evidence to support older complaints, however this does not defend or explain why the majority of claims submitted are groundless. It is obvious that CMC's are not making the most rudimentary of checks on the existence or validity of complaints before sending these to dealers. Processing claims is timely and costly, particularly when it is concluded that the claim is *void*. The specific issue of void claims is something the NFDA has been very concerned about for some time and continues to be moving forward.

The NFDA expects that the proposals laid down in the consultation for PPI will address some of the issues dealers have experienced with CMC's. However, if the proposals are not introduced in a robust, timely and succinct manner and the CMC's are not efficiently regulated and monitored, there could be further abuse by the CMC's which leads to a further rise in claims that are of poor quality and groundless.

Consultation questions

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?

1.1 Agree.

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

2.1 The NFDA is in agreement with the nature, date and scope of the proposed deadline and see this being beneficial to both consumers and firms alike.

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

3.1 The NFDA agrees with the proposed aims of the consumer communications campaign and further agrees that a clear communications campaign will dispel myths and confusion on how consumers can register PPI complaints, highlighting this can be directly registered with a firm, rather than having to use a CMC.

3.2 It is advisable that the media message conveyed through the communication campaign will not infer that most PPI was mis-sold. However, if the communications campaign is not targeted correctly and clear, there is a concern that the campaign could increase the number of poor quality complaints and encourage CMCs to, once again, pursue claims where there is little evidence of a PPI policy ever being sold. A positive and clear communications campaign is therefore essential to help mitigate this.

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

4.1 The NFDA agrees with the proposed audience, channels and cost of the proposed consumer communications campaign.

4.2 It is strongly advised that the campaign is firmly managed to ensure it meets the set goals and it is not encouraging poor quality complaints that will 'tie up' and potentially waste resources for both firms and the Ombudsman Service. The NFDA would particularly urge the FCA to work with the Ministry of Justice to ensure that CMC's are effectively regulated and do not abuse the campaign as previously stated. It is crucial that firms found to be abusing the situation are firmly sanctioned.

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

5.1 Agree.

5.2 Firms that are considered most responsible for causing PPI complaints should be charged the fees to cover the cost of the communications campaign.

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?

- 6.1 Agree.
- 6.2 The FCA must intervene and propose rules and guidance which will remove the uncertainty that firms currently face in the light of *Plevin*.
- 6.3 The FCA should also take the lead, rather than the Ombudsman Service, which currently determines complaints on a case by case basis and often lacks consistency in the judgement of these cases. Taking the lead will allow the FCA to provide a precedent for the Ombudsman Service to adhere to and follow for Step 2 complaints.

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

- 7.1 Agree.
- 7.2 The new rules and guidance should apply only to eligible PPI complaints. Therefore claims made against the lender under Section 140A of the CCA as an unfair relationship and are in respect to a credit agreement in operation on or after 6 April 2007 are in scope.

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?

- 8.1 Agree.
- 8.2 The two-step approach will provide clarity on how a firm should assess whether a complaint under S140A of the CCA exists.
- 8.3 The NFDA agrees with the rule that states a firm would not need to undertake the second step if it has concluded that there is a valid claim for mis-selling under the first step and has previously paid the required redress.
- 8.4 The NFDA also agrees with the rule that the claim should be assessed under step 2 if it has been previously rejected under step 1.
- 8.5 However, clearer guidance about the nature of eligible complaints to avoid confusion would be welcomed. For example, there is still confusion as to whether a previously rejected complaint, rejected due to the PPI being sold prior to ICOBS, would now be considered in scope?

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

- 9.1 Agree.
- 9.2 The above definition of commission is simple to operate. However the NFDA believes that Insurance Premium Tax (IPT) should also be taken into account, as this is paid to the insurer but would not be retained as it will be passed to HMRC.

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?

- 10.1 As insurance intermediaries, NFDA members often introduced PPI to consumers as a secondary insurance product, once a vehicle sale and funding options were decided. NFDA would like to clarify that for members, the vehicle sale is always the primary sale, with finance and PPI being secondary sales.
- 10.2 Whilst the organisation accepts that the total amount of commission to lender and intermediaries may have exceeded 50%, members do not agree that this automatically presumed it gave rise to an unfair relationship between the lender and the consumer.
- 10.3 The NFDA does however accept that 50% seems a fair ‘tipping point’ for firms to assess whether S140A applies.

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?

- 11.1 The proposed examples of why certain circumstances may give rise to a firm rebutting a consumers’ complaint under S140A are agreeable. Examples:
- When the insurer provided the PPI to an intermediary directly rather than the CCA lender and the CCA lender was not party to the commission agreement.
 - If the complainant could reasonably be expected to be aware of the level of commission because, for example, they worked in a relevant role in the financial services industry.
- 11.2 In the event of a commission disclosure making no difference to the complainants’ judgement regarding the value of the PPI, the NFDA agrees that this would be too difficult to assess and that this is likely to be relevant in limited circumstances only.
- 11.3 There is concern that the proposal to ignore the 50% ‘tipping point’ if the complainant was in particularly difficult financial circumstances (or if a complainant can prove they took a close interest in commission payable on other purchases). This will inevitably lead to confusion as to whether there is a valid claim or not and the NFDA believes this suggestion should be removed.

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*?

- 12.1 Agree.
- 12.2 The redress amount for eligible PPI claims under the 2-Step approach should be that of:
- The difference between the commission the customer paid and 50% (e.g. 70% commission minus 50% would equal 20% of commission to be repaid).
 - Plus – the historic interest the customer paid on the above proportion of the premium
 - Plus – annual simple interest of 8% on the sum of 1 and 2.

12.3 The NFDA agrees that a 50% limit (see question 10) be determined as fair and below this, commission would not need to be disclosed.

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?

13.1 Agree.

13.2 Paying the higher amount of redress when considering a claim under both step 1 and step 2 is a fair outcome for consumers.

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?

14.1 To make this simple to operate, the NFDA broadly agrees.

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?

15.1 Agree.

15.2 The approach to monitor the situation before making further rules as a result of *McWilliam v Norton*. The NFDA welcomes this approach, noting that the outcome of the case was largely undefended by the defendant(s).

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

16.1 The NFDA has no concerns.

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?

17.1 Broadly agree.

17.2 The NFDA does not think there are any other potential impacts to consider.

Q18: Do you have any comments on our compatibility statement? In particular, do you have any comments on any issues relating to mutual societies that you believe would arise from our proposals?

18.1 Not applicable.

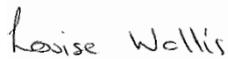
Concluding remarks

The NFDA would welcome the opportunity to meet with the FCA to discuss any of the points raised in the above consultation response further.

For further information or to arrange a meeting, please contact Louise Wallis on the below details:

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Yours Sincerely



Louise Wallis

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