



Direction

To: The Co-operative Bank Plc
(the “firm”)

Ref: 1343372

Of: P O Box 101
1 Balloon Street
Manchester
M60 4EP

Date: 14 July 2011

Handbook version as in force at the date of this Direction except as otherwise stated

Introduction

1. The British Bankers’ Association (“BBA”) started judicial review proceedings on 8 October 2010 challenging the *FSA*’s decision to publish Policy Statement 10/12 “The assessment and redress of Payment Protection Insurance complaints” and make Dispute Resolution: Complaints (Payment Protection Insurance) Instrument 2010. This instrument modified various provisions in the Dispute Resolution: Complaints sourcebook (“*DISP*”) including making a new *DISP App 3* specific to the handling of payment protection insurance complaints. On 20 April 2011 the High Court dismissed the judicial review and no appeal was pursued.
2. In this direction there are two categories of *complaint* the firm has received about payment protection insurance (“PPI”), in particular:
 - 2.1. those *complaints* about PPI received on or before 23 February 2011, to which the firm has responded with a written response by the end of eight weeks of receipt, relying on *DISP* 1.6.2R(2) and citing the above judicial review, and those *complaints* about PPI received after 23 February 2011 but on or before 20 April 2011 (together “Backlog Complaints”); and,
 - 2.2. those *complaints* about PPI received after 19 May 2011 (“New Complaints”). New Complaints do not include any *complaints* that have been referred to the *Financial Ombudsman Service* before the date of this direction.

3. Backlog Complaints do not include any *complaints* that have been referred to the *Financial Ombudsman Service* before the date of this direction.
4. In light of the number of Backlog and New Complaints the firm has received, or is receiving, and the potential impact on the proper handling of Backlog and New Complaints, the *FSA* has given this direction to the firm on its application.
5. *Guidance* in this document does not form part of the direction.

Power

6. This direction is given by the *FSA* under section 148 of the *Act*.

Duration

7. (1) This Direction takes effect on 14 July 2011.
(2) This Direction ends on 31 December 2011.

Application

8. This direction is relevant to any *complaint* received by the firm that is a Backlog or New Complaint received on or before 31 December 2011.

Rules modified

9. The *FSA* directs that the *rules* below, to the extent they apply to the firm, apply to the firm with the modifications shown.

Rules	Modification
<i>All rules in DISP 1</i>	<p>The requirements on the firm under rules contained in <i>DISP 1</i> are modified:</p> <p>(a) in relation to Backlog Complaints to the extent necessary to allow and require the firm:</p> <p>(i) to comply with <i>DISP 1.4.1R(3)</i> (to offer redress or remedial action if the firm decides this is appropriate) and all associated precedent obligations in relation to the Backlog Complaint by 31 August 2011; or</p> <p>(ii) if the firm decides no offer of redress or remedial action is appropriate under <i>DISP 1.4.1R(3)</i> to communicate this to the complainant by 31 August 2011; and,</p> <p>(iii) to make the offer under (i) or to communicate the decision in (ii) in a form of a <i>final response</i>.</p>

	<p>(b) in relation to New Complaints to the extent necessary to allow and require the firm to provide the final response required by <i>DISP</i> 1.6.2R(1) by the end of:</p> <p>(i) sixteen weeks from the date of receipt where the <i>complaint</i> is received after 19 May 2011 but on or before 31 August 2011; and,</p> <p>(ii) twelve weeks from the date of receipt where the <i>complaint</i> is received after 31 August 2011 but on or before 31 December 2011.</p> <p>(c) in relation to Backlog and New Complaints, the firm is not permitted or required to do anything permitted or required by <i>DISP</i> 1.6.2R(2), 1.6.5R and 1.6.6R (the firm must issue a <i>final response</i>);</p> <p>(d) in relation to Backlog and New Complaints, irrespective of the above deadlines, the firm is to take all reasonable steps to send to the complainants the written responses required by (a) or (b) above as soon as possible.</p>
<i>Generally</i>	References in Handbook rules to any <i>DISP 1</i> rule shall refer to that rule as modified, to the extent modified by this direction.

10. The *FSA* made amendments to its rules in *DISP 1* on 26 May 2011 by Dispute Resolution: Complaints (Amendment No 3) Instrument 2011(FSA 2011/33) (“the Instrument”).
11. The Instrument amends *DISP* 1.4.1R and *DISP* 1.6.2R and these amendments will come into force on 1 September 2011. So far as applicable, this direction is to be treated as modifying the time limits in *DISP* 1.4.1R and *DISP* 1.6.2R, and any other rule in *DISP 1*, as and when amended by the Instrument, in the same manner as indicated above.

Guidance: We consider that a non-exhaustive list of rules in *DISP 1* modified are *DISP* 1.1.8R, 1.3.1R, 1.4.1R, 1.6.2R, and 1.6.5R. For the avoidance of doubt *DISP* 1.3.2G continues to apply to modified *DISP* 1.3.1R, and *DISP* 1.4.3G continues to apply to complaints handled by the firm under modified *DISP* 1.4.1R.

Nothing in this direction waives or modifies anything in *DISP App 3*, or the requirements in *DISP* 1.4.1R to, once a complaint has been received by the firm: (1) investigate the complaint competently, diligently and impartially; (2) assess fairly and consistently; (a) the subject matter of the complaint; (b) whether the complaint should be upheld; (c) what remedial action or redress (or both) may be appropriate; (d) if appropriate, whether it has grounds to be satisfied that another respondent may be solely or jointly responsible for the matter alleged in the complaint, or any obligation arising after that in *DISP* 1.4.1R(3).

The firm also has ongoing obligations under *DISP* 1.4.4R for *complaints* which have been referred to the *Financial Ombudsman Service* to cooperate fully with the *Financial Ombudsman Service*.

Ancillary Modifications

12. The rules as modified include the following additional requirements, namely that the firm:

Handling Backlog and New Complaints

- 12.1. take reasonable steps to ensure that complainants and potential complainants are not adversely affected to a material extent by this direction;
- 12.2. ensure a fair and intelligent filtering of Backlog and New Complaints in order to identify *complaints* or parts of *complaints* that do not concern PPI, or are *complaints* received on or before 23 February 2011, and in respect of which no *DISP* 1.6.2R(2) letter citing the judicial review was sent by the end of eight weeks after receipt of the *complaint*, and progress them promptly in compliance with *FSA* rules unmodified;
- 12.3. will take reasonable steps to ensure Backlog and New Complaints which involve an element of financial hardship of the complainant are identified and dealt with on an expedited basis;

Communicating with Customers

- 12.4. when communicating with complainants, potential complainants and other customers about actual or potential Backlog or New complaints, the firm must do so in a way that is clear, fair and not misleading;
- 12.5. ensure that it publishes sufficient details to keep all its customers appropriately updated (on the firm's website or by other general means) on the grant of this direction and its implications, during the duration of this direction;
- 12.6. send to all Backlog Complaint complainants a written response by two weeks after 14 July 2011 either providing:
- (i) a *final response* in accordance with 9(a)(iii) above; or,
 - (ii) in the case Backlog Complaint, explaining why it has not been in a position to make a *final response*, including summary details of this direction, where a copy of it can be found, and all other appropriate information for the complainant to be able to understand how the *complaint*

will be dealt with, including at a minimum that the Backlog Complaint is required to be dealt with as soon as possible, and in any event by 31 August 2011;

- 12.7. ensure that in relation to all New Complaints:
- (i) when the *complaint* is acknowledged under *DISP* 1.6.1R(1), in addition to the requirements of that rule, the firm provides summary details of this direction, where a copy of it can be found, and all other appropriate information for the complainant to be able to understand how the *complaint* will be dealt with, including at a minimum that the New Complaint is required to be dealt with as soon as possible, and in any event by the relevant date in 9(b) above; or
 - (ii) if the *complaint* has been acknowledged under *DISP* 1.6.1R(1) before the date of this direction, the firm provides complainants with a written response, by two weeks after the date of this direction, with summary details of this direction, where a copy of it can be found, and all other appropriate information for the complainant to be able to understand how the *complaint* will be dealt with, including at a minimum that the New Complaint is required to be dealt with as soon as possible, and in any event by the relevant date in 9(b) above;

Guidance: *DISP* 1.6.1R(2) continues to require the firm to keep the complainant informed of the progress of the measures being taken for the Backlog or New Complaint's resolution.

Monitoring Complaints Handling

- 12.8. the firm shall keep appropriate records in accordance with *DISP* 1.9.1R in relation to Backlog and New Complaints, in particular to substantiate compliance with the amended time limits in this direction;
- 12.9. the firm will agree with or in default be notified by the *FSA* of appropriate monitoring, reporting and publication plans to include whether the amended time limits set out in this direction are being met, and the firm will comply with such requirements as are agreed with or notified to it;
- 12.10. the firm will notify the *FSA* in the event any rule modified by this direction is, or is likely to be, materially breached, and of any other matter which the *FSA* should be made aware of in relation to a rule modified by this direction.

Guidance: Generally, the *FSA* will keep the need for this direction under review. In particular, if the *FSA* no longer considers that the statutory test for this waiver is met, this would constitute sufficient grounds for the *FSA* to revoke this direction under section 148(9)(a) of the *Act*.

Further, the *FSA* has given this direction on the basis of certain facts and expectations, including, but not limited to, the firm ensuring appropriate redress in accordance with *DISP* is offered to complainants, and the firm providing expected dates by which complaints are to be resolved.

The non-existence or failure of any of these, at the time of or subsequent to the grant of this modification, would negate the judgement that underlay the approval of the firm's application for this modification, and would constitute sufficient grounds for the *FSA* to revoke this direction under section 148(9)(a) of the *Act*.

Interpretation

13. Interpretative provisions (including definitions) of the Handbook apply to this direction in the same way they apply to the Handbook.

Waivers Team
Regulatory Transactions Department
Financial Services Authority