

The cost of redress:

the lessons to be learned from the PPI mis-selling scandal



“It’s also vital that both banks and regulators learn the lessons of PPI to ensure a similar scandal on this scale cannot be allowed to happen again in the future.”

Gillian Guy,

May 2011, following the BBA decision not to appeal the 2011 High Court ruling.

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Introduction

Scale of mis-selling

Personal payment insurance (PPI) was an unprecedented mis-selling scandal. At least one commentator has described it as the biggest scandal in British banking history.¹

Huge numbers of consumers have sought redress and financial service firms have collectively put aside around £22 billion to cover their compensation bill and associated costs.² As of November 2013, £13.3 billion had been paid out in compensation by banks and other financial businesses³; the Financial Ombudsman Service has received more complaints about PPI than any other financial product: by January 2014 it had received over 800,000 complaints⁴.

At the root of the PPI crisis was the widespread selling of insurance products to people who would not be able to use them. This was carried out wholesale by a wide range of firms working in the financial service industry such as banks, credit card providers and mortgage lenders. The market in PPI was driven by a combination of the large profits that could be made on the products and the sales incentives offered to staff to sell them.

PPI is usually linked to credit, and is intended to cover the borrower's repayments if they become unable to make them, for example, if they lose their job or are unable to work because of illness or disability. As can be seen in the scale of the compensation bill, many of the policies were sold to people who could never hope to use them. Incredibly, some were even sold to people without their knowledge.

1. www.lrb.co.uk/v35/n13/john-lanchester/are-we-having-fun-yet

2. The Guardian, 4 February 2014 www.theguardian.com/business/2014/feb/04/financial-conduct-authority-libor-abuse-market-rates-london

3. Compensation paid between January 2011 and November 2013. Figures from the FCA PPI tracker of the 24 firms that made up 96% of complaints about the sale of PPI in 2013 and 2012, and during 2011 it covered 16 firms which accounted for 92% of PPI complaints. www.fca.org.uk/news/consumers/monthly-ppi-refunds-and-compensation

4. www.financial-ombudsman.org.uk/contact/PPI-your-case.html

Growth of claims management companies

While claiming compensation for a mis-sold financial product is a welcome demonstration of consumer empowerment, redress for mis-sold PPI products quickly became characterised by a proliferation of claims management companies (CMCs). These firms aim to help consumers make complaints in order to claim compensation, and often take a percentage sum of the compensation received.

In the 2012/13 review, the claims management regulator (CMR) which sits within the Ministry of Justice, reported a growth in the financial services claims sector, which has become largely dominated by PPI firms. In 2012/13, 180 CMCs joined the sector, bringing the total number of financial services CMCs to 1,155⁵. As of September 2013, there were 1,050 CMCs working on PPI, 45 per cent of the total number of authorised CMCs. PPI CMCs account for the majority of complaints made to the CMR – 79 per cent.⁶

Problems caused by CMCs

Our research suggests that the growth in the use of CMCs has been fuelled by the erosion of consumer trust in their bank but by and large they have been cashing in on an easy money-making opportunity created by a combination of the mis-selling in the first place and then a slow and inadequate initial reaction by banks.

There is no doubt that CMCs can be a useful service for some people, in some circumstances. However, in most PPI cases it is better for consumers to claim redress directly rather than paying an intermediary to act on their behalf. There are no complex areas of law involved: it is a matter of making a well evidenced complaint and there are a number of free materials easily available which make sure consumers know what information they need. This is exactly the same information that a CMC would require from a customer in order to make a claim.

Using a CMC costs money, and this is typically paid as a percentage of any pay out, often in excess of 25 per cent. Given the amount of work that CMCs carry out on a typical PPI complaint, the fees seem hugely disproportionate. Furthermore, the issue with CMCs is not simply that they are unnecessary and cost money. There is considerable evidence of unscrupulous firms who cause significant additional consumer detriment by making nuisance calls, providing a poor service and even leaving clients out of pocket, over and above the loss of compensation through paying commission on the settlement.

Meanwhile, CMCs have bombarded the majority of adults in Great Britain with cold calls and nuisance texts as they and the lead generators who sometimes work on their behalf have sought the details of people with a case for a PPI complaint. Research conducted for us by Ipsos MORI found that 63 per cent of adults in Great Britain have been contacted by an organisation offering to help them reclaim mis-sold PPI.⁷ ⁸Over half of these had been contacted more than 10 times in the past 12 months.⁹ Ninety eight per cent of the adults contacted about PPI didn't feel that they had given permission to be contacted in this way.¹⁰

5. Claims Management Regulator Annual Report 2012/13, Ministry of Justice.

6. Claims Management Regulation, An Update: Current Issues and Future Reforms, Ministry of Justice, October 2013.

7. Base: 5,682 GB adults 18+. This excludes contact from the organisation that may have sold them the PPI product.

8. The research was conducted on Capibus, Ipsos MORI's face to face omnibus, between 21st June and 15th July 2013. Questions were asked of 5,682 adults aged 18+ across Great Britain. The survey data were weighted by age, gender, region, social grade, household tenure, working status and ethnicity to be nationally representative of adults 18+ in Great Britain.

9. Base: 3,409 GB adults 18+ who have been contacted about PPI at least once.

10. Base: 3,409 GB adults 18+ who have been contacted about PPI at least once, when thinking about the most recent occasion on which they were contacted regarding PPI.

While consumers should be free to make an informed decision to use a CMC if they wish, it is unreasonable to allow CMCs to continue to pester the public with unsolicited calls, texts and emails, and unscrupulous CMCs should be made to treat their customers fairly, or to leave the market. In other words the CMR needs to act more forcefully to clamp down on CMCs which continue to breach the conduct rules.

Solutions

Our objective is that a consumer should be able to claim directly from their bank with ease, and that this becomes the consumer's instinctive first choice of means of claiming redress. To achieve this, banks must take a more proactive, strategic approach to redress.

Our evidence suggests that one key reason why people use CMCs is because CMCs 'get there first': they make consumers feel there is a genuine opportunity to get a settlement before the banks do and their communications and presentations encourage people to believe it is 'easier' to make a claim through a CMC than to do it themselves. Banks were initially reluctant to take responsibility for PPI, and then once forced by the regulator, not all made it easy for consumers. This has led to further damage to the reputation of banks.

Payment protection insurance (PPI) has developed into the biggest issue of financial mis-selling in recent years, and has significantly damaged public trust in financial institutions. Ensuring that firms put things right by handling PPI complaints fairly is vital to bringing closure to the issue and rebuilding public confidence, and is a priority for the FCA.¹¹

11. Payment Protection Insurance Complaints: report on the fairness of medium sized firms' decisions and redress, September 2013, Thematic Review, TR13/7, FCA. The FCA became responsible for the conduct supervision of all regulated firms from 1 April 2013. The FSA was abolished and its functions split between the FCA and the Prudential Regulation Authority.

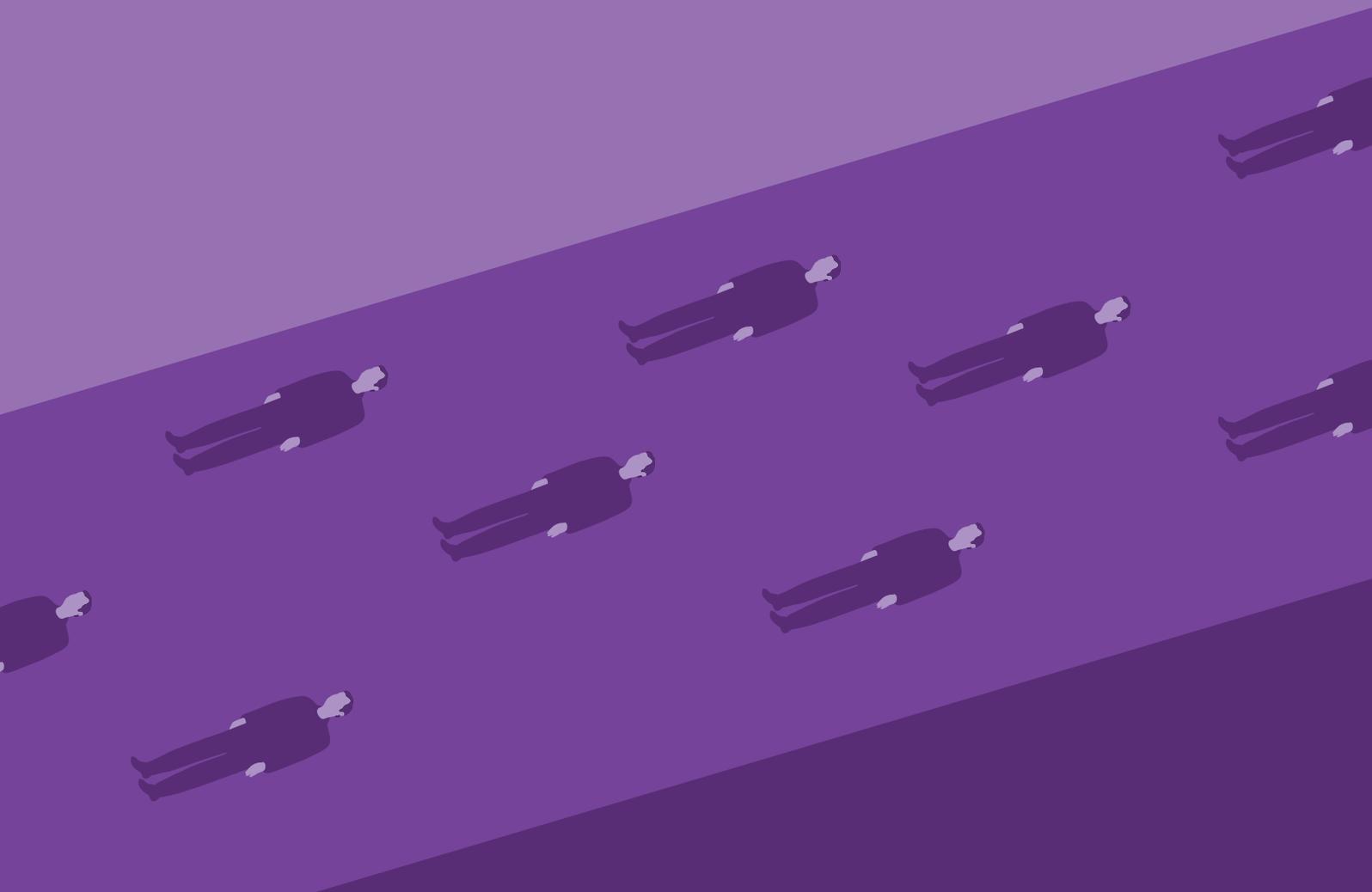
12. The Ipsos MORI qualitative research was conducted in London between 12th and 22nd August 2013 and comprised 6 x 2 hour focus groups among people who had reclaimed, or attempted to reclaim PPI. The sample was split by age (30–45 or 46–60); SEG (BC1 or C2D); and method of claiming (self-claim or used CMC). All groups contained an equal mix of participants according to gender and general satisfaction with their reclaiming experience (broadly satisfied vs. broadly unsatisfied).

Banks must learn from the lessons of PPI and restore trust by taking responsibility for their mistakes and providing consumers with redress in a proactive, open manner. This in turn would reduce the demand for CMC services. Providing redress is a simple, effective way for banks to demonstrate a recognition that they have made a mistake and that they are willingly complying with their legal and moral duty to rectify that as soon as they become aware of a problem.

Evidence

Our conclusions and recommendations have been informed by research conducted by Ipsos MORI on people's attitudes towards claiming PPI, which comprises results of a representative, face to face omnibus survey of 5,682 adults aged 18+ from across Great Britain conducted between 21 June and 15 July 2013 and findings from focus groups involving people who made a PPI claim, either directly or through a CMC, conducted between 12 and 22 August 2013.¹² We are also guided by an analysis of calls to the Citizens Advice consumer service helpline and client case studies submitted by Citizens Advice Bureaux.

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Section 1:

How did we get here? A short history of the PPI scandal

PPI is not the only financial service product to have been mis-sold, but the sheer extent of mis-selling means that it is an instructive case study in mis-selling and redress.

The large numbers of PPI products sold and the extent to which they were sold to people who would struggle to use them meant that it was a particularly lucrative market for CMCs to enter. While the gross misbehaviour in the PPI market will hopefully never be repeated, we would argue that the lessons learned from PPI are pertinent to the future: there is nothing so peculiar about PPI which means that the banks' approach to redress and the behaviour of CMCs would not repeat itself were a new mis-selling scandal to occur.

The origins of the PPI phenomenon

In its prime, PPI was big business: in 2005, there were an estimated 20 million live policies in the UK, and between 6.5 and 7.5 million policies being taken out each year. PPI premiums were said to have total approximated £5.3 billion per year¹³ and it has been estimated that £50 billion worth of PPI policies have been sold by over the last 10 to 15 years by hundreds of financial firms.¹⁴ The problem, however, was that many of these products had been mis-sold. Many consumers did not realise that the insurance had been added to their loan, or that they had been sold a product which was completely inappropriate for their circumstances and that they would be ineligible to make a claim. The premiums were often expensive, and could represent between 13 and 56 per cent of the total credit amount.¹⁵

13. Protection Racket, *CAB evidence on the cost and effectiveness of payment protection insurance*, Citizens Advice (2005).

14. www.financial-ombudsman.org.uk/contact/PPI-your-case.html

15. Figures from Citizens Advice Bureaux client cases between January 2004–April 2005, published in the Protection Racket, Citizens Advice.

Citizens Advice's involvement in drawing attention to problems with payment protection policies began in 1995¹⁶, but due to the intransigence of industry and lack of regulation of general insurance, mis-selling continued unabated until 2005 when the Financial Services Authority (FSA) (which had recently acquired the responsibility to regulate insurance) issued a probe into PPI and Citizens Advice submitted a "Super Complaint" on PPI mis-selling to the Office of Fair Trading (OFT).

For almost a decade, the various regulatory bodies – the OFT, the Competition Commission, and the FSA – worked their way through the ills of PPI, faced with large parts of the industry which refused to accept PPI was causing consumer detriment, and challenged the regulators' interventions.

It was not until the High Court Ruling in 2011 that the debate was finally laid to rest with PPI providers obliged to provide consumers with redress for mis-sold PPI. The nature of the deliberations during this decade can be interpreted in two different but interrelated themes – the suitability of the product and its selling in the first place and the redress and complaints which followed.

The refusal to admit the problems with the product's selling, almost inevitably, led to the banks refusing to accept that consumers should be provided redress. Yet the pressure on banks to respond to complaints was mounting from their customers as they started to complain in significant numbers in 2006/7.

The Chief Ombudsman told the Commission on Banking Standards, "we had fewer complaints in the whole of 2007 than we now have in three days about the operation of PPI. The volumes before 2007 were tiny [...] they were mostly about claims. What happened around 2006–07 was the big publicity – there was the super complaint, all the consumer groups started to talk about it and there were the Competition Commission and the OFT inquiries – so the volume went up."¹⁷

At this stage, the onus was on the individual consumers to make a complaint to their firm or subsequently to the Financial Ombudsman. In July 2008, The Financial Ombudsman made a formal referral to the FSA about the way PPI complaints were being handled by financial services firms. It was concerned that placing the onus on the individual was not the right way to deal with a systematic problem – it could mean that many people would not make a complaint and so would miss out on redress, while others might submit claims with little prospect of success – and asked the FSA to consider whether it should intervene to ensure firms take appropriate remedial action.¹⁸

By August 2010, the FSA had taken enforcement action against 24 firms and individuals in relation to PPI failings with fines totalling nearly £13 million.¹⁹ The FSA reported that the 18 major PPI providers had rejected almost half of the PPI complaints they received, with some rejecting nearly all. Around 30 per cent of rejected complaints went to the Financial Ombudsman, which overturned 80 per cent of cases in consumer's favour.²⁰

16. *Security at risk – CAB evidence on payment protection insurance and implications for public policy*, National Association of Citizens Advice Bureaux (now Citizens Advice), June 1995.

17. Parliamentary Commission on banking standards, para 22, JQ 696, HL Paper 27–II, HC 165–II.

18. www.financial-ombudsman.org.uk/publications/technical_notes/ppi/ppi-FSAreferral-Jul08.pdf

19. www.fsa.gov.uk/library/communication/pr/2010/132.shtml

20. www.fsa.gov.uk/library/communication/pr/2010/132.shtml

In light of the industry's continuing poor approach to complaints handling, the FSA introduced a package of measures which set out how firms should assess and provide redress to complaints, new guidance on how businesses should manage complaints, with the ultimate aim of getting the banks to:

“ treat consumers more fairly and consistently, benefit consumers who have been mis-sold PPI and who complain, and reducing the heavy burden of cases on the Financial Ombudsman Service; and deliver fairer outcomes to consumers and deliver fairer outcomes to consumers who may have been mis-sold PPI but have not complained.”²¹

The British Bankers' Association (BBA), the trade body for banks in the UK, challenged the FSA and Financial Ombudsman's right to issue such guidance by way of judicial review. In April 2011, the High Court ruled in favour of the FSA and the Financial Ombudsman Service.²² The banks decided not to appeal. The practical outcome was that firms were made to follow the FSA's contested policy on PPI complaints.

Why was complaint handling so poor?

Prior to the High Court Ruling, firms had to comply with the FSA's general complaints rules, which included taking reasonable steps to identifying and correcting recurring or systematic problems.²³ However, the FSA introduced the 2010 package of measures relating to PPI, which included additional guidance on handling PPI complaints and providing proactive redress for non-complainants. The FSA considered additional guidance was necessary because of its serious concerns about the "industry's poor handling of the increasing volume of PPI complaints, and its neglect of root cause analysis and fairness obligations toward non-complainants".²⁴

Firms identify potentially affected customers by conducting a 'root cause analysis' of what was causing complaints. Firms have a degree of discretion in deciding what action to take to fairly treat those customers who have yet to complain, but might have grounds to complain. For example, they might consider it proportionate to proactively contact customers who may have been affected.²⁵ The FSA guidance sets out the steps firms must take when writing to customers, including providing information on why the customer may have been mis-sold and could be entitled to redress, and how the customer should respond to make a claim from the firm, including the need to act promptly to avoid the case becoming time-barred.

Given the extent to which CMCs have thrived despite this guidance it is worth reflecting on whether it was too little too late.

As of September 2013, firms had or were sending out some 3.5 million letters proactively to claimants who were identified through the firms' root cause analyses as being a high risk of having been mis-sold PPI but had yet to complain.²⁶ At this stage it is difficult to comment about the actual success of the FSA's policy on complaints handling, in particular the 'root cause analysis' and consequent communication with customers who

21. PS10/12: The assessment and redress of PPI complaints (August 2010) www.fsa.gov.uk/pubs/policy/ps10_12.pdf

22. [2011] EWHC 999 (Admin).

23. FCA complaints handling rules, DISP 1.3.3.R, <http://fshandbook.info/FS/html/handbook/DISP/1/3>

24. Policy FSA – PS10/12 www.fsa.gov.uk/pubs/policy/ps10_12.pdf

25. Policy FSA – PS10/12

26. PPI complaints thematic review, TR1 3/7, FCA.

might have been affected but had not yet complained. The FCA is reviewing the scope and conduct of firms' root cause analysis and proactive mailings to high risk customers, "since these will have a particularly significant role in addressing the remaining areas of potential detriment, restoring customer trust and achieving eventual closure of this issue".²⁷

The FCA has also been reviewing PPI complaint handling at six larger firms which account for 80 per cent of PPI complaints, and plan to report findings later in 2014.²⁸ It has completed a review of complaints handling of the 18 medium sized firms, which accounted for 16 per cent of PPI complaints between January 2010 and December 2012. The purpose of the investigation was to find out if the firms were delivering consistently good outcomes for consumers, by assessing the merits of individual complaints fairly; making fair offers of redress, and explaining their decisions clearly and fairly to complainants. It found that "some of these firms are mainly delivering fair outcomes to PPI complainants but that other still have some way to go, with significant issues that they need to put right".²⁹

Why were so many PPI policies mis-sold?

A fundamental cause of the mis-selling was that frontline staff were incentivised to do so. In Citizens Advice's submission to the Parliamentary Commission on Banking Standards (the Commission), we said:

/// *One of the most widespread underlying causes of these issues are staff incentives to sell products which make a profit for the bank, rather than considering which product is best for the customer's needs and circumstances. The case of payment protection insurance offers an apt illustration of how these incentives can not only lead to consumer detriment but have sizeable financial consequences for banks themselves".³⁰*

Ultimately, the incentive schemes resulted in huge financial and reputational losses for the responsible banks, as well as poor consumer outcomes.

There was movement in this area in 2012/13, in terms of banks' policies and regulatory attention, but the jury is still out as to whether this is sufficient. Over 2012/13 several of the large banks announced that they had dropped their sales-based incentive schemes for staff in retail branches and call centres, in favour of customer satisfaction based schemes.³¹

In January 2013, the FSA published revised guidance on sales incentive schemes³², following a review which found that "most firms did not properly identify how their incentive schemes might encourage staff to mis-sell. This suggests that they had not sufficiently thought about the risks to their customers or had turned a blind eye to them."³³

However, the Commission reported concerns that even in places where the formal sales incentive does not remain, the sales-centric culture has persisted, which perpetuates the risk of poor selling practices.³⁴

27. PPI complaints thematic review. TR1 3/7, FCA.

28. PPI complaints thematic review. TR1 3/7, FCA.

29. PPI complaints thematic review. TR1 3/7, FCA.

30. Parliamentary Commission on Banking Standards, EV 966.

31. Parliamentary Commission on Banking Standards, para 858.

32. FSA, Final Guidance, Risks to Consumers from financial incentives, FSA – FG13/1

33. FSA, Guidance Consultation: Risks to Consumers from financial incentives, September 2012.

34. Parliamentary Commission on Banking Standards, para 860.

For example, in December 2013, the FCA issued a major banking group with a massive fine for serious failings in their controls of sales incentives of certain products between January 2010 and March 2013.³⁵ We await with interest the publication of the FCA's follow up work on firms' approach to managing risk in sales-based incentives, due to be published in the first quarter of 2014.

The growth in CMCs

CMCs were quick to pick up on the PPI scent, many using aggressive marketing campaigns, and the number and activity of CMCs pursuing PPI claims has continued to proliferate. In the 2009/10 Annual Report, the CMR noticed an increase in activity of CMCs in the PPI sector. The Financial Ombudsman Service reported a 58 per cent increase in the number of PPI related cases in the financial year 2009/10, and CMCs were involved in six out of ten PPI cases, which was 67 per cent of the total cases which the Financial Ombudsman Service received from CMC businesses.³⁶ The 2010/11 report observed that the 2011 High Court ruling and the subsequent decision of the BBA not to appeal and the ensuing media attention led to an increase in CMC activity.

During the BBA's legal challenge of the FSA's guidance, many of the banks placed a number of PPI redress claims on hold, as they waited for the outcome of the judicial review.

The regulator commented that during this period of uncertainty, the number of settlements decreased, but banks and the Financial Ombudsman continued to receive new complaints.³⁷ After the High Court case most of the major banks decided to settle most or all of the cases which had been lodged with the Ombudsman as a "gesture of goodwill".³⁸ Over the course of 2010/11, the proportion of cases managed by the Ombudsman which involved a CMC increased to 45 per cent, from 28 per cent which the Ombudsman described as being the direct result of a 113 per cent increase in PPI complaints, where CMCs were most active. 83 per cent of complaints to the Ombudsman made via CMCs in 2010/11 related to PPI.³⁹

In its 2012/13 annual report, the CMR reported a growth in the number of financial service CMCs – a further 180 CMCs had joined the market – and that the sector was dominated by PPI claims. The regulator suggested that it was likely that CMCs would continue to focus on PPI until there were signs of a significant decline in the way that PPI redress was paid out.⁴⁰ A recent indication of the financial service sector's expectation that CMCs will continue to be a strong presence on the wider financial claims scene for the foreseeable future, is the FCA's recent publication of revised guidance for consumers, financial service providers and CMCs on how consumer complaints should be handled when they choose to use a CMC.⁴¹

Arguably, CMCs were able to proliferate because there was a consumer demand for their services; however, much of this demand was premised on consumers not being fully aware of their rights and was generated by the misinformation and opportunistic marketing activities of the

35. www.fca.org.uk/news/press-releases/fca-fines-lloyds-banking-group-firms-for-serious-sales-incentive-failings

36. Claims Management Regulation: Annual Report 2009/2010.

37. Claims Management Regulation Annual Report 2010/2011.

38. Letter from Financial Ombudsman to Parliamentary Commission on Banking Standards, Information on PPI complaints www.financial-ombudsman.org.uk/publications/technical_notes/ppi/banking-commission-PPI-Dec12.pdf

39. Financial Ombudsman Annual Review, 2010/11.

40. Claims Management Regulator Annual Report, 2012/13.

41. <http://www.fca.org.uk/your-fca/documents/claims-management-companies-and-financial-services-complaints>.

CMCs themselves. We have always argued that CMCs thrive because consumers are not fully aware of their rights to claim directly.⁴² The Chief Ombudsman told the Treasury Committee, “the reason the claims management industry has been able to thrive is because detriment built up over so many years while banks – in the case of PPI – said, “no there is not an issue” [and] because banks had not done a good enough job of investigating cases”.⁴³

Of course, the banks were not universally obstructive or passive, but their efforts were too little and too late. In 2007, the FSA and industry agreed the first package of measures on fairness and transparency of refunds⁴⁴; and from 2011, firms were required to identify potentially affected customers and consider what action would be necessary to give them fair treatment – including whether they should contact them directly. Yet, by 2011, CMCs had already proliferated.

The cost of the growth in CMCs

While the huge number of claims and amounts paid out in redress could be seen as a demonstration of consumer empowerment, it is worrying that so many complaints – to the banks and to the Financial Ombudsman Service – are made by CMCs.

In 2011/12, almost half of the complaints made to the Financial Ombudsman were made by CMCs.⁴⁵ In May 2012, the Financial Ombudsman estimated the costs of the practice:

“ of £9 billion provisioned by businesses to pay consumers, up to £2 billion could be passed direct to a sector that has added virtually no value to consumers in terms of helping them get redress, and that many consumers have paid for because they were mis-sold the service”.⁴⁶

42. Claims pests, Citizens Advice, November 2012.

43. Quoted in the Parliamentary Commission on Banking Standards, uncorrected transcript of oral evidence taken before the Treasury Committee on 30 October 2012, HC (2012–13) 701–I, q 3.

44. FSA press release 29 March 2007

45. The Financial Ombudsman Annual Review 2011/12

46. Letter from the Chief Executive and Chief Ombudsman of the Financial Ombudsman Service to the Chair of the Treasury Select Committee, 30 May 2012, www.parliament.uk/documents/commons-committees/treasury/120528%20-%20FOS%20re%20CMC's.pdf

Citizens Advice acknowledges that CMCs can be a useful service for consumers who make an informed choice that their service is right for them. Perhaps they simply do not have the time or inclination to make a complaint themselves and are willing to pay someone to do it for them. But in our view, to be informed, they must be fully aware that they are paying a business to do something that they could do themselves for free, that there is no greater chance of success or of getting a larger settlement by paying for it, and that the process will not necessarily be easier.

The information they would be required to give their bank is exactly the same as they would need to give a CMC, in practice meaning that using a CMC does not actually save a consumer much if any time or effort. It also serves to emphasise just how disproportionate the level of CMC fees are for PPI cases.

All the available evidence, including our own, demonstrates that many people are not fully aware of these facts but are using CMCs regardless. They lose money unnecessarily and risk entering into agreements with an unscrupulous firm and experiencing further detriment in trying to seek redress for the first incident.

Section 2:

How CMCs cause consumer detriment

The CMC market contains a number of unscrupulous CMCs which display little regard to their regulatory requirements and legal and contractual obligations. Some leave their clients in worse off financial positions, and submit poorly administered and or spurious claims. Moreover, the efforts of CMCs to reach more potential customers has resulted in the widespread use of direct marketing through calls and text messages, which is highly unpopular and resented by the vast majority of people who receive them. Indeed, a recent AXA survey found that 64 per cent of people think cold calling by CMCs should be banned.⁴⁷

The poor practices of the unscrupulous CMCs demonstrate that the proliferation of CMCs has caused consumer detriment beyond the loss of award settlements to CMCs through commission. We believe that such practices have been allowed to develop in part because the limited resources and powers of the relevant regulators, in particular the Information Commissioners Office (ICO) and CMR, have not increased sufficiently to keep up with the expansion of the CMC market and their increasing activity. This has meant that the opportunity for CMCs created by the PPI mis-selling scandal has been capitalised to the extent that there is an apparently widespread acceptance of the commercialisation of redress by many consumers.

Unsolicited contact

The use of unsolicited calls and text messages for marketing purposes is probably the most known and resented aspect of the CMC business model for many CMCs. The calls and texts are at best annoying, and at worst, capable of consumer detriment by encouraging, and in some cases, pressuring people into agreeing to use a service which causes them detriment.

⁴⁷. AXA UK's Compensation Culture Series, Claims Management Companies, November 2013.

In the omnibus survey that we commissioned, seventy-two per cent of British adults had received some form of unsolicited marketing contact in the past year (call, email or text). Sixty three per cent of adults had received an unsolicited contact from a PPI claims firm – over half of these had been contacted more than ten times in the past twelve months. Ninety eight per cent of the adults contacted about PPI didn't feel that they had given permission to be contacted in this way.⁴⁸

Focus group participants often made a spontaneous association between cold calling and direct marketing. Participants consistently referred to the tactic in negative terms. Many participants considered cold calls to be a nuisance, and most avoided answering the calls and felt confident not agreeing to the service when they did speak. However, some participants described aggressive or 'bullying' calls from the CMC, and were made to feel stupid for declining the offer and felt 'pressured' or 'bullied'. Many of them said that they received calls, texts, or emails almost daily, including during the evening which interrupted activities such as getting their children to sleep or relaxing. Participants were particularly annoyed when CMCs continued to call after they had asked them not to, or after they had already made a claim.

There is a regulatory framework which CMCs must comply with in terms of direct marketing. CMCs are subject to the relevant telemarketing legislation and the rules on marketing set out in the Claims Management Regulator's Conduct of Authorised Person Rules 2013 (2), which require CMCs to observe the Direct Marketing Association's code of practice on direct marketing.

CMCs are also subject to the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) rules.⁴⁹ These state that people must give their consent to receive text messages, faxes, emails and recorded messages, and 'opt out' if they do not want to receive live voice calls. The Telephone Preference Service (TPS) provides a means by which consumers can opt out of receiving live voice calls but it still allows firms who have permission to call them.

It is striking that 98 per cent of adults who have been contacted about PPI didn't feel that they had given permission to be contacted in this way.⁵⁰ In fact, we can reasonably assume that quite a large chunk of these people had probably technically consented, though they genuinely do not think that they have. Part of the reason for this is the issue of third party consent.

It is technically legal for a firm to sell or otherwise pass individuals' details on to third parties in order to carry out direct marketing if consent has been given for this. However, the means by which consumers can be considered to have given consent are wide-ranging and lead to a situation where people receiving direct marketing calls or texts may be adamant they did not give their permission to be contacted, but from a legal point of view they did. It is our position that someone who believes they have not given their consent to something has clearly not given informed consent. That so many members of the public clearly do not consider this to be consent indicates that the current interpretation of the rule lacks legitimacy.

48. Base: 3,409 GB adults 18+ who have been contacted about PPI claims at least once, when thinking about the most recent occasion on which they were contacted regarding PPI.

49. Failure to comply with PECR would be in breach of General Rule 5 of the conduct rules, "A business shall observe all laws and regulations relevant to its business".

50. Base: 3,409 GB adults 18+ who have been contacted about PPI at least once, when thinking about the most recent occasion on which they were contacted regarding PPI.

An additional issue is that the level of evidence required for the ICO to take enforcement action for PECR breaches is very high. To take enforcement action, the ICO must demonstrate that a firm is causing “substantial damage”, whereas OFCOM is only required to demonstrate “nuisance and annoyance”. The absurdity of this situation is aptly illustrated by the adverse decision of the first tier tribunal considering the appeal of the firm Tetrus against the fine the ICO issued for sending millions of text messages in breach of PECR, an activity the firm does not even deny.⁵¹

The Department of Culture, Media and Sport (DCMS) is expected to propose lowering the threshold for the ICO to issue civil monetary penalties, which we believe would help enforce PECR. Further action is required to resolve the issues around consent but this is not currently on the table.

Given the pervasive issues involving CMC direct marketing we have long argued that they should be banned from cold calling.

Lead generation and the trade of contacts

Direct marketing by CMCs is intertwined with the activities of lead generators, firms that gather the details of potential customers and sell the details on to other firms with products and services to sell. The APPG on nuisance calls inquiry in 2013 reported that while the underlying figures are not known, it seems reasonable to assume that a significant proportion of calls are made by lead generators. The inquiry heard that “the low cost involved in making marketing calls meant that there was no economic driver to undertake any initial targeting or research: calls are so cheap that it is economically effective to simply dial telephone numbers in sequence.”⁵²

Not only are the details of people with potential PPI claims being exchanged, our evidence suggests that CMCs and lead brokers are exchanging details of people who have used a CMC already. All participants in the focus groups had received an unsolicited contact from a CMC at some point. Many of them hoped and expected that cold calls from CMCs would stop after they had made a claim with them, but in general they felt that the opposite had occurred. The calls came both from companies that they had been in contact with before and new ones. This led some participants to suspect that companies shared information about people who had made a PPI complaint.

The CMR has tried to mitigate the worst effects of CMC use of the lead generation market. It requires CMCs to ensure that the work done by a third party, for instance the lead generator, is compliant with the same data rules: for example the requirement not to call anyone who is registered with the TPS, or to send an SMS to anyone who has not opted in to receive such messages.⁵³

The recently passed Financial Services (Banking Reform) Act will give the CMR the power to impose financial penalties on non-compliant CMCs

51. EA/2012/0260.

52. House of Commons APPG on Nuisance Calls, Inquiry into the unsolicited marketing industry, Final Report, October 2013.

53. Conduct of authorised person rules 2013, Client Specific Rule 9.

for the first time. This means CMCs could be fined for not complying with the Conduct Rules and the Direct Marketing Association Code of Practice and for failing to make sure any third parties they engage are similarly compliant (although the CMC conduct rules only require them to take “reasonable steps”). We hope that the threat of a fine will make CMCs more scrupulous in ensuring that the leads they purchase are legally compliant.

Problems with fees

Problems with fees are a common issue in enquiries about CMCs to the Citizens Advice consumer service helpline and to bureaux. In general, CMCs are paid for their service by charging the customer a percentage commission on any settlement from the PPI provider but in the past upfront fees were also common.

Such a funding model is not inherently unfair or detrimental, as we recognise that CMCs do need to charge for the service they provide, and charges on a settlement are preferable in our view to an upfront fee. Having said that, a fee which is a fixed sum is easier for consumers to understand than one based on a percentage of a compensation payment which is unknown at the time the contract is agreed.

The CMR rules stipulate the type of information that the CMC must provide to clients about fees as well as requiring that they be agreed in writing before being charged. The rules also place an overall duty on CMCs to act in the client’s best interests.

We have encountered repeated and frequent issues with CMCs charging upfront fees before going on to provide a substandard service, with subsequent problems receiving a refund or allowing customers to exercise their cancellation rights. Given the relative recentness of the rule regarding a contractual agreement before any charges can be made, it is possible that our recent evidence involves clients who started a claim before the new rules were introduced, but it is striking that the issue remains very common in evidence from bureaux and in calls to the consumer service.

The CMR reports that no CMCs currently engaged in processing PPI complaints are charging upfront fees, as although it remains legal the rule requiring a contract before any payment could be taken has made them less attractive as a business model. This is a welcome development, as we have many concerns about the use of upfront fees.

Of an analysis 240 calls to Citizens Advice consumer service helpline in June and July 2013, we know that at least 38 per cent of callers had been charged an upfront fee. The analysis and our case study evidence demonstrates consumer detriment occurring where the CMC has charged an upfront fee but then makes an unsuccessful claim on behalf of the client and refuses to refund; the firm takes an upfront fee and becomes difficult to contact or goes bust; or implying that that it was a no-win-no-fee arrangement and hiding the upfront fee in the small print of the terms and conditions and then charging it without explicit notification.

A CAB in Suffolk advised a pensioner who had lost £250 to a CMC in an upfront fee. The client had received a letter from the CMC which said that she could be eligible for compensation for up to £6,000 for mis-sold PPI. She responded to the letter and as requested paid £250 to the CMC to start the process. She was later told that she was not eligible to make a claim and following her request for a refund, she was told that it was a non-refundable membership fee. The client was sure that this hadn't been mentioned before she made the payment, and continued to write and call the firm. She didn't get any response, until the CMC called her and said that she would receive a refund within 30 days, but two months later she still hadn't heard anything.

These could be the tail end of the upfront fee charging cases, as some clients contact us at the late stage of a claim, but we urge the regulator to be vigilant on upfront fees as CMCs move into different redress markets which require more extensive and complex work by the CMC with a lower chance of success. We acknowledge that the introduction of the rule that a firm cannot take payment from a client until a client has signed a contract (with prescribed elements, such as details of cancellation rights) was introduced subsequent to the start of some of our clients' cases, and this rule should lead to greater clarification about the amount of charges and the customers' right to cancel and withdraw from an agreement.⁵⁴

The analysis of the consumer service helpline statistics found that overall 13 per cent of calls to the helpline about CMCs were about problems with fees, both upfront and commissions. Case studies submitted by bureaux between July and November 2013 highlight the following ways in which CMCs can inflict varying degrees of detriment on consumers.

Even though the conduct rules require the client to ensure that all information given to the client is clear, transparent, fair and not misleading,⁵⁵ our evidence shows that some clients are not aware of how and when they will be charged, which can cause just as much detriment, if not more, as not being aware of the exact amount of the charge.

One simple measure to improve transparency and prevent cases such as the one below, would be to extend Conduct Rule 11e, which currently requires customers and the CMC to agree the contract, which should include information about the charge, including specifically the percentage payable where relevant, so that it also specifies a requirement to include detail of when the payment will be made, for example at source from award or if client will be billed once they have received their settlement.

A CAB in Yorkshire helped a client who received a demand for payment of £487 two years after a PPI CMC made a successful PPI claim. The client had agreed to a 39 per cent charge, which she believed should have been deducted before she received compensation.

54. Conduct Rule 11.

55. Conduct Rules, Client Specific Rule 1c).

56. Base: 189 GB adults 18+ who have used a CMC.

The omnibus survey shows a mixed picture regarding people's awareness of fees. Twenty seven per cent of CMC users did not think the fee structure was explained to them before they made the claim, whereas 64 per cent thought that the fees were clearly explained.⁵⁶ Twenty eight

per cent of CMC users didn't feel that the way they would receive any compensation was explained clearly to them before they made the claim, but 65 per cent thought that it was.⁵⁷

Overall, most focus group participants reported a vague awareness of fees at the various stages of their claim. When thinking about the initial stages of the claim, for instance when the CMC sent the client an application form, most participants struggled to recall what information was provided in the paperwork sent to them by CMCs, and many said that they didn't read most of it in any detail, as they felt that much of it was irrelevant and so focused their energies on completing or checking the application form.

Most of the focus group participants said they had been provided with further information about how the relationship between themselves and the CMC would work, and most could recall general information about the fee structure. Only a minority recalled being told about the fee and payment structure in detail; very few could remember an explicit conversation or reading specific information which set out their responsibilities and those of the CMC. Some, but not all, of the participants remembered being told or reading the percentage of commission that would be charged at this point. Some said that the figure was quoted on the initial telephone call and in subsequent correspondence but others couldn't remember being told. Some said that they hadn't been successful so they might have been told but couldn't remember, and some were waiting for a decision but couldn't remember being told a figure. A few participants thought that the percentage figure had been "brushed over" in the initial communications with the CMC. Some participants said that they had realised the amount of commission they would have to pay, they would have considered claiming directly instead, whilst others explained they felt happy to give up a proportion of their pay-out in order to experience a 'hassle-free' process.

A few participants were surprised to hear how much other participants had paid: they expected to pay less than 10 per cent, and so were surprised to hear that others paid between 15 per cent and 30 per cent, and thought that this was very high. Citizens Advice case studies show how problems with fees can be caused by ambiguities about more fundamental aspects of the claim, rather than just whether the client was fully aware of the amount or nature of a charge. For example, bureaux have advised clients who didn't think that they had agreed to use a CMC, who were struggling to enforce their cancellation rights, and who were being pursued for payment by a CMC who they didn't think had carried out any work on that particular claim. A common theme is the lack of clarity as to who is doing what: is the CMC responsible for pursuing a claim and if so, on which loan? This issue is complicated further where the client has pursued a complaint or a parallel one by themselves or used a different CMC as well.

57. Base: 189 GB adults
18+ who have used a CMC.

Cancellation and withdrawal rights

Thirteen per cent of calls to the Citizens Advice consumer service helpline were about cancellation rights. The conduct rules make clear that a CMC must observe the Consumer Protection (Distance Selling) Regulations 2000 and give customers a cooling-off period of at least 14 days after any agreement has been signed; during this period the client may cancel the agreement and be entitled to a refund of any payment made.⁵⁸ Once the 14 days have passed, the CMC must allow the client to withdraw from the contract at any point, and any charge to the client is limited to what is reasonable in the circumstance and reflect the work actually undertaken by the business.⁵⁹ The position on cancellation and withdrawals must also be included in the contract, which since July 2013 the client and CMC must sign in writing or electronically.⁶⁰

Case studies submitted by bureaux show the problems clients can encounter when trying to exercise these rights. We consider that they highlight the need for a proper complaints mechanism for CMCs, and welcome the amendment to the Financial Services (Banking Reform) Bill to extend the Legal Ombudsman jurisdiction's to include responsibility for dealing with complaints about CMCs.

A woman sought advice from a Cornwall CAB because she was being pursued for more money than had been agreed between her and the CMC when she withdrew from the contract. The client agreed to use this CMC to investigate whether she had a PPI claim after they cold called her. She decided to use their services as she was out of work and in need of money. The CMC found she was owed £80 from the PPI provider, but she would have to pay the CMC £30 in fees. The client decided not to pursue the claim because the amount was so small, and agreed to pay the CMC £29 to cover the work they had completed. However, the CMC continued to call and text the client to insist that she owes them more money.

A Yorkshire bureau advised a client who had cancelled an agreement with a CMC within the 14 days cooling off period. The company took about £737 from the client's card, for a £495 upfront fee plus 10 per cent of recoverable monies. Almost a year later, despite numerous phone calls and emails, the firm had not returned the money.

A client from a Cornwall CAB used a CMC to make a PPI claim in 2012, however, after a few months he withdrew because he hadn't heard anything. The client then received a letter asking for a 20 per cent fee from the client's settlement, which the client says she never received.

A CAB in Essex saw a client who was being charged for a service he thought had cancelled. The client was contacted by the CMC firm, and he signed the documents, but the following day he contacted the firm to cancel and they said that the claim wouldn't be processed. The client went on to make a successful claim directly with his bank. Four to five months after the client received the settlement, the CMC contacted the client with a request for 30 per cent of the award. Although the client informed the CMC that he had cancelled, they insisted that he must pay because he had signed the forms.

58. Conduct Rule 15.

59. Conduct Rule 16.

60. Conduct Rule 11.

The last two cases highlight another problem some clients had encountered – the confusion, or, in some cases, “piggy-backing” by a CMC onto other claims made by the client directly or used by a CMC.

It must be noted that conduct rule 11 – the requirement that the contract must be signed in writing or electronically – was introduced in July 2013, so may not have applied to some of the cases we have seen recently because of the length of time the complaints process can take.

Nevertheless, we consider that the conduct displayed in the cases may still have been in breach of the general principles of fair and honest business practices. Moreover, rule 11 could be made more effective by introducing the requirement that the contract must specify the exact loan(s) or credit products which the CMC can investigate. This specification should reduce the chance of confusion and disputes, but also give both the consumer and the CMC a reference point to substantiate challenges to actions.

Despite the protections afforded by the conduct rules, consumers in such circumstances would struggle to rectify the situation, as there is no clear means through which a consumer can seek individual redress beyond the firm itself. We believe that clients in such circumstances will benefit from a complaints mechanism such as the Legal Ombudsman and we strongly welcome the amendments made to the Compensation Act by the Financial Services (Banking Reform) Act 2013.

Not acting in the client’s best interests

A CMC has a duty to act in the interests of their customers. Under the Conduct Rules, they must only advise them to pursue a claim if it is in the interests of the client to do so, and they must ensure that any service the CMC offers meets the needs of the clients and satisfies the requirement of these rules.⁶¹ We are concerned by the cases we see in which the client has been left out of pocket after agreeing to use a CMC. If a client is in a financially vulnerable position before they agree to use a CMC service, for instance in arrears or have outstanding debt to the firm they are making a PPI complaint about, using a CMC to make a PPI claim can be a risky thing to do. This is because the lender can offset any compensation against the outstanding debt or arrears meaning the client receives a much reduced pay out, or potentially none at all. In most cases, the clients will also have to pay a commission, which would normally be paid from the compensation settlement. If the settlement has been set against an outstanding debt the client would have to pay the commission out of their own pocket, leaving them in a worse off situation in the short-term and potentially requiring them to get into further debt to pay the CMC.

61. Client Specific Conduct Rules, 1(b), a business shall “ensure that the service offered is one that meets the needs of the clients and satisfies the requirements of these rules” and 1(e) “where advice is given, advise the client to pursue cases only if it is in the best interests of the clients do so”.

A CAB in Sussex advised a client who had long term mental health problems, and had about 20 different creditors with a total debt of around £65,000. The client said that a CMC called her 10 times in one day to persuade her to take a claim against one creditor. The CMC obtained almost £9,000 in a settlement, but around £6,000 was deducted by the creditor who had mis-sold PPI as a part payment of an outstanding debt. The client tried to pay the remainder into her bank, but they also deducted a significant chunk for outstanding debt payments. The client hadn't made any improvements to her disposable income from the claim, so she was unable to pay the 35 per cent commission charged by the CMC. The client sought debt advice from an agency which made a reduced payment offer to the CMC, but the CMC started court action for payment nonetheless.

There have also been several cases recently where CMCs appear to have made hasty and arguably unfair use of debt collectors and court action.

A Yorkshire CAB saw a client who sought advice when the CMC she had contracted with to pursue a PPI claim sent her a final notice demanding £670 in fees, for the PPI settlement which they said had been paid to her in several months previous. However, the client said that she hadn't received any money or confirmation documents. The client was stressed and embarrassed when the bailiffs called at her house. She also commented that she had been led to believe that she needed to use a CMC to make a claim.

A London CAB was approached by a CMC about a PPI claim, and he agreed to enter into an agreement with them. He ended up owing the CMC £1,700, which he couldn't afford. When he failed to pay the debt, the debt collectors threatened to come to his house, smash his car and beat him up. The company took the client to court and was ordered to pay £100 a month. The client's tenth payment was returned to him in the post, and it appeared that the debt collector had become insolvent. The client was struggling to get a mortgage because of the CCJ. The bureau were concerned that his debt continued to accrue.

How to improve CMC conduct and consumer awareness

It is evident that a significant number of cowboy CMCs are causing their customers detriment by not complying with the conduct rules, and exploiting legal loopholes in the regulations on direct marketing communications. The CMR needs to come down hard on non-compliant CMCs which tarnish the image of the CMCs which obey the rules. In addition, tighter regulation helps remove any competitive advantages there may be in ignoring the rules.

However, insufficiently robust regulation and lack of consumer awareness of CMCs' responsibilities are not the only factor behind the growth of non-compliant CMCs, as the other key factor is the lack of consumer awareness of alternative means of redress. The normalisation of using a CMC has allowed some CMCs to push at the boundaries of acceptable conduct.

A key reason why people think using a CMC is normal is because they were not made sufficiently aware that they could do it directly: some people might have known about the legal entitlement, but weren't aware of how easy it would be. The responsibility for this lies with the banks – they failed to normalise direct redress by taking so long to accept that PPI was a product which caused consumer detriment and dragging their heels significantly when asked by the regulator to provide redress, and in the process further damaged relationships with their customers.

This is a constructive criticism: the lessons from the PPI fiasco are quite clear, and banks should see this research as an opportunity to better understand what drives people to use CMCs, and develop interventions which provide their customers with a direct, effective means of redress, and as a result, will contribute to the efforts to restore trust in retail banking. The next section explores how consumer insight can be used to develop effective redress strategies.

Section 3:

Changing the redress norm: how financial service providers should use consumer insight to develop effective redress strategies

The key question we sought to answer in commissioning consumer research from Ipsos MORI was why 36 per cent of people who make a PPI complaint were willing to pay a CMC to do it for them⁶² when they could do this just as easily for themselves for free. An instinctive response to this question might be that it is the result of information asymmetry: people who use CMCs are not aware of the free option and would act differently – more ‘rationally’ – if only they had known.

However, few things in consumer behaviour are as straightforward as policy makers and campaigners might like to think and it seemed likely there was a more complex interplay of competing interests which steered some people towards using a CMC and others towards making the complaint themselves.

How were people first made aware of PPI mis-selling?

Many of the participants in our focus groups were aware of the possibility of making a PPI claim for some time before they took action. The most common ways in which people were made aware of PPI mis-selling were family, friends and in the media, or a combination of the two. Many of the participants explained that they didn’t pay much attention to the issue initially, particularly those who went on to use a CMC, because they weren’t aware of the details of the mis-selling, or because they weren’t sure if they had been affected.

A few were first made aware of the issue when they were contacted by their bank or credit card provider, which informed them that they might have been mis-sold PPI and that they could find out more information or make a complaint. Notably, these participants said that they were pleasantly surprised to receive the call and pursued the offer directly with the bank or credit card provider.

⁶². Base: 521 GB adults 18+ who have made a PPI claim.

A minority were first made aware of the potential to reclaim mis-sold PPI when they were contacted by a CMC. People responded in a range of ways to the initial contact by CMCs: some were prompted to look into the issue by going online or contacting their bank or credit card company directly, or raising the issue with family and friends.

What prompted people to take action?

None of the focus group participants were prompted to take up the opportunity to make a claim with the first company which had ever contacted them about PPI. For some this was because they were suspicious of the CMC's intentions, while others didn't feel that they would be successful or had grounds to make a claim. A minority of the participants explained that they had been prompted to take action by an unsolicited communication from a CMC, though not with the firm which was the first to have ever contacted them.

Participants in the focus group were generally motivated to claim because they thought they might get back a relatively large sum of money. Some participants said that they wanted to see justice done and banks held to account. Others, who were more likely to have used a CMC, just wanted to see if they would get lucky and made a speculative claim.

We found that focus group participants were prompted to take action by the following range of triggers, some of which overlap with the means by which people became aware of PPI mis-selling in the first place:

- **Hearing about other people's successful claims:** some participants were prompted to take action when they heard about the sizes of their settlements and reports that the claiming process was straightforward, required little effort and was low risk. The focus group participants who used a CMC were more likely to have been told that the process was very easy than those who had made the claims directly. This was also slightly more apparent amongst focus group participants in the C2D socio-economic groups, which reflects a slighter higher instance of what can be described as an opportunistic motivation to make a PPI claim among this group.
- **Pressure or encouragement from family member:** some participants, after a while, gave in to pressure from family members to make a claim.
- **Specific media stories or articles:** some participants took action after seeing or hearing stories about PPI on radio or the television. Most of these participants had heard Martin Lewis talking about this issue, and took notice of him because they knew and trusted him, and because he emphasised the ease of the process and the success of other people in making claims. Most were prompted to claim direct to the banks, because they were given the confidence to do so by the stories in the media and by the information they found on MoneySavingExpert.com, whereas some chose to contact a CMC because they did not have the time or could not be bothered to go through the process themselves.

- **Calls or emails from CMCs:** a minority of participants took action because of an unsolicited contact from a CMC. Some were tempted by the quotations of specific amounts of money, others simply gave in to the pressure of constant calls, and some were persuaded by the wording or style of a particular communication.
- **Call or letter from their bank:** A few focus group participants were first made aware of the issue when they were contacted by their bank or credit card provider, which informed them that they might have been mis-sold PPI and that they could find out more information or make a claim. Interestingly, these participants said that they were pleasantly surprised to receive the call and pursued the offer directly with the bank or credit card provider.

Why did people use CMCs?

Many participants in the focus groups said that they used a CMC because they thought it would be easier than claiming directly. Some even said they would not have bothered to make a claim if they had not been told that using a CMC was very simple. This sentiment was more frequently reported by people who had made speculative claims and had not thought they had a good chance of being successful, so were more laid back about the idea of paying commission on a potential settlement.

Others also thought that they had more chance of getting a pay-out, or a bigger one, if they used a CMC. Some participants recalled that they got the idea that they would get a larger settlement after they had read information given to them by the CMC about the size of other settlements that they had been able to secure. Others said that they had been told by the CMC staff on a cold call that they would get a bigger pay out. Some thought that the process would be faster than claiming directly.

For some participants, the perceived expertise of the CMC was a key reason for why they used a CMC. Some thought that making a claim would require specialist knowledge or that it would be difficult to manage the forms. Some people thought that their claims would be complicated or would be contested by the lender, and they expected to have to 'fight' for a settlement and thought that the CMC would have more chance of success.

Although none of the focus group participants said that they agreed to use the CMC which was the first firm to have ever contacted them, some participants agreed to use a CMC following an unsolicited contact, with a few of them having done so simply because they thought it would stop the tide of unsolicited contacts. Sixty per cent of the CMC users in the omnibus survey used a CMC which had contacted them proactively, (though this was not necessarily their first ever contact with any CMC) and 34 per cent of people initiated the contact with the CMC which they went on to use.⁶³ That the majority of CMC users used a company which had contacted them illustrates the attraction of cold calling for CMCs. It is also interesting that a significant minority of CMC users made the proactive effort to contact their CMC of choice, which suggests that the process of using a CMC is not always passive.

⁶³. Base: 189 GB adults 18+ who have used a CMC.

Why did CMC users not make the complaint themselves?

Claiming directly was not seriously considered by the focus group participants who had used a CMC, with only a small minority researching the option in any depth. Some had contacted their lenders but they had been told that they wouldn't be eligible for a pay-out, and so were using a CMC as a second choice. Some discussed it with friends and family before deciding to use a CMC. A few participants said that they would have preferred to have claimed directly and not have lost part of the award to the CMC, but they didn't have the information which they thought they would need to make a claim directly. They thought that their claim would entail negotiations and correspondence with the lender and that they could avoid this by using a CMC.

The CMC users discussed whether they would have decided to make a direct claim if they had had access to more information or guidance. They also discussed how they felt hearing about the experiences of people who claimed directly. Most said that having access to the information and resources would have increased their knowledge and confidence. Some participants said that independent information describing the process of making a complaint directly and explaining that the same information required to use a CMC is also required to complain independently would have encouraged them to consider doing it themselves more seriously.

A few focus group participants said that they did not realise that the process of claiming could be so simple, and had they known this at the time they would have given more thought to claiming directly. They were interested to know that direct claimers did not always have to provide detailed information or documents. They liked the idea of a template letter as it took away some of the pressure on them to find out what they needed to write and mitigated the lack of confidence that wouldn't know what to write. Indeed, the omnibus survey data suggests that many CMC users are not fully aware of the alternatives to using a CMC.

In the omnibus survey, 39 per cent of people who used a CMC did not realise that they could have claimed without using a CMC at the time that they made a claim.⁶⁴ Fifty one per cent of CMC users were not aware of the free materials available to help make direct claims.⁶⁵ Similarly to the focus groups participants, almost half (47 per cent) of CMC users surveyed in the omnibus said that if they had been aware of the free material they would not have used a CMC.⁶⁶

Some focus group participants said that even with the knowledge of the process acquired in the discussion, they probably still wouldn't have made a claim directly because they didn't want to have to make any more effort. This attitude was slightly more apparent among C2D participants who had made a somewhat speculative claim through a CMC.

64. Base: 189 all GB adults who have used a CMC.

65. Base: 189 all GB adults who have used a CMC.

66. Base: 189 all GB adults who have used a CMC.

Did CMC users feel they received a good service?

The participants' experiences of using a CMC were mixed. Some CMC users said that the CMC had provided them with a helpful and efficient process from start to finish. They were given assistance completing the forms and a decision was made quickly. However, others reported more inconsistent quality of service and less positive experiences: some felt the CMC provided poorer customer service once they had agreed to use them, and some older participants felt that the CMC staff had been more interested in getting them to agree to use their services rather than try to help them.

Twenty seven per cent of CMC users in the omnibus survey felt that the CMC put them under pressure to proceed with the claim, although 60 per cent did not feel that they had been put under pressure.⁶⁷ The survey respondents reported mixed views as to the success of their claims: 53 per cent of CMC users agreed that their claim was successful but 24 per cent didn't agree.⁶⁸

Only a very small minority of participants thought that the service they received from the CMC justified a complaint, although this could be because of attitudes to making complaints rather than a lack of objective cause to make one.

Only one participant had complained to their CMC, and none had complained to a third party such as the Financial Ombudsman Service or CMR. Potential grounds for complaint were largely due to frustrations with the process: the one actual complainant complained because they were unhappy with the process, rather than the outcome or fee. None of the participants thought they had grounds to complain on the basis of illegal or inappropriate behaviour.

However, the issue that they felt most strongly about were the frequent unsolicited communications. Some felt that these justified a complaint, but most felt that they couldn't spend any more of their time on making formal complaints, and in any case they saw cold calls as irritating but something over which they had no control. They also didn't think they would be able to make a complaint because they didn't know the name of the company making the calls. Most participants were unsure about who they would make a complaint to about a CMC – they thought it might be the Financial Ombudsman Service or FCA and so were surprised to learn that the Ministry of Justice dealt with CMC complaints. They had limited understanding and perceptions of how CMCs would be regulated, but there was a general agreement that a regulator should be able to deal with specific cases, if necessary.

A few recommended the establishment of a hotline, which would make it easier to report cold calling and 'bullying' tactics.

67. Base: 189 GB adults
18+ who have used a CMC

68. Base: 189 GB adults
18+ who have used a CMC.

Why do people claim directly?

Participants in the focus groups who decided to claim directly were influenced by the positive experiences of family and friends who they trusted and could give advice. They were also given confidence by the free online independent advice and information, specifically, MoneySavingExpert.com. Some said that they were encouraged by the strong “don’t get ripped off twice” message, and some found the step by step guidance and letter templates useful.

Many participants who decided to claim themselves, did so primarily because they did not want to lose any of their potential settlement in payment to the CMC. They thought it would be relatively straightforward to claim directly and so it would be unnecessary to pay for such a service. Some thought that it was unfair of CMCs to charge for it.

A minority of direct claimers in the focus groups had used a CMC in a previous claim and decided to make their next claim direct with the lender, primarily because they wanted to keep their entire award. A minority of participants said that they trusted the banks and other lenders more than CMCs to handle their financial data and act in a trustworthy manner. Some other participants disagreed with this view, saying that the banks had shown that they were untrustworthy by mis-selling PPI in the first place.

The perceptions of the quality of direct claiming experiences of the focus group participants were mixed, which is to be expected because of the sampling method taken in the study (a mixture of satisfied and dissatisfied claimants).⁶⁹ However, while there were certain problems, most participants were either happy or neutral about claiming directly from their bank, building society or credit card company. Some said that they were pleasantly surprised by how easy it was to make a claim, as they had thought it would be either complicated and arduous application process, and / or that they would face resistance from the lender.

Positive experiences were due to the following factors:

- Lenders initiating contact with the customers about PPI mis-selling.
- Dedicated PPI teams within lenders to streamline communication and ease of contact.
- Claim dealt with almost entirely over the phone.
- Simple and easy to understand forms.
- Fast decision and delivery of settlement.

However, some were disappointed in the process. A minority had tried to make a claim direct but had found the process too complicated or had been unsuccessful, so decided to use a CMC. Participants who felt that they had negative experiences gave the following reasons:

- Complexity and length of process for more contentious claims.
- Long and complicated paperwork and forms.

69. All focus groups contained an equal mix of participants according to gender and general satisfaction with their reclaiming experience (broadly satisfied vs. broadly unsatisfied). This sampling method was chosen to reflect the findings of the Omnibus and to explore the issues from a balanced perspective in the qualitative phase.

- Inefficient processing and customer service (for example having to submit the same information twice).
- Unrealistic requests for details about historic policies and products (e.g. security passwords).

In the omnibus survey, of people who made a previous claim but did not use a CMC, 79 per cent said that they would make the claim by themselves again, and only eight per cent said that they would use a CMC.⁷⁰ Direct claimers were not statistically significantly more likely to consider their claim a success (59% saying it was successful⁷¹, compared to 53% of CMC users)⁷²

Are there socio-economic factors at play?

The omnibus research indicates small differences in both the take-up of CMC services, and clear differences in exposure to direct marketing by CMCs between socio-economic groups and income groups, although not perhaps entirely as might be expected.

Indicatively, CMC use may be more common among C2 and DE social groups, with 40 per cent of complainants using a CMC compared to 32 per cent in the AB and C1 groups. The proportion reporting that they complained directly varies from 59 per cent among AB and C1, to 56 in C2 and 48 in DE groups.⁷³

Interestingly, people in the AB and C1 social groups were significantly more likely than the C2 and DE groups to have been contacted by PPI CMCs. Seventy four per cent of adults in the AB group had been contacted at least once, 68 per cent in C1, 59 per cent in C2, and 48 per cent in DE.⁷⁴

There is also geographical variation, for example, a higher percentage of people in Yorkshire and Humber (76 per cent) and in Wales (68 per cent) were contacted about PPI reclaims than in Great Britain in general (63%). People in London (49 per cent), the North West (48 per cent) and the West Midlands (50 per cent) reported being contacted much less often.⁷⁵

This raises an interesting question which requires further research to answer properly: are people in particular socio-economic groups more likely to use a CMC even though they receive fewer unsolicited contacts?

Access to redress

A key argument of this report is that banks need to improve their redress strategies. We must also look at the accessibility and effectiveness of the independent support and advice a claimant can use to help and reassure them about the process. As discussed in the focus groups, the Financial Ombudsman Service and consumer groups have developed a set of free resources to help people make claims directly. MoneySavingExpert.com has a step by step guide to reclaiming PPI, Citizens Advice online advice pages offers free template letters for people to complain to their banks. The Financial Ombudsman Service has made a lot of effort to make its

70. Base: 220 GB adults 18+ who did not use a CMC and who may make a PPI claim in the future.

71. Base: 332 GB adults 18+ who did not use a CMC to make a PPI claim.

72. Base: 189 GB adults 18+ who used a CMC to make a PPI claim.

73. Base: 521 GB adults 18+ who made a claim and of these bases, within the social grades, AB = 93, C1 = 171, C2 = 140, DE = 117.

74. Base: 5,682 GB adults 18+ and of these, bases within social grades AB = 1069, C1 = 1697, C2 = 1,303, DE = 1,613.

75. Base: GB adults 18+ 5,682 and of these, bases within regions, Wales = 293, Yorks and Humber = 483, London = 760, North West = 743 and West Midlands = 636.

service accessible, including offering a standard PPI questionnaire which claimants can use to make a claim to their banks. While a significant proportion of people are aware of the free material, and the focus groups highlight how useful they can be in terms of encouraging people to make the claim directly, the CMCs users' lack of awareness of the free material suggests a need for more awareness raising initiatives. This could be through publicity campaigns or further integration within firms' communications to claimants.

Additional work on the effectiveness of PPI communications needs to be done to increase the proportion of people who know about the materials, and go on to use them. In the omnibus survey, 49 per cent of CMC users were aware of the free materials at the time that they used the claim.⁷⁶

It would be valuable to invest in further research to better understand why some people do and some do not use supporting resources, and how they can be designed accordingly, so that future redress communications are more effective. The FCA has researched how behavioural economics can be applied to better understand consumers decision making in financial markets.⁷⁷ One piece of research explored how behavioural economics can be applied to improve the letters firms send consumers to alert them to a potential issue and the avenues of claiming redress. The research notes that some consumers do not act, even when it would be in their interest to claim redress. The researchers used a randomised control trial to test a series of changes to letters, and analysed the responses: "The results are clear, surprising, in magnitude and direction, and challenge current accepted practice"⁷⁸

A lack of trust in banks was a prominent motivating factor for many people in using a CMC. It appears that part of the reason these people use CMCs is because they lend a feeling of confidence that people who know what they are doing are looking after the complaint and holding the bank of account. Even if banks repair their reputations significantly, and improve the way they target people who could receive redress, there will likely always be a cohort who feel this way. In this light it is interesting to note that to an extent the Financial Ombudsman has emulated some of the language and appearance of CMC websites on its own site. Whether this was consciously done or not, it is an illustration of one way to provide an alternative source of confidence in making complaints to banks and other financial service firms.

Whilst it is important for the Financial Ombudsman Service not to compromise its independence and impartiality, it could usefully build on this approach and further develop the excellent tools and information it already has on its website. For example, a 'complaint checking' service could lend consumers confidence that they are making their complaint in the right format and with the right information. A more explicit message that if their bank does not deal with the complaint to their satisfaction they can refer it to the Financial Ombudsman for expert, independent consideration could reassure consumers lacking in confidence that they are not making the complaint alone as a 'powerless consumer' acting against a large multinational corporation.

76. Base: 189 GB adults 18+ who have used a CMC.

77. Applying behavioural economics at the FCA, Occasional Paper No. 1, April 2013.

78. Encouraging consumers to claim redress: evidence from a field trial. Occasional Paper No.2 April 2013, FCA.

Conclusions:

Redress is fundamental to restoring trust in the banks

Few people come out well from the story of the PPI scandal. Banks caused detriment to consumers twice, by mis-selling unsuitable products in the first place and then prevaricating when asked to take responsibility for their mistakes. This created the window of opportunity for CMCs to step in and it seems clear that the issues we see in the CMC market, from nuisance calls to the value of compensation for consumers extracted through commission, would be significantly less widespread if the banks had acted quickly and decisively.

In 2012, the Financial Ombudsman estimated that around £2 billion of the then £9 billion allocated by banks for PPI redress costs could go to CMCs: more than 20 per cent. If that trend has continued, with the amount set aside in the region of £22 billion, CMCs could have extracted almost £5 billion that should have gone to consumers.

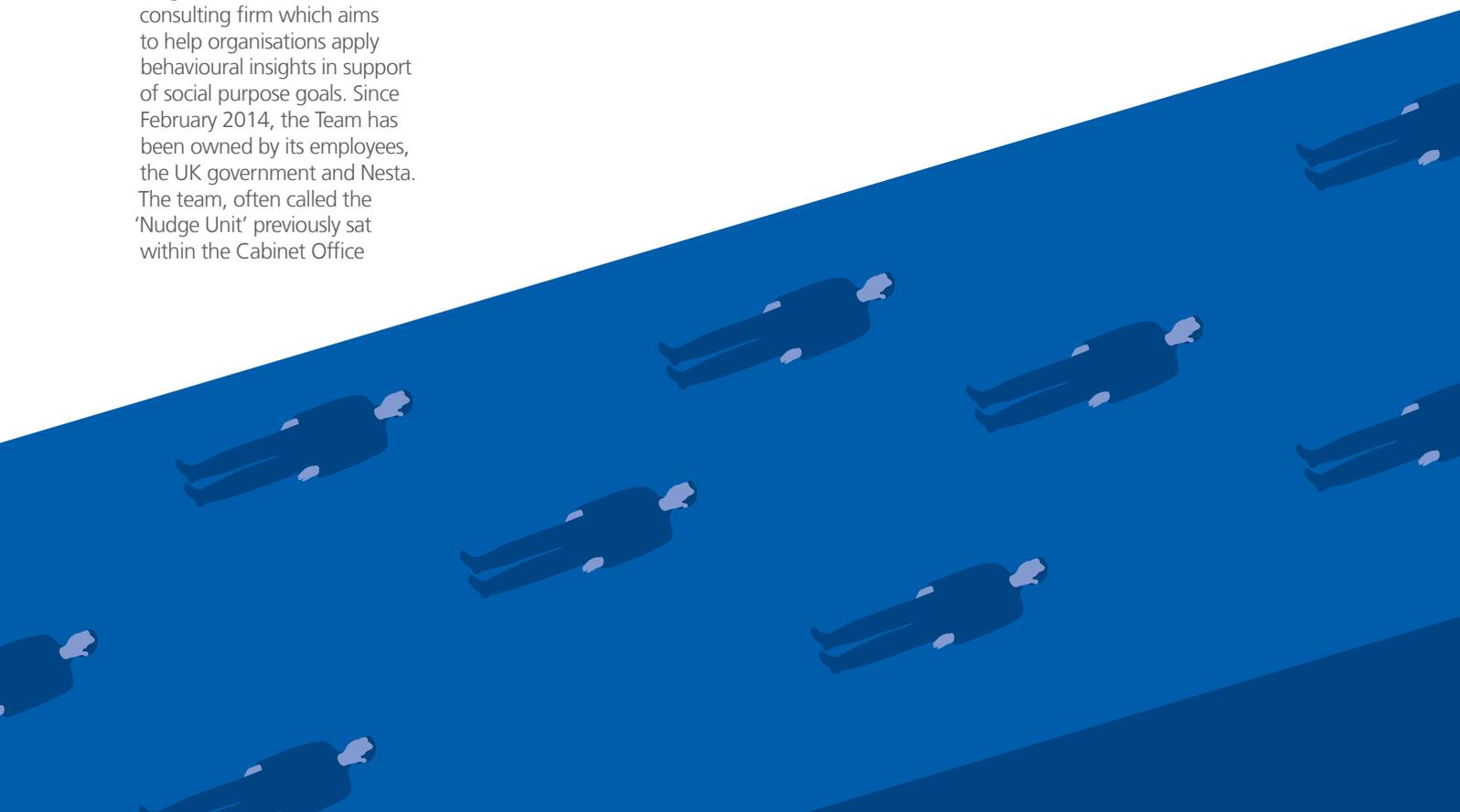
While compliant CMCs have a legitimate market among those who make a fully-informed decision, too many people appear to use CMCs without a full understanding of the options available to them. This is largely because CMCs succeeded in making the use of their services the norm to a significant proportion of those who seek redress. Our survey found that more people have sought redress for PPI directly from their bank than have used a CMC, but too many people are paying for a service which they do not need.

Banks are aware of the need to restore trust in themselves as institutions and should take the opportunity to learn from the PPI scandal. By admitting to problems early and taking proactive steps to make it as easy as possible for those problems to be rectified, banks could do a great deal to re-establish relationships of trust with their customers. That banks and regulators have begun to learn that lesson can be seen in the recent example of the CPP protection insurance mis-selling redress scheme which saw a central point of contact and a coherent, collaborative approach to affected consumers.⁷⁹

To ensure consumers do use redress mechanisms, they must be designed and communicated in way which takes into account the various factors which can influence a person's decision to make a claim. Banks need to communicate and involve customers as soon as possible following identification of an error: they need to get their customers' attention, and gain their trust, to ensure that redress is most often sought directly from the bank rather than via a third party. We recommend that banks, along with the FCA and the Financial Ombudsman Service, work with the Behavioural Insights Team⁸⁰ to develop redress strategies for the future which should have applicability not just in terms of PPI and financial services, but in helping encourage consumers to complain in other markets too.

79. www.cppredressscheme.co.uk/

80. The Behavioural Insights Team is a consulting firm which aims to help organisations apply behavioural insights in support of social purpose goals. Since February 2014, the Team has been owned by its employees, the UK government and Nesta. The team, often called the 'Nudge Unit' previously sat within the Cabinet Office



Recommendations

Change the redress norm

- The banks, the FCA and the Financial Ombudsman Service should work with the Behavioural Insights Team to develop effective redress strategies, informed by consumer insight about why people use CMCs. One of the most important lessons from PPI is that delay in accepting responsibility and proactively contacting affected consumers creates opportunities for third parties. This work should include further research into why some people do and some don't use free supporting resources to claim directly, and how they can be designed and promoted accordingly, so that future redress communications are more effective.
- The industry and the FCA should implement the recommendations of the Parliamentary Commission on Banking Standards relating to retail banking. One of the recommendations was that the FCA should consider the case again for requiring banks to write to all identified customers, except those who have already initiated a PPI complaint or have been contacted as part of any FSA led PPI process in the past. We urge the FCA to make the banks contact all PPI customers when it publishes its definitive view of next steps in 2014.
- Without compromising its independence and impartiality, the Financial Ombudsman Service should position itself as a trusted intermediary that can provide the assurance and confidence required to make a complaint to financial service firms, as well as providing an expert service that can hold banks to account if they do not deal with a complaint properly. They should consider developing a 'complaints checking' service or tool which would go beyond existing resources. This would help consumers lacking in confidence as well as helping ensure that banks have all the information they need to deal with a complaint quickly and correctly at the first attempt.

Putting an end to nuisance calls

- The Government should ban cold calling by CMCs. Our evidence shows that these calls and texts are almost universally seen as a nuisance and a large proportion of CMC users took up their services after being cold called.
- Citizens Advice supports the Government's move to lower the threshold of detriment nuisance calls need to cause before the ICO can issue civil monetary penalties.
- Citizens Advice supports the Government's move to improve data sharing between ICO and Ofcom, but recommend the Government should take account of the APPG on nuisance calls warning that their proposals won't lift all of the legal barriers.
- The Department for Culture, Media and Sport should establish a prominent single point of contact for complaints about nuisance calls.
- The Government should reform the law on consent so that people are fully aware of whether they have given permission for their details to be passed to third parties.

Improving CMC conduct

- Citizens Advice supports the moves to give the CMR the power to fine CMCs for non-compliance.
- The CMR should extend CMC Conduct Rule 11e so that contracts must specify which particular loan or loans the CMC has been instructed to make a complaint on. This would help ensure that customers are not suddenly presented with bills if they subsequently receive compensation for mis-sold PPI from a complaint that they claim the CMC did no work on.
- Citizens Advice supports the extension of the Legal Services Ombudsman's responsibility to manage complaints about CMCs, and urge it to work closely with other regulatory and adjudication bodies relating to CMCs.
- The CMR must be vigilant to the reoccurrence of upfront fees. While the recent conduct changes requiring the agreement of a contract before any fees can be charged has helped, our concern is that CMCs may start charging upfront fees as they move into other more complicated markets with less certain outcomes for complaints.

Our principles

The Citizens Advice service provides free, independent, confidential and impartial advice to everyone on their rights and responsibilities. We value diversity, promote equality and challenge discrimination.

Our aims

- Provide the advice people need for the problems they face.
- Improve the policies and practices that affect people's lives.

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Scottish charity number SC016637