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Stephen Haddrill  
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Adrian Coles  
Director General  
The Building Societies Association

Michael Coogan  
Director General  
Council of Mortgage Lenders

Angela Knight  
Chief Executive  
British Bankers' Association

Dear Stephen, Adrian, Michael and Angela

### **MPPI Premium Variation Clauses: Industry-wide Agreement**

Firstly, I would like to thank you for engaging with us, on behalf of your members, in relation to our concerns about recent unilateral increases in premium and/or decreases in cover under Mortgage Payment Protection Insurance (MPPI) policies\*. Our concerns centred on inadequate disclosure of a cancellation right or of a contractual right to vary premiums or cover, and/or that the variation right was drafted unfairly in the contract.

### **Details of agreement**

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\* Payment protection insurance policies that were sold or marketed to policyholders to protect their ability to continue to meet mortgage payments, including income protection with a term of less than 5 years, if it was marketed primarily for mortgage protection and/or if both the policy and the mortgage were arranged by the same distributor at the same time.

During a meeting on 29 September, we reached an agreement which addresses the FSA's concerns and which we believe delivers an appropriate degree of protection for customers. In summary, it was agreed that:

- in relation to increases in premium and/or decreases in cover since 1 January 2009, firms will refund the increase and/or restore the previous level of cover for all existing and past customers in relation to all policies, regardless of when they were sold the policy;
- in relation to cancellations during the same period, where the firm cancelled the policy<sup>\*</sup>, or where the customer cancelled their policy provided they did so within two months of a change in premium and/or cover, the firm will offer to reinstate the cover;
- it will be made clear to all customers concerned that they are entitled to a refund whether or not they choose to stay with their current provider. Customers will not have to exit their current policies or providers in order to have the refund paid as a lump sum;
- refunds should be made to customers as quickly and efficiently as is practicable and in any event by no later than 30 June 2010. In general, this will be by a one-off payment. However, we recognise that some firms, in relation to some of their older books, may find it much less costly to provide refunds by net payments over a small number of months;
- firms will not effect any further increases in premium and/or decreases in cover, or cancellations<sup>†</sup> until, at the earliest, 1 Jan 2010;
- firms will write to customers, giving at least 2 months notice, and explain the basis on which the premium may be increased and/or cover decreased after 1 January 2010 pursuant to a fair and adequately disclosed variation term. Firms will also explain the basis on which the firm may cancel the contract pursuant to a fair cancellation term. Customers will be told clearly of their option to stay with the provider or cancel the contract, if they wish. Where customers choose to stay with their current provider, firms will not re-consider waiting periods, pre-existing conditions, etc;
- firms' communications with customers will clearly remind customers of their rights to complain, and firms will deal with customers' complaints fairly, consistently and promptly;
- where customers complain and it can be shown that the sales or marketing process gave a guarantee or commitment, or created a reasonable expectation, that premium and/or cover would be held for a longer period, then this will be honoured; and
- going forward, firms will revise their contracts with new customers to ensure that terms are drafted and applied fairly, and adequately disclosed. We acknowledge that different firms will adopt different approaches and would be happy to discuss with firms any points of principle that arise over how our regulatory framework applies to different kinds of products.

Further detail on the terms of the agreement is set out in the attached matrix.

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<sup>\*</sup> Except in cases of non-payment of premium, of fraud or in some cases of non-disclosure of a material fact on the part of the customer.

<sup>†</sup> Except in cases of non-payment of premium, of fraud or in some cases of non-disclosure of a material fact on the part of the customer.

The agreement will not apply to MPPI policies where the terms, based on FSA expectations, are assessed by the firm to be fair and to have been adequately disclosed to customers. Any firm that forms this view must validate it with the FSA.

### **Agreement does not create a precedent**

This agreed solution has been arrived at on the basis of our joint consideration of factors that are specific to this case. It is a unique solution to a specific set of FSA concerns about variation and cancellation clauses in MPPI policies and therefore does not set a precedent for other considerations, for example in relation to other products or existing action prior to FSA insurance conduct of business regulation.

The FSA acknowledges that industry does not necessarily accept the FSA's interpretation of the Unfair Terms in Consumer Contracts Regulations 1999 and disclosure requirements but that industry has agreed to this solution in order to meet our shared goal of achieving an appropriate degree of consumer protection for a particular group of consumers.

### **Handling Individual Complaints**

The agreed solution should help avoid the need for customers to make individual complaints about these matters. But some complaints may be made which we will expect firms to consider in the normal way. In particular firms will need to ensure that they take account of any wider factors (for example, about the circumstances of the sale or the suitability of the product for the customer) that may have a bearing on the appropriate outcome in an individual case.

Disputes connected with these MPPI premium increases and / or decreases in cover may be referred to the Financial Ombudsman Service so we have written to it to draw its attention to this agreement. Our exchange of correspondence is attached.

### **Interaction with Consultation on PPI Complaints Handling (CP 09/23)**

The scope of the draft provisions consulted on in CP09/23 currently includes complaints related to the sale of MPPI policies. However, CP09/23 was prepared before the agreement with the industry on MPPI policies was reached. As the MPPI agreement responds to specific concerns about unfair variation terms, and/or inadequately disclosed variation and/or cancellation terms, it is now our intention to exclude any MPPI complaints that relate solely to issues covered by the MPPI agreement we have reached, from the scope of CP09/23 when the final rules are published. We will work with the MPPI industry on the best way to achieve this.

Additionally, we will actively consider excluding, by waiver or some other means, all complaints about regular premium MPPI policies from the scope of the final rules on PPI Complaints Handling, provided that the evidence or analysis, including that supplied in response to CP09/23 justifies this. We look forward to meeting with you to discuss your evidence and analysis.

### **Going forward**

Going forward, firms are free to choose the appropriate structure for their MPPI policies, whether as annual contracts or some other basis, provided that the relevant terms are fair and disclosed as required. This means, for example, that the marketing literature and sales process must be fully aligned with the underlying features of the product, such that the standards set out in ICOBS and our Principles for Businesses are met. For example, firms will need to ensure that cancellation clauses are fair and give the customer adequate notice (which might need to be longer than for, say, a premium increase). We would be very happy to work with firms as they ensure that this alignment is achieved across the whole range of products sold in this market.

Yours sincerely,

**Jon Pain**  
**Managing Director, Supervision**



## **FSA and Industry Agreement for Mortgage Payment Protection Insurance, MPPI: MATRIX**

### **Purpose**

- To provide a 'safe harbour' matrix of options for firms that wish to use it to ensure that all variation and cancellation clauses in new and existing MPPI policies are fair and appropriately disclosed to customers.

### **Industry commitments**

- Firms will not use cancellation<sup>\*</sup> or variation clauses in MPPI contracts before they have completed a full review (as set out in section 1 below).
- Firms will not use cancellation<sup>†</sup> or variation clauses in MPPI contracts before 1 January 2010, even if the required action is completed before then, unless FSA confirms that the review shows that no further action is needed.
- Firms will undertake their reviews taking into account the FSA's expectations around the fairness of terms and disclosure requirements.
- Firms will choose at least one option in each category.
- Firms will adopt the most appropriate solution for customers at a book level, to avoid arbitrage, not at an individual customer level.
- Firms will use all reasonable endeavours to meet the implementation deadlines, with exceptions agreed bilaterally with FSA.
- Firms will offer every customer a single solution for each policy, not a menu of options.

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\* Except in cases of non-payment of premium, fraud or, in some cases, non-disclosure of a material fact on the part of the customer.

† Except in cases of non-payment of premium, fraud or, in some cases, non-disclosure of a material fact on the part of the customer.

- Firms will notify all customers about any clarifications or changes to their contracts (as set out in section 3 below) and of their option to stay with the provider or cancel the contract, if they wish. Any customer that stays will be given the same underwriting criteria.
- Firms will notify all relevant customers about details of any redress (as set out in section 4 below) and that customers are entitled to redress whether or not they choose to stay with the provider.
- Firms will notify all customers about their right to complain if they are not happy with the firm's proposed action.

## Principles

- All options in 'the matrix' ensure fair and proportionate outcomes for all customers.
- The matrix of options below applies to payment protection insurance contracts that were sold or marketed to policyholders to protect their ability to continue to make mortgage payments – for this purpose 'MPPI' includes income protection with a policy duration of less than 5 years, if it was marketed primarily for mortgage protection and/or if both the policy and the mortgage were arranged by the same distributor at the same time.

Matrix of Options	Scope	Options	Timing
<b>1. Review current position</b>	All policies	<p>Firms will review their policy variation and cancellation clauses and documentation and other related marketing material for new and existing policies.</p> <p>Until each firm completes its review, it will continue its current commitment to FSA not to use variation and/or cancellation terms. Then...</p> <p><b>A. No action required</b></p> <ul style="list-style-type: none"> <li>▪ If the review concludes that the firm's policy variation and cancellation clauses and documentation are in order, firms will validate this with FSA and, if FSA agrees, take no further action. These firms are then free to exercise the variation and cancellation clauses (although, if they exercise their cancellation right, firms should consider their TCF obligations in doing so).</li> </ul> <p><b>B Continue 'freeze'</b></p> <ul style="list-style-type: none"> <li>▪ If the review concludes that the firm's policy variation and/or cancellation clauses require to be changed and/or further disclosed to customers, then on an individual basis, firms will continue their undertaking to FSA not to use variation and/or cancellation terms until new arrangements are in place</li> </ul>	Reviews to be completed by 31 December 2009.

		or, if the firm prefers, beyond that until the end of the customers' policy.	
<b>2. Making new arrangements for new customers</b>	All new policies	<b>C Remedy as required</b> <ul style="list-style-type: none"> <li>Firms will ensure that the terms for new customers are fair and fully disclosed in policy summaries and orally as part of a face-to-face or telephone sale to the extent required by ICOBS.</li> </ul>	To be completed by 30 April 2010.
<b>3. Making new arrangements for existing customers</b>	All live existing policies	<b>D. No action required for existing customers</b> <ul style="list-style-type: none"> <li>Applicable where FSA accepts that variation and cancellation clauses are fair and were disclosed.</li> </ul> <b>Ensuring all contracts are compliant</b> <p><b>E. Firms may – and will, where the term is assessed as unfair AND inadequately disclosed -</b> replace contracts and/or vary contract terms to ensure that all variation and cancellation clauses are fully compliant.</p> <p>Alternatively,</p> <p><b>F where the term is assessed as unfair and is capable of being applied fairly BUT disclosure is assessed as adequate, firms may give an undertaking to apply terms in a demonstrably fair way</b></p> <ul style="list-style-type: none"> <li>Firms would give FSA an undertaking that they would operate all variation and cancellation clauses in a way that is demonstrably fair.</li> </ul> <p><b>G. where the term is assessed as being fair, BUT inadequately disclosed, firms may clarify existing variation and/or cancellation clauses</b></p> <ul style="list-style-type: none"> <li>Firms will contact customers to clarify existing variation and/or cancellation clauses.</li> <li>Firms would give an undertaking to customers not to rely on the clarified variation and/or cancellation clauses for at least 2 months following the clarification.</li> </ul>	Firms will give at least 2 months notice of any changes to the variation and/or cancellation clauses within the overall end date to ensure all contracts are fully compliant. The overall end date is 30 June 2010.
<b>4. Dealing with past changes</b>	All existing and past policies where, since 1 January 2009	<b>H. No action required for past changes</b> <ul style="list-style-type: none"> <li>Applicable where FSA accepts that variation and cancellation clauses are fair and were disclosed.</li> </ul>	

\* Some cancellations may arise from a distributor switching a portfolio of contracts between insurers so that cover for the customer continues. Any resulting variation, for example in premium, would be treated in the same way as any other variation.

	<p>until the completion of 3 above, firms have:</p> <ul style="list-style-type: none"> <li>▪ Increased premiums; and/or</li> <li>▪ Reduced cover; and/or</li> <li>▪ Cancelled contracts</li> </ul>	<p><b>I. Reverse all applicable changes for all MPPI policies as follows:</b></p> <ul style="list-style-type: none"> <li>▪ <b>Premium increases</b> – Firms will refund the amount of the increase.</li> <li>▪ <b>Reductions in cover (past claims)</b> – Firms will reassess all relevant claims using the terms applicable before the cover was reduced.</li> <li>▪ <b>Reductions in cover (future claims)</b> – Firms will continue to assess future claims for applicable customers on the terms applicable before the cover was reduced until the new arrangements are in place.</li> <li>▪ <b>Customer cancellations</b> – Firms will identify customers who cancelled their policy within 2 months of an applicable change in terms, and offer to reinstate the same cover with a replacement policy that has fully compliant variation and cancellation clauses for the same premium, and on the same underwriting criteria.</li> <li>▪ <b>Insurer cancellations that result in customers being left without cover*</b> – Firms will offer to reinstate the same cover with replacement policies that have fully compliant variation and cancellation clauses for the same premium and on the same underwriting criteria.</li> </ul>	<p>Firms will reverse any applicable changes by 30 June 2010.</p>
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Financial Services Authority



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07 October 2009

**MPPI Premium Variation Clauses**

I attach a copy of a letter we intend to send to Trade Associations about this matter setting out an agreement we have reached. I am aware that this is of interest to you as you have a number of cases on this matter which you told us appeared to be likely to have wider implications for customers and firms. I would welcome any observations you might have about the implications our agreement might have for the handling of complaints by the Ombudsman.

Yours sincerely,

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7 October 2009

Dear Jon

### **MPPI Premium Variation Clauses**

Thank you for your letter of 7 October and attachments, the contents of which are noted. I am grateful to you for keeping us informed.

We have previously discussed the legal background to this matter. Your earlier observations in your statement on "Fairness of Terms in Consumer Contracts" (May 2005) continue to provide a valuable summary of the legal and practical considerations in the assessment of premium variation clauses in a financial services context. Our own approach to disputes about these matters mirrors that analysis.

Turning to the agreement you have reached on MPPI with trade associations I share your expectation that if fairly and consistently implemented this should avoid the need for customers to raise complaints about this matter. This is welcome. In so far as any complaints are raised with the Ombudsman Service we will consider them in the normal way bearing in mind the agreement you have reached. I see nothing in your agreement that conflicts with the approach I would expect the Ombudsman to take to the resolution of such disputes.

As you note there will of course be cases where there are wider considerations that may impact the fair outcome of the case. In particular issues around the way the product was sold, the representations made and the suitability of the product for the individual customer may mean a different outcome from the generic position described is appropriate.

Yours sincerely

**Tony Boorman**  
**Decisions Director**