

## STEP Briefing Note

### Payment Protection Insurance

#### Who is this an issue for?

STEP members (and others) acting as, or advising, the following:

- Executor or administrator of the estate of a deceased person;
- Attorney under an enduring power of attorney, or a property and affairs lasting power of attorney;
- Court of Protection appointed deputies
- Trustee in bankruptcy; or
- Supervisor of an individual voluntary arrangement.

#### What is the Issue?

The deadline for submitting claims for compensation for the mis-selling of payment protection insurance (PPI) is 29 August 2019.

Billions of pounds set aside by the financial institutions have yet to be claimed.

The Financial Conduct Authority (FCA) is encouraging those who have either forgotten, or are unsure of, whether they had PPI in the first place to investigate their position by enquiring of financial institutions.

This guidance will apply also to those acting as, or advising, fiduciaries (who may not know if their principal had entered into any PPI arrangements).

Financial institutions must conduct a ‘two stage’ review of PPI complaints. To uphold a complaint at the first, ‘mis-sale’ stage, it will not necessarily require information about a customer’s circumstances. If a mis-sale complaint fails, an institution is able to uphold a complaint at the second, ‘undisclosed commission’ stage without receiving *any* information about a customer’s circumstances.

#### The Risks

Claims management companies, after 29 August 2019, may change their focus to pursuing outstanding claims on behalf of beneficiaries against the fiduciaries involved. The potential argument might be that fiduciaries, and their advisers, would have been expected to investigate whether estates were entitled to compensation.

#### How far back does this go?

The mis-selling of PPI has been known about for several years. The first successful claim was decided in 1992/93, and the OFT “Super Complaint” lodged in 2005.

The Official Receiver announced on 5 February 2019 that it is reviewing and considering PPI claims in closed bankruptcy cases back to 1 January 2000:

<https://www.gov.uk/government/news/payment-protection-insurance-ppi-claims-and-the-officialreceiver>

For the classes of fiduciary referred to above, a back-book review of cases active since 1 January 2000, mirroring the stance taken by the Official Receiver, would not appear “unreasonable”, and could reduce the potential for challenges from disappointed beneficiaries, etc.

## **Actions**

Fiduciaries, and those advising fiduciaries, might like to consider the possibility that estate administration files post 2000 could be subject to such a claim.

Where advising a fiduciary only, you may also wish to consider inserting a clause into your terms of engagement letter which includes/excludes your responsibility to check the estate for PPI, in accordance with instructions from your client.

STEP UK Practice Committee

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16 April 2019