



THE BEGINNING OF THE END OR THE START OF A NEW CHAPTER FOR PPI CLAIMS?

The Financial Conduct Authority's decision to consult on the introduction of a deadline for PPI claims may have intended to start to draw a line under the issue, but the signs are that there are going to be more challenges to overcome. As the banking sector waits in anticipation for the consultation, due by the end of the year, the case of *'Plevin – v Paragon Personal Finance Ltd'* is still causing significant consternation.

Simon Hough, Partner at Rosling King LLP discusses:

The announcement from the FCA that they are consulting on introducing a deadline for PPI complaints should spell an end to the ongoing saga facing banks.

The decision to impose a cut-off point on PPI complaints shows that the City regulators want to encourage those who haven't claimed to do so, but also to bring an end to the PPI debacle, helping banks to plan ahead and rebuild public trust in the financial sector.

The PPI scandal might be the final hurdle for banks to overcome following the financial crisis. Banks have set aside billions to deal with the mountain of claims brought and this welcome decision will enable them to plan effectively for the future.

However, as the FCA gives with one hand, it may take away with the other. They will also be consulting on the Supreme Court decision in *Plevin*.

In overturning the Court of Appeal decision, the Supreme Court ruled that failure to disclose the amount of commission earned by a lender in a PPI sale to a borrower gave rise to an 'unfair relationship', a decision that could potentially open the floodgates for a new wave of PPI claims as the payment of commission was widespread.

In the case, the borrower, Mrs Plevin, had been informed that commission would be paid to the lender, but the Supreme Court decided that the 71.8% rate paid by the PPI insurer rendered the relationship with her lender unfair under section 140A Consumer Credit Act 1974.

The decision has undoubtedly created uncertainty for banks. Previously, as long as the lender disclosed that there was a commission arrangement in a PPI sale to a borrower, its obligations had been satisfied and there was no unfair relationship.

But how much commission is too much? FCA guidance will likely aim to put an end to this uncertainty and may recommend that a commission of 50% or more will give rise to an 'unfair relationship' and lenders should expect to be challenged over these rates. The FCA may say that any of the PPI premium not paid to the insurer will constitute commission for the purposes of an unfair relationship, irrespective of how that money was treated or defined by the lender internally.

Unfortunately, this decision may mean that thousands of PPI claims that had previously been rejected may be reopened, and banks may find themselves throwing further billions into the bottomless PPI pit.