

Financial Services Consumer  
Panel response to: HM  
Treasury consultation on  
Long-Term Care Insurance.

**Regulation of Long-Term Care Insurance**  
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HM Treasury consultation on Long-Term Care Insurance

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## Introduction

1. The Panel strongly welcomes Government proposals to bring long-term care insurance within the Financial Service Authority's full conduct of business regulation. The Panel has called on several occasions<sup>1</sup> for long-term care to be included in the FSA's remit at the outset of the new regime, because of the complexity of the products and the vulnerability of consumers who purchase them.
2. We believe the consultation has missed an opportunity for a comprehensive look at the regulation of the health insurance market. There is potential for consumer detriment across all the various forms of health insurance due to the complex nature of the products and anomalies in the ways they are currently regulated.

## The Options

3. The Panel's view is that Option 3 (full regulation of information and advice on LTCI plans, with authorisation and disclosure) is the minimum level of regulation required, and that serious consideration should be given to Option 4 (full regulation of all medical insurance plans, with authorisation and disclosure).
4. The complexity of LTCI products combined with the vulnerability of many of the people to whom they are sold means that there is great potential for consumer detriment. Voluntary regulation (Option 1) would be too weak to ensure compliance and would lack a sufficient compensation mechanism. A combination of authorisation of plan providers and a standardised disclosure regime (Option 2) would fail to deal with the main risks to purchasers. Face to face sales are likely to represent the channel by which the majority of sales of health insurance products will be completed. We believe that the introduction of a regime which does not regulate advice will provide insufficient protection for consumers, many of whom will be looking to purchase such a product at a sensitive time in their lives.
5. As many of the current and potential sellers of long-term care policies are likely to be already regulated for other purposes we consider the cost of Option 3 to be greatly outweighed by the consumer benefits. Conduct of business regulation would also remove the anomaly that many products already sold for the purposes of providing long-term care, such as investment bonds, are already regulated.

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<sup>1</sup> See for example *Financial Services Consumer Panel calls for changes to the Financial Services Bill to safeguard consumers* Panel press release, 13 April 1999

6. The Panel believes that serious consideration should be given to extending the regime to all medical insurance plans (Option 4). Many of the potential consumer hazards identified for LTCI also exist for the other products in the health insurance market, most of which currently out-sell LTCI. They are all complex and opaque, and there appears to be no good argument for regulating one and not the others. Health insurance policies are often difficult for consumers to switch because of product complexity and a lack of transparency and comparability. Even for policies which are written annually, consumers may be inhibited from changing provider, for example because of problems over pre-existing conditions. In addition, there are already anomalies in the regulation of some health insurance products, with (for example), permanent health insurance (PHI) products with an investment component being within full conduct of business regulation, while other PHI products are not.

## CAT standards

7. The Panel is very concerned by the low level at which CAT standards are proposed for LTC products. For example, a 13-week period for claims-processing seems very generous, and we regret the failure to set any standard definitions for ADLs, or even to require the existing ABI benchmarks to be used.
8. Some of the language used in Annex B to define the CAT standards is very ambiguous. This ambiguity lends itself to differences of interpretation and means that consumers cannot rely on the standards as a guide to what to expect. Examples include the statement that to fail 3 ADLs will '*normally*' trigger the payment of benefits and also the requirement for product brochures and other documentation to cover the '*main exclusion clauses*' of the policy, without any guidance as to what 'main' or 'normal' might be.
9. In addition, the standards relate to only two variants of long-term care insurance products. Other means of achieving the same ends are possible. We are concerned that the effect of CAT-marking only these variants may drive sales in their direction, stifling innovation elsewhere.
10. The Panel strongly believes that these products should be sold with advice. They are usually complex in design, purchased at a sensitive time, and it can be difficult to establish which product type is most suitable. CAT standards may encourage consumers to believe that they can do away with advice and rely on the standards to show that the product is suitable.
11. Even when advice is sought, we are concerned that CAT standards may encourage non-specialist advisers to sell CAT-marked products at the expense of more suitable alternatives. As just one example of the expertise that is needed, depending on where the customer lives the adviser may need to take into account the differing provision of state funding for long-term care in different parts of the United Kingdom.

12. To sum up, the Panel does not support the CAT standards at the level currently proposed. We feel that considerable dangers would arise from encouraging consumers to buy this complex product without good-quality advice. We believe that conduct of business regulation, plus action where necessary under the Unfair Terms in Consumer Contracts Regulations, is more likely to provide effective consumer protection.

## Legal Definitions

13. The consultation asks how the legislation should define LTCI and in particular how LTCI can be ring-fenced from other forms of medical insurance. We would argue that it is preferable for any definition to be wide in scope, even if this could catch other health insurance products, rather than run the risk of excluding any products which might fulfill the function of long-term care insurance.

## About the Financial Services Consumer Panel

The Financial Services Consumer Panel was established by the Financial Services Authority (FSA) in December 1998 to ensure that consumers' interests are represented in the development of the regulation of financial services. The Panel is independent of the FSA so that it can: advise the FSA on policy as it evolves, monitor the FSA's effectiveness in meeting its statutory objectives towards consumers, review developments in financial services where they impact on consumers, and publicly report its findings and recommendations. It can raise its own concerns and has resources to carry out its own research.

### Who is on the Panel?

#### Colin Brown (Chairman)

Colin is an independent consultant specialising in consumer affairs. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 20 years' experience of social and consumer research.

#### Ann Foster (Vice-Chairman)

Ann is a former Director of the Scottish Consumer Council and has over twenty years' experience in the consumer movement. She is also a member of the Consumer Council for Postal Services. She was formerly Director of Government Affairs with Monsanto.

#### Jean Gaffin

Jean chaired OFTEL's Advisory Committee on Telecommunications for Disabled and Elderly People until 31 December 1999 and is currently a Non-Executive Director of Harrow & Hillingdon Healthcare NHS Trust. She has extensive experience of working on behalf of vulnerable consumers. Previous posts include: the Executive Director of the National Council for Hospice and Palliative Care Services and Chief Executive of Arthritis Care.

#### Yvonne Gallacher

Yvonne is Chief Executive of Money Advice Scotland, set up in 1989 by Scottish Consumer Council. She has over thirteen years' experience of consumer credit/money advice issues and of working with vulnerable consumers in a variety of roles, including debt counsellor, trainer and manager. She has also lectured and co-authored a Guide to Money Advice in Scotland. Yvonne is presently a member of the FSA Consumer Education Forum and Credit Union Consultation Panel. Yvonne is a member of the Scottish Consumer Council.

## **John Howard**

John is a solicitor with extensive experience of consumer issues as a former presenter of the daily consumer programme on Radio 4 'You and Yours'. He is currently a freelance broadcaster and his work includes presenting personal finance television programmes. He is a member of the Mortgage Code Compliance Board.

## **Vinod Kumar**

Vinod is a social scientist with market research skills and extensive voluntary and public sector experience of policy analysis and research. Now retired, Vinod has previously worked for the Commission for Racial Equality and was Head of Policy and Research at the Royal National Institute for Deaf People. He is currently Non-Executive Director of Barnet Health Authority, board member of the South Barnet Primary Care Group and member of the Consumer Liaison Group of the Medical Research Council.

## **Nick Pearson**

Nick is the National Money Advice Co-ordinator for the Federation of Information and Advice Centres. A career spent in advice organisations including the National Association of Citizens Advice Bureaux where he was manager of the Money Advice Support Unit, he has particular experience of credit, debt and personal finance issues and of working with vulnerable consumers.

## **Paul Salvidge**

Paul is a former senior civil servant with experience of regulatory work, employment law, competition, consumer protection, telecommunications, financial services and company law. He was previously Competition Policy and Consumer Affairs Director at the Department of Trade and Industry.

## **Richard Smethurst**

Richard is Provost of Worcester College, Oxford University; he chairs the Training Standards Panel of IMRO, of which he is a non-executive Director. He has served as an economic adviser in Whitehall, and on the Monopolies and Mergers Commission, where he was Deputy Chairman. Richard lectures widely on financial and economic topics to businessmen and adult education groups. He is President of the National Institute of Adult Continuing Education.

## **Jane Vass**

Jane is an independent consumer researcher specialising in financial services. She was previously Head of the Financial and Economic Research Group at Consumers' Association and is still author and editor of a number of Consumers' Association publications. Other research has included work for the National Consumer Council. Her current committee memberships include: Council of the Ombudsman for Estate Agents, the Inland Revenue Tax Law Rewrite Project Consultative Committee and the FSA Training Advisory Panel.

## **Dave Watts**

Dave is a partner in a media business which is involved in publishing, editing and journalism - personal finance plays a large part in this. He is a former editor of Which? and Money Which? and former Assistant Director of Consumers' Association. He was also a policyholder representative on the Insurance Brokers Registration Council for nine years.

## **Harriet Hall**

Harriet is a solicitor with considerable experience of consumer policy and retail financial services. She is a former legal officer with the National Consumer Council, where she worked on the needs of low income consumers, banking, credit, mortgages, regulation of equity release and long-term care insurance, the Financial Services and Markets Bill and the proposed EU directive on distance selling of financial services.

## **Dianne Hayter**

Dianne is the Chief Executive of a new cancer charity, the Pelican Centre. She is the former Director of Corporate Affairs for the Wellcome Trust and was previously the Chief Executive of the European Parliamentary Labour Party and, prior to that, Director of Alcohol Concern. She has substantial voluntary sector and trade union experience.

## **How to contact the Panel**

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