

Financial Services Consumer
Panel response to:
Consultation Paper 160
Insurance Selling and
Administration:
The FSA's High-Level
Approach to Regulation

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Financial Services Consumer Panel response to Consultation
Paper 160: Insurance Selling and Administration: the FSA's High
level Approach to Regulation

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Summary

- I. The Financial Services Consumer Panel welcomes many of the proposals in this paper, but there are a number of points on which the Panel wishes the FSA regime to go further to protect consumers.
- II. Claims handling: The Panel believes that the FSA has failed to grasp the importance to consumers of this aspect of insurance administration and the difficulties consumers often encounter when trying to make a claim. There is a perception among consumers that in some cases it is an uphill struggle to claim and that insurers try to avoid payment in full. The Panel is disappointed that no training and competence requirement is proposed for those overseeing the administration of claims, which is a crucial part of insurance business.
- III. Definition of small businesses: In the Panel's view the definition of small businesses is too low. The FSA should either adopt a threshold of called-up share capital/net assets/income of less than £5mn or it should undertake research into how a range of threshold figures would impact on small businesses, trusts and charities.
- IV. Commission disclosure: The Panel feels strongly that consumers are entitled to know the amount of commission (in whatever form) the selling firm will receive.
- V. Adequate/suitable products: The Panel believes that the question of whether a product is adequate must include some consideration of whether it represents value for money – ie the cost. The Panel would also like to see a more extensive discussion of the meaning of “adequate” and “suitable” in the context of insurance sales.
- VI. The sales process: the Panel welcomes the FSA's proposal for only two types of selling process - advised and non-advised, with the same regulatory requirements applying to non-advised execution only sales

and non-advised sales where the consumer is asked a series of 'filtering questions'.

Panel response to Consultation Paper 160: Insurance Selling and Administration: The FSA's High Level Approach to Regulation

Introduction

1. This paper is the response of the Financial Services Consumer Panel ('the Panel') to the Financial Services Authority (FSA) Consultation Paper 160, Insurance Selling and Administration: The FSA's High-level Approach to Regulation.
2. Although the Panel welcomes many of the proposals in this paper, the Panel believes that the FSA has failed to take account of a number of consumer issues, particularly in the area of claims handling. The FSA has failed to grasp the importance of this process to consumers and the difficulty they often experience when trying to make a claim. This can result in consumers giving up on their claim or accepting an offer of payment which is less than the sum they are entitled to.

Who and what will be affected

3. The paper refers to the Government's recent consultation on whether certain types of insurance which are exempt from the scope of the Insurance Mediation Directive should be regulated. Although CP 160 does not seek comments on this issue, the Panel is concerned that there is a significant risk to consumers of mis-selling and poor value products in the area of travel insurance sold as part of a holiday package. Of the three options set out by HM Treasury for dealing with 'bundled' products, the Panel strongly supports regulation by the FSA.

Customer classification

Q1: What are your views on whether small businesses should be given the same regulatory protection as individuals?

Q2: What are your views on the proposed definition of small businesses?

4. The Panel agrees that small businesses should be treated in the same way and afforded the same level of protection as individuals. The Panel has concerns, however, about the proposed definition of small businesses.
5. In its response to CP 33 (Scope of the Financial Ombudsman Scheme) the Panel raised concerns about the position of charities and access to the Ombudsman Scheme. The FSA had proposed that small businesses should be defined as those with a turnover of £1mn or less and under five employees (although the employees criterion was later dropped) and that charities would also be assessed against these criteria. The Panel pointed out that although the proposals would have given some 98% of charities access to the Ombudsman Scheme, it was doubtful that the remaining 300 would be likely to be able to sustain a significant financial loss. In response the FSA settled on a single criterion of £1mn annual turnover. In the case of charities the £1mn limit would apply to income and in the case of trustees, to the net assets of the trust. The FSA also undertook to keep the £1mn limit under review.
6. The concerns set out by the Panel in their response to CP 33 still apply. The Panel is also conscious that at a time of high property prices it is not inconceivable that executors or trustees can find themselves responsible for assets worth in excess of £1mn, which puts them at risk of having regulatory protection removed even though they do not meet the FSA's expectation that these individuals will have "appropriate in-house expertise" or "the means to pay for professional advice". The Panel considers that the proposed threshold figure for the definition of small businesses (group turnover of £1mn) is too low and should, in any event, have been reviewed since 2000. We suggest that either the figure should be increased now, then formally reviewed every two years, or that the FSA adopt the alternative definition of called-up share capital/net assets/income of less than £5mn. Alternatively the FSA could undertake research into

how a range of threshold figures would impact on small businesses, trusts and charities.

Q4: What are your views on options A and B?

7. The Panel considers that Option A is the most appropriate form of customer classification as under Option B there is a greater risk that small businesses would not be adequately protected.
8. We are also concerned about excluding third parties involved in insurance disputes from access to the Financial Ombudsman Service unless they have legal rights to enforce a contract. Third parties are those who are making a claim against the insurance policy of another person and where that other person is liable for the event on which the claim is being made. This means that consumers have better protection against wrongdoing or maladministration by an insurance company if the accident was their fault than if they are the victim of another policyholder's offence. This is inequitable.

Context for regulation

9. The Panel strongly supports the assessment of risks spelled out in paragraphs 6.5 to 6.9 of the consultation paper. Poor claims handling in particular is a vital issue and one that leads to considerable consumer detriment. We believe that the extent of underpayment and unfair handling of claims are areas which the FSA needs to research. The complaints that reach the Ombudsman on this issue are only the tip of the iceberg.

Q5: What are your views on our identification of four insurance products (long-term care, income protection, critical illness and private medical) as presenting a higher level of risk?

10. The Panel agrees that the four insurance products identified in the paper present a higher level of risk to the consumer than other types of insurance.

Q6: Should long-term care insurance be subject to the same regime as other higher risk insurance products, or should it be subject to a regulatory regime that is similar to that for investment products?

11. The Panel believes that long-term care insurance products should be regulated in a similar way to investment products, as this regime would provide better protection for consumers. However the Panel is concerned by footnote 19 to the paper which states that if the investment business regime were to be applied to long-term care insurance, the FSA would not be able to regulate financial promotions of long-term care insurance as comprehensively as for investment based long term care insurance. The Panel recommends that the FSA take steps to ensure that there is no significant distinction in the regulatory treatment of investment based long-term care products and long-term care insurance. The Panel has also recommended to the FSA that they should produce an information leaflet for consumers on long-term care insurance, explaining the various types of cover available and identifying the significance of the differences between products.

12. The Panel welcomes the analysis of risk set out in paragraph 6.16 of the paper. The distinction of only two types of selling process (advised and non-advised) with the same requirements applied to non-advised filtering questions and non-advised execution only sales, is the approach recommended by the Panel in its response to CP 146 (Regulating Mortgage Sales). We hope that this reflects a general view of filtered questions throughout the FSA.

13. The Panel is pleased that the FSA has identified secondary purchase sales as potentially posing greater risks to consumers than unlinked insurance sales. Consumers of 'secondary purchases' are particularly

vulnerable to sales of poor value policies and are less likely to shop around, including in the area of travel insurance where the Panel has called for FSA regulation.

Firm status and status disclosure

Q7: What are your views on our proposals for status disclosure for private customers?

14. The Panel welcomes the excellent research that was undertaken on disclosure. Generally we support the FSA's proposals on status disclosure, although we recommend that the intermediary should disclose at the outset whether he/she is acting for the customer or the provider and whether he/she will be remunerated by the provider. We also believe that, for the avoidance of doubt, there should be status disclosure on renewal.

Q8: Should we impose restrictions on the use of the term 'independent'?

15. As the Panel made clear in its response to CP 146, the use of identical terms with different meanings in the investment, insurance or mortgage market would create scope for consumer detriment on a large scale. In the Panel's view the use of a high level rule that all communications by firms should be clear, fair and not misleading would not provide an acceptable level of protection against misuse of the term 'independent'.

Standards for advising and selling

Q10: What are your views on our proposals to do nothing beyond that required by the IMD in terms of conduct of business requirements for advised sales to private customers?

16. The Panel is not convinced that the proposals set out in the paper provide sufficient safeguard for consumers. The discussion about the meaning of "adequate" and "suitable" products falls short of what the Panel would expect to see and we would like this area to be explored in more detail. In

particular the Panel believes that the question of whether a product is “adequate” must include some consideration of whether the product represents value for money – ie the cost. The Panel supports the proposal that consumers must be advised if there is no “adequate” policy available at all and that an adequate advice requirement will apply to renewals of existing policies if advice is provided at renewal.

Q11: (a) What are your views on our proposals to do nothing beyond that required by the IMD in terms of conduct of business requirements for the generality of non-advised sales involving private customers?

(b) In relation to non-advised sales of ‘higher risk’ products, do you think that we would: (i) require all questions to be scripted; or (ii) require that the individual supervising the sales staff is trained and competent to give advice? Do you have an alternative suggestion for a requirement to protect consumers?

17. The Panel welcomes the proposals for dealing with firms selling the higher risk products identified earlier. We see no valid reason not to extend these requirements to renewals, where the consumer is potentially exposed to considerable risk – for example, the implications of the disclosure requirements on the policyholder for events which have occurred within the past twelve months.

18. The Panel would be satisfied with either scripted questions or qualified supervision, provided that it is made absolutely clear to consumers whether or not they are being given advice and that the behaviour and quality of information given by staff is adequately monitored by both firms and the FSA.

19. As regards the demands and needs statement, the example at paragraph 8.12 is confusing. The word “need” is used incorrectly. More appropriate wording would be “you have decided on” or “you have selected”. “You need to take out comprehensive motor insurance” sounds almost tantamount to advice.

Training and competence

Q13: (a) *what are your views on our overall approach to training and competence for individuals advising and selling?*

(b) *What are your views on requiring an examination for those advising on 'higher risk' products?*

20. Generally (but see paragraph 21 below) the Panel supports the proposals in the paper for training and competence requirements on firms selling insurance contracts.

21. The Panel favours an examination requirement for those advising on higher risk products and urges the FSA to proceed with the development of a suitable examination.

Q14: *Do you agree with our proposals not to introduce any specific training and competence requirements for persons overseeing the administration of claims?*

22. The Panel has commented on the FSA's proposals for Claims Handling in paragraphs 40-44 of this response. Claims handling is a crucial part of insurance business. The FSA needs to ensure that firms maintain high standards in this area and training and competence requirements are an effective means of achieving this. The level of skill and competence required to carry out claims handling is no less than the level of skill and competence required to sell insurance products. The Panel is disappointed that no training and competence requirement is proposed for those overseeing the administration of claims, particularly since well-established and relevant examinations are already available. These could be enhanced to deal with the problems of fairness and communication referred to in the Paper. It is vital, therefore, that these staff are closely monitored to ensure no consumer detriment, rather than cutting claims costs for firms.

Product disclosure and other information

23. The use of the word “mediation” as in paragraph 10.3 of the paper is misleading for consumers. If mediation means “selling”, then the word selling should be used.

Q16: Do you have any comments on our proposals for additional guidance on financial promotions?

24. The Panel supports the additional guidance that the FSA proposes to issue on financial promotions. There should also be rigorous and speedy enforcement action against misleading promotions, together with greater transparency in that process and its outcome.

Q17: Are you aware of any other problems that should be addressed by additional rules and guidance on financial promotions?

25. The Panel believes that there should be additional rules and guidance for tied-in sales – for example, house insurance linked to a mortgage, payment protection insurance linked to a loan, travel insurance linked to a holiday. In many cases these policies are not suitable for the consumers who buy them because they contain exclusions the consumer should be made aware of before sale. Moreover they can be very bad value for money.

Q18: What are your views on our proposals for pre-commitment disclosure?

Q19: Do you agree with our proposals to differentiate the pre-commitment disclosure requirement for ‘higher risk’ products?

26. The Panel supports these proposals, except that we believe that pre-commitment disclosure should be made in writing. The requirement for disclosure by the consumer of relevant facts, with clear examples, and the consequences of not doing so must be made absolutely clear at the pre-commitment disclosure stage.

Q20: *What are your views on our post-application product disclosure proposals?*

27. The Panel supports these proposals.

Q21: *What are your views on our proposals for product disclosure at renewal?*

28. The Panel welcomes the requirement that changes to cover should be highlighted on renewal.

Q22: *Do you agree that there should not be any post-sale product disclosure requirements except in the areas identified?*

29. The Panel agrees with this proposal.

Q23: *What are your views on:*

(a) our proposals for product disclosure for non-private customers who purchase policies where the intended beneficiary is a private customer (eg group health policies)?

(b) whether there should be any product disclosure requirements when liability insurance is sold to non-private customers and, if so, what form these might take?

30. The Panel supports the FSA's proposals for product disclosure for non-private customers who purchase policies where the intended beneficiary is a private customer.

Q24: *What are your views on the priorities for consumer education and the means of achieving them? How else might we raise consumer awareness and knowledge?*

31. The Panel welcomes the FSA's commitment to developing a clear consumer education strategy. This is something the Panel has been calling for over many years. Without doubt neither press nor publicity can

be effective unless they are part of a strategy which defines the message and the audience. Leaflets in particular have to be very targeted to have any impact and distribution has to be part of the strategy.

32. Within the context of an appropriate strategy, the Panel generally supports the proposals in the paper for consumer education and information, although we feel that press and publicity should be given more prominence than some of the other tools available to the FSA. The priority areas identified by the FSA seem right and the Panel is pleased that the FSA intends to address potential problems arising with secondary sales.

33. The Panel has always supported the FSA's Comparative Tables and wishes to see them more widely publicised and used by consumers. The Panel would like more products to be covered by the tables, including insurance contracts, and believes that there should be a requirement for reference to be made to the comparative tables on all relevant marketing literature. This is one of the most efficient ways of raising awareness of the tables.

Fair treatment

Q25: What are your views on our proposal not to introduce commission disclosure for private customers immediately but to keep this issue under review?

34. The Panel does not agree with this proposal. The Panel feels strongly that consumers are entitled to know the amount of commission (in whatever form) the firm will receive, whether or not they specifically request the information. The Panel does not accept that commission disclosure would confuse consumers or cause "information overload".

Q26: What are your views on our proposal for a rule that would prevent firms providing inducements that may conflict with the firm's duty to its private customers? Are there any particular types of inducement that we should prohibit under such a rule?

35. The Panel supports the introduction of a rule that would prevent firms providing inducements that may conflict with the firm's duty to its private customers. In addition the Panel would expect all inducements to be disclosed to consumers.

Q27: What are your views on whether or not we should introduce a rule to prevent firms from making excessive charges to private customers and on the criteria that firms should take into account in judging whether a charge is excessive?

36. The Panel strongly supports the introduction of such a rule.

Q28: What are your views on our proposal not to introduce a cancellation period for transactions that are not concluded at a distance and for transactions involving private customers who are small businesses?

37. The Panel believes that private customers who are small businesses should enjoy the same protection and rights as other private customers. The cancellation period should therefore be introduced for all private customers.

Q29: What are your views on whether a cancellation period should apply to non-distance sales of private medical insurance?

38. The Panel agrees that a cancellation period should apply to non-distance sales of private medical insurance to bring it into line with the cancellation requirements applying to non-investment life products, so that all consumers buying a higher risk product would have a cancellation right.

Q30: What are your views on our proposals for commission disclosure in the non-private market and, in particular, whether it should be extended to require commission disclosure throughout the distribution chain?

39. As already stated in paragraphs 4-6 of this response, the Panel recommends a revised definition of 'small business'.

Claims handling

Q32: What are your views on our proposals for handling private customer claims?

40. The Panel believes that the FSA has failed to take account of the enormous impact that the way in which claims are handled has on consumers. Claims are made in a time of crisis when consumers may be ill prepared to deal with complex procedures and sharp practice and it is vital that firms operate in a fair and transparent way.
41. The Panel believes that this consultation paper should have been called “Insurance Selling, Claims Handling and Administration” and that the issues arising for consumers in the area of claims handling should have been analysed and properly addressed. The Panel’s own research into consumer concerns shows that consumers who had made claims on their policies observed that some companies provided a very good service, whereas others recalled stories of a less helpful service. Additional, anecdotal evidence from Panel members suggests a reluctance on the part of many firms to deliver the claims handling service and to pay the full amount to which the claimant is entitled. There is a perception that it is an uphill struggle for consumers to claim and that insurers try to avoid payment in full. Consumers who are not confident in their dealings with financial firms can simply give up on the whole process, or accept an offer of payment which is less than the sum they are entitled to.
42. Although the FSA has had discussions with FOS about claims handling, no research has been undertaken into the experience of a wider range of customers. The number of consumers pursuing complaints with FOS is likely to be a small proportion of those who have experienced difficulties in the way in which a claim has been handled. The Panel urges the FSA to undertake focussed consumer research before the next consultation round so that it can better identify consumer detriment. The FSA should also set up a system to monitor claims handling to ensure that it is fair and

reasonable and aimed at giving the policyholder what he/she is entitled to, rather than keeping the firm's costs down.

43. The FSA's proposals in Table 12.1 to deal with the issues they have identified go some way towards satisfying the Panel's concerns, although it is unclear how some of these would work in practice. For example, Proposal number 2 is that intermediaries who act for both parties in the handling of claims should inform the customer of this and obtain "genuine" consent to act for both parties. There is a serious possibility that many consumers will not fully appreciate the implications of the intermediary's conflict of interest.

Q33: Do you agree that we should include the key provisions of the ABI's Statement of General Insurance Practice in our rules?

44. The Panel strongly supports the inclusion of the key provisions of the Statement of General Insurance Practice in the FSA's rules.

Complaints

Q36: What are your views on our proposals for registering and handling complaints?

45. The Panel supports the proposals set out in this chapter although, as we have made clear in paragraphs 4-6 of this response, the Panel believes that the definition of small business should be revised. This would in turn be reflected in the definition of eligible complainant.

Q37: Do you agree that all authorised firms who sell and manage insurance contracts should be subject to the Compulsory Jurisdiction of the FOS?

46. The Panel agrees with this proposal.

High level approach to cost benefit analysis

47. The FSA's proposed approach will in fact only measure costs to providers and not costs to consumers of poor standards and practice. Nor will it measure benefits to consumers of the new regime.

48. The Panel's view is that the FSA should undertake a survey of consumers, looking in particular at their experiences of claims handling. The Panel also urges the FSA to undertake independent monitoring of claims handling practices, including access to the claims procedure.

Who is on the Panel?

Colin Brown (Chairman)

Colin is a consultant specialising in consumer affairs, working with consumer organisations throughout the EU and in Central and Eastern Europe. Previously Deputy Director of Research at Consumers' Association and Senior Fellow at the Policy Studies Institute, he has over 25 years' experience of research and development in social and consumer policy.

Ann Foster (Vice-Chairman)

Ann is an independent consumer affairs consultant and former Director of the Scottish Consumer Council. She is a member of Postwatch, the Consumer Council for Postal Services, and a member of the Health Professions Council.

Jean Gaffin, OBE

Jean chaired OFTEL's Advisory Committee on Telecommunications for Disabled and Elderly People until 31 December 1999 and is currently Chair of Brent Primary Care 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, OBE

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.

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 on the board of both the National Consumer Council and of the National Patient Safety Agency. She was formerly the Chief Executive of the Pelican Centre (a cancer charity). Before that she had periods as the Director of Corporate Affairs for the Wellcome Trust, Chief Executive of the European Parliamentary Labour Party, Director of Alcohol Concern, General Secretary of the Fabian Society, a journalist and trade union research officer. She is a member of the Labour Party and on their

National Executive Committee. She is currently also a research student at Queen Mary College, London..

John Howard

John is a solicitor with extensive experience of consumer issues as a 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. Until recently, he was Head of Policy and Research at the Royal National Institute for Deaf People, and he has previously worked for the Commission for Racial Equality. Now retired, Vinod is currently Non-Executive Director of Barnet Primary Care Trust and a 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. With 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. From November 2002 until March 2003 Paul will not be participating in Panel business as he has taken up the position of acting Legal Services Ombudsman.

Richard Smethurst

Richard is Provost of Worcester College, Oxford University; previously a non-executive Director of IMRO, he chaired their Training Standards Panel. He has served as an economic adviser in Whitehall, and on the Monopolies and Mergers Commission, where he was Deputy Chairman..

Jane Vass

Jane is an independent consumer researcher specialising in financial services. She is a former Head of the Financial and Economic Research Group at Consumers' Association. Her current committee memberships include the Council of the Ombudsman for Estate Agents 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.

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