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PR8/MT

Dear Clive

CP 200: Regulation of long-term care insurance

This is the Consumer Panel's response to CP200. The Panel generally welcomes the approach taken by the FSA, however we do have some comments on specific questions.

Q1: Do you agree with our analysis of the consumer risks arising from different LTCI products? Are there any that we have overlooked?

The Panel agrees with this analysis. However, it would like to add a further risk to paragraph 4.18 (equity release products). Although no 'packaged' products currently exist, the FSA should be alert to the possibility that advisers may sell their own one-off versions. The Panel believes that these are particularly risky and difficult to spot, and therefore financial promotions should be monitored to see whether equity release is marketed for this purpose.

Q2: Do you agree with the amendments we propose to make to the Handbook definition of "LTCI contracts" with effect from 14 January 2005?

The Panel agrees with these amendments.

Q3: Do you agree that long-term care insurance contracts written as general insurance should be regulated as an insurance product, rather than an investment?

The Panel is content with this proposal provided that this definition does not result in the products being called 'long term care insurance'. Please see our response to question 15 (ii).

Q5: Do you agree with our proposal to apply the packaged product regime to LTCI pure protection contracts?

The Panel agrees with the FSA's proposals. However the Panel is concerned that the HM Treasury is apparently not intending to amend the Financial Promotions Order so that pure protection insurance contracts are subjected to the full financial promotions rules. The Panel believes that this decision is regrettable, as these products will be specifically targeted at vulnerable consumers. Given this situation the Panel believes that the regulatory emphasis should be on preventing poor

financial promotions rather than dealing with them after consumer detriment has occurred.

Q6: (i) Do you agree with our proposal to include all LTCl pure protection contracts under the definition of life policy?

The Panel supports this proposal.

(ii) Do you agree with the way we propose to authorise firms/ approve individuals selling LTCl pure protection contracts?

The Panel supports this proposal and is very pleased to see that FSA propose to collect data on claims-handling.

Q7: Do you agree with our proposal to subject LTCl intermediaries to our complaints handling rules and bring them into the scope of the FOS?

The Panel agrees with this proposal.

Q8: (i) Do you agree with our proposal to bring LTCl intermediaries into the scope of the FSCS? and (ii) Do you agree with our proposal to treat compensation claims relating to the mediation of LTCl products as 'investment' claims, which means that the maximum claim will be £48,000?

Whilst the Panel agrees with the principle of this proposal, we are aware that this limit will adversely affect individuals who invest more than the maximum FSCS claim limit. The fact that the *average* claim is around the £48,000 limit suggests that the limit is now too low and we believe that it should be reviewed for all products.

Q10: (i) Do you agree with our proposal to apply Chapter 1 and 2 of the TC Sourcebook to intermediaries and insurers in respect of their sale of LTCl pure protection contracts?

Yes.

(ii) Do you agree with our proposal to require those selling any kind of LTCl contract to pass an approved examination for LTCl – and do you agree that the indicative syllabus in Annex 3 covers the right topics?

The Panel strongly supports the proposal to require advisers to pass an approved examination. The indicative syllabus appears to have no specific reference to Scotland. The Panel believes that advisers across the UK should be aware that legislation and practice might vary.

(iii) Do you agree with the "grandfathering" provisions we propose for advisers who have already been assessed as competent under our existing TC requirements?

No. Given the extent of the knowledge needed to sell these products safely, and the lack of any existing qualification, the Panel is extremely concerned that FSA proposes to grandfather existing advisers. It believes that existing advisers should be required to pass the examination within a reasonable period, as part of their continuing professional development.

(iv) Do you have any views on whether overseers of administrative functions for LTCI business (e.g. claims handling) should also be required to pass an examination – and, if so, what do you consider to be the appropriate level of competence that should be required?

The Panel believes that administrative overseers should also be required to pass the same exam as advisers. The risk analysis in this consultation paper has noted the risks of poor claims-handling in this market, and it is entirely appropriate for overseers to undergo formal, exam-based, training.

Q11: (i) Do you agree with our proposal to apply a modified version of the ICOB claims handling rules to insurers in respect of LTCI contracts?

(ii) Do you agree with the additional information requirements that we propose to apply?

The Panel agrees with both proposals. However the Panel believes that in order to enable consumers to be treated fairly after the point of sale, consumers need to be provided with regular information so that they can assess their position. The proposal to introduce an annual statement for LTC1 investment bonds is very welcome, but should also apply to pre-funded policies. The Panel believes that a requirement for consumers to receive regular annual statements would act as a prompt for consumers to consider whether any changes were needed to their policy.

The Panel believes that the annual statement should also provide information about surrender values and the notice the company needed to give before it could increase premiums. The Panel does not want to prohibit premium reviews, however we do want to ensure that consumers are fully aware of the possibility of premium increases.

Q12: Do you agree with our decision not to standardise ADLs? If not, what do you think these should be?

Irrespective of whether or not there are standardised ADLs, the Panel believes that what is needed here is bench-marking that enables the consumer to see, without having to compare each provider's detailed wording, how the standards of one company measure up to the industry norm. The information about events or circumstances, which could lead to claims, should be contained in a special key features document, which would also clearly explain what ADLs are.

The Panel is concerned by differences in standards employed by different companies in the use of activities of daily living (ADLs) to trigger claims under pre-funded policies. There are considerable risks for consumers if difficulties in understanding and comparing ADLs lead them to take the wrong policy. These risks are likely to be considerably exacerbated in a fast-changing market, or if depolarisation results in significant selling of LTC1 by company representatives or multi-ties. Therefore it might be appropriate for the FSA to prescribe standard ADLs.

One solution is to adopt the present ABI code as the standard for the industry. However, the Panel is very concerned that the standard used in these ADLs should be set at the right level: these standards need to be robust, and to be bench-marked against good practice in the field of long term care. This is all the more necessary, in

our view, since, as the CP concedes, standard definitions cannot “remove the subjective judgement involved in deciding how ADLs are to be interpreted and applied in any given situation.” (paragraph 5.64). One can easily foresee that two professionally trained occupational therapists may well take a different view in the same situation.


The Panel is concerned by the reliance placed on the independence of occupational therapists. This is not calling into question their professional integrity but recognising that there are risks associated with this proposal, as the insurer selects and pays the occupational therapist; there is therefore a risk of selecting therapists who tend to give the benefit of doubt to insurers. As a result, the Panel believes that the FSA should address these risks, for example by requiring a right to obtain a second opinion.

Q 15: (i) Do you have any views on whether the term ‘Long Term Care Insurance’ is likely to be confusing to consumers and, if so, what would you consider to be a more appropriate term?

(ii) Do you agree that we should introduce rules to prohibit firms from describing a general insurance contract (or any other contract which falls outside our proposed definition) as a ‘long-term care insurance contract’?

The Panel believes that, unless there is evidence to the contrary, the term ‘long-term care insurance’ is acceptable. However, it is important to avoid any confusion between other types of medical insurance, and the Panel therefore strongly supports the proposal to prohibit the use of the term for products falling outside the FSA’s definition.

Yours sincerely,



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Chairman
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cc. The Consumer Panel

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