

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

Direct line: 020 7066 9346

Local fax: 020 7066 9728

Email: enquiries@fs-cp.org.uk

Peter Edmonds
Manager
General Insurance Policy
Retail Policy Division
Financial Services Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

27 September 2007

Our ref: ICOB/KW

Dear Peter

CP 07/11* Insurance Selling and Administration**

The Consumer Panel is pleased to have this opportunity to provide comments on the consultation which follows the effectiveness review of the Insurance Conduct of Business sourcebook. The Panel was fully supportive of the FSA's proposals to undertake early effectiveness reviews of the new regulatory regimes in the mortgage and general insurance sectors in order to assess if the objectives of the regimes are being met.

The Panel appreciates that general insurance products are deemed lower risk compared to other regulated products, and that the need for a large number of detailed rules is therefore diminished. In the circumstances it would appear sensible to move to a more principles-based general insurance regime where costs to firms for complying are lower, without removing valuable safeguards for consumers. That said there are clearly some aspects of the general insurance sector that do not work well for consumers – the Payment Protection market being one example. It is therefore appropriate that regulators seek to address these issues and the Panel is obviously aware of work being done by the Competition Commission and FSA in this regard. In terms of the proposals to change the only recently introduced FSA regime, the Panel does have a number of concerns over the changes being proposed, and, where relevant, answers to the questions posed in the consultation appear below.

Q1: Do you agree with our proposals:

- a) to include PMI in the 'other' group of products;*
- b) to include all term assurance in the protection group;*
- c) to include all PPI products in the protection group?*

If not, please give reasons.

A: Whilst the Panel agrees with the proposals to place all term assurance and PPI products in the protection group, it does not agree that it is appropriate to include PMI products in the 'other' group of products. The Panel understands and agrees with the basis on which for example car and household insurance have been put into this category, but it firmly believes that PMI products do not have the same characteristics as these 'other' products. PMI policies are complex products that consumers do not understand to the same degree. The Panel learned recently that one large product provider issued a guide to financial advisers which demonstrates that firms themselves clearly view these products as complex enough to provide guidance to intermediaries. Whilst it is true that PMI policies are renewed annually, the Panel does not feel consumers have the same understanding of the product as they do with car and household insurance.

The Panel also feels that there is not the same degree of ease of switching PMI products as there is with other annually renewable policies. Consumers choose to switch for a number of reasons and may face barriers to doing so where for example a medical condition has arisen during the period of cover. In some cases, consumers could be prevented from switching or will find that such pre-existing conditions are excluded from cover with a new provider. Whilst the Panel understands that some group policies will include a 'no worse terms' arrangement, this may not be the case for consumers who negotiate their policies individually. The Panel conducted a small survey and found that up to 70% of consumers affecting their own cover may not have the benefit of a 'no worse terms' policy with the new provider. In the circumstances, the Panel believes it is more appropriate to include PMI products in the protection group in order to afford consumers the greater degree of protection provided by, for example, rules on product disclosure and suitability. The Panel understands that only a relatively small number of complaints about PMI products are forwarded to the Financial Ombudsman Service. However, the benefit of better understanding of such products by consumers is intangible and not easily capable of assessing.

Q3: Do you agree with our proposals for moving to a more principles-based approach for the rules on:

- a) inducements;*
- b) reliance on others;*
- c) exclusion of liability;*
- d) excessive charges;*
- e) record keeping; and*
- f) financial promotions?*

If not, please give reasons.

A: The Panel has no view on the changes to rules covering reliance on others, exclusion of liability, record keeping or financial promotions. In relation to inducements, the Panel believes that all consumers should be told how much an intermediary has earned by way of commission or other inducement in effecting the sale of a product. The subject of commission is being debated as part of the Retail Distribution Review, and if some of the outcomes of this review are to be read across to both the ICOB and MCOB regimes, then changes to rules on inducements at this stage may be somewhat premature in any event. In addition with some PPI premiums consisting of up to 70% commission, more needs to be done in this area to address failures in one aspect of the insurance market. The Panel is aware of the

work being done to extend the coverage of the FSA's Comparative Tables, which are an important tool for judging the value-for-money of many products. However, where a substantial proportion of premium income is paid out in commission, consumers will not realistically be able to make judgements about which products represent better value-for-money. There needs to be much greater market transparency in order that consumers can make better purchasing decisions.

The Panel is disappointed the FSA is removing rules on excessive charges. It is also disappointing to note the FSA has not taken any action under the existing rules. The Panel understands the FSA's reasons for not wishing to be an economic regulator, and accepts that the market must itself find an appropriate level of fees, and charges. However, there comes a point when consumers are exploited – either because of their lack of knowledge or inability to really shop around for a product or service when regulatory intervention is appropriate if prices are too high. In view of the many other priorities under the TCF initiative, and bearing in mind the FSA's view on economic regulation, there is little prospect of any firm being taken to task for failings in this area. The danger therefore is that there will not be seen to be a maximum and that some consumers – most likely the more vulnerable - will pay more than is fair and reasonable.

Q4: Do you consider there are any areas where important consumer protections are being removed, as a result of our simplification proposals, in ways that will expose consumers to significant risk of detriment?

A: The Panel is unclear why the FSA has chosen to amend the 'mixed-use' rule. The consultation refers to there being no evidence of market failure, but does not refer to any potential detriment that might occur. Whilst in many cases this move will be appropriate, some individuals who are sole traders will not have the level of sophistication that the move would appear to have assumed. The consultation refers to the example of a taxi driver, but it is unclear why such an individual is being afforded a lower level of protection on the basis that he is a commercial customer.

Q6: Do you agree with our proposals for general rules on:

- a) suitability; and*
- b) eligibility?*

If not, please give reasons.

A: The Panel is reasonably pleased with the manner in which the rules on suitability have been amended. The Panel notes there is to be guidance – based on the existing rules – which will apply only to protection contracts. Where the FSA feels a higher standard should apply to certain more high-risk products then it should apply rules rather than guidance, as firms do not have to comply with the latter.

The Panel is concerned that there is a rule requiring that firms take reasonable steps to ensure consumers only purchase a PPI product under which they will be eligible to claim benefits, but that this is only guidance for all other policies, which means that firms do not have to comply. The Panel feels this is a mistake as firms should always ensure that there is no real obstacle to a consumer being able to claim on a policy by reason of easily determinable facts such as those outlined in the CP. This is one example where the Panel feels that the sale of PMI products should be subject to a higher degree of control than is being proposed by this consultation.

Q7: Do you agree with our proposals for demands and needs statements? If not, please give reasons.

A: The Panel does not agree with the removal of the rules covering demands and needs statements for PMI products for reasons already stated above. The Panel is also concerned that a higher standard will apply to intermediaries than to insurers. Similar concerns were raised over MiFID implementation. The higher standard should apply across all firms. Smaller firms will of course feel a disproportionate impact of these additional requirements – and costs may ultimately be passed on to consumers.

Q8: Do you agree with our proposals for general rules on product disclosure? If not, please give reasons.

A: The Panel is concerned over the extent of the changes as they affect PMI policies. Whilst noting the high-level requirement to ensure consumers receive appropriate information in good time and in a comprehensible form before conclusion of the contract, the degree of complexity of these products is such that the pre-contract information should be more closely regulated. There may well be a degree of standardisation of PMI policies, but the Panel feels that consumers will be more likely to compare one product against another where there is a degree of standardisation of product information. This cannot be guaranteed where each firm is left to determine what it feels is appropriate pre-contract disclosure. Coupled with the deletion of the rules covering a demands and needs statement, and changes to eligibility rules, the Panel believes these measures may lead to increased consumer detriment primarily resulting through lack of understanding. Along with PPI policies, it is important that consumers fully understand the significance of full disclosure on their part.

Q9: Do you agree that we should retain the cancellation right for non-distance sales of 'other' insurance products to consumers? If not, please give reasons.

A: The Panel is pleased the FSA has decided to retain cancellation rights for non-distance sales of 'other' products. The Panel felt that removing these rights could lead to consumer confusion over what is or is not cancellable and ignored or pre-empted on-going debate at EU level over rights of cancellation. The Panel agrees with retaining these rights for non-distance sales of 'other' products.

Q11: Do you agree with our proposal to require oral disclosure of information on all the main characteristics of a protection policy in sales where part of this information is given orally? If not, please give reasons.

A: The Panel feels this is a sensible move as it agrees consumers tend to place greater reliance on information given orally than provided through other means. This is of course subject to all firms sending appropriate documents in good time before completion of the contract. The Panel would urge the FSA to consider ways in which consumers can be encouraged to engage more with written information firms are required to give them, through its financial capability work.

Q12: Do you agree with our proposals on price disclosure for protection products? If not, please give reasons.

A: The Panel is broadly supportive of the proposals for price disclosure. However, the Panel is concerned over the change to the original proposal to require firms to tell consumers if their decision over whether or not to purchase a PPI will affect their application for credit. The Panel acknowledges that care must be taken to ensure that consumers do not become too aware of the manner in which firms make lending decisions. However, this change in policy fails to recognise that credit is often a distress purchase, and consumers *will* feel pressurised to purchase PPI even if it is not compulsory, where they are desperate to obtain credit by any means. This is of course a very complex and sensitive area, especially as those most affected may be more vulnerable, e.g. sub-prime borrowers.

Q13: Do you agree that, for PPI:

- a) there should be a cancellation period of 30 days for all PPI contracts; and*
- b) a full refund of premium should be given on cancellation?*

If not, please give reasons.

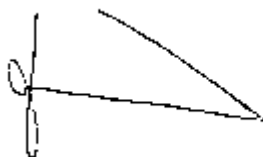
A: The Panel broadly supports these proposals.

Q15: Do you agree with our proposals on claims handling by insurers? If not, please give reasons.

A: The Panel is broadly supportive of these proposals, but notes that further changes may be needed once the law Commission's review is completed.

The Panel understands the FSA normally undertakes post-implementation reviews and would fully support this policy once these changes have been made. The Panel is concerned however, that not enough information is available about the level of detriment experienced in this market, and would urge the FSA to schedule further analysis work to gain a better understanding in this regard.

Yours sincerely

A handwritten signature in black ink, appearing to be 'John Howard', written in a cursive style.

John Howard
Chairman