

Telephone: 020 7066 9346
Local fax: 020 7066 9728
Email: enquiries@fs-cp.org.uk

Karen Ainsworth
HM Treasury
Financial Services Strategy Team
Room 4/18
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

14 March 2007

Our ref: HMT/MT

Dear Ms Ainsworth

Consultation on amendments to the Financial Services and Markets Act 2000 (Exemption) Order 2001 for the role of policyholder advocate

This is the Financial Services Consumer Panel's response to HM Treasury's Consultation on amendment to the financial Services and Markets Act 2000 (Exemption) Order 2001 for the role of policyholder advocate in relation to the reattribution of an inherited estate.

Question: Do you agree that a policyholder advocate carrying out the functions intended in the FSA rules does not need to be authorised by the FSA? (pg 12)
Given the practical difficulties of authorisation identified in the consultation paper, such as maintaining professional indemnity insurance and satisfying the FSA's threshold conditions, the Consumer Panel recognises that in the particular and unique circumstances of the role of the policyholder advocate authorisation by the FSA would not be appropriate.

Question: Do you think that an exemption from authorisation in respect of the regulated activities specified in articles 25 and 53 of the Financial Service and Markets Act 2000 (Regulated Activities) Order 2001 is the most appropriate solution? (pg 13)

Option Two appears to the Panel to be the most practical solution to this situation. Limiting the exemption reduces the possibility of unintended consequences, whilst providing the policyholder advocate with legal certainty that a criminal offence has not been committed. It also ensures that any agreement between the insurer and the policyholder advocate is not invalidated.

Question: In the event of an exemption, do you think that the safeguards discussed provide sufficient protection to policyholders? (pg 14)

The Panel believes that the safeguards identified in the FSA's rules are sufficient, that is to say: -

- FSA approving the appointment of the policyholder advocate by the insurer and is able to nominate someone else to carry out the role where it is thought to be in policyholders' interests;
- rules on some of the key terms on which a policyholder advocate is appointed;
- requirement for the insurer to notify the FSA of the terms on which it proposes to appoint the policyholder advocate so that the FSA can raise any objections to any terms of appointment;
- rules requiring the terms of the policyholder advocate's appointment to allow for direct communication with the FSA and for participation in the FSA's meetings with the insurer;
- FSA can intervene if it believes there is reason for it to do so;

combined with the requirement that the insurer has to

- ensure that each affected policyholder receives timely and appropriate information about the reattribution that is clear, fair and not misleading, which should include information about the policyholder advocate and his views on the reattribution proposals, any benefits that policyholders are likely to receive and the rights and interests that they are likely to be asked to give up, any wider restructuring of the insurer and the benefits and drawbacks of the specific reattribution proposals;
- inform relevant policyholders when it finishes negotiating with the policyholder advocate and explain the outcome of the negotiations and its reattribution proposals
- if the insurer makes an offer to policyholders which is not supported by the policy holder advocate, the insurer should explain that the policyholder advocate disagrees and give the reasons why.
- Send out details of the individual benefits each relevant policyholder will receive.

In addition policyholders have the opportunity to vote on any proposals that have been negotiated by the policyholder advocate. Normally policyholders have the individual choice of whether to accept or reject the insurers offer and in general, policyholders who do not agree retain their rights. Or policyholders may be required by court process to vote together at a court convened meeting on whether or not the insurer should go ahead with its proposal.

In addition the normal legal process for making a reattribution is governed by Part VII of FSMA. We do believe that these measure provide some protection to policyholders, however we are not in a position to judge whether they are in themselves sufficient.

We are pleased to note that the FSA are considering whether any amendments need to be made to their conduct of business rules on additional information that may need to be provided to policyholders so that they are aware of the implications of the policyholder advocate not being an authorised person under FSMA.

Yours sincerely,

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

John Howard
Chairman