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By email: commercialinsurancemarket@fca.org.uk

Dear FCA,

Financial Services Consumer Panel response to FCA Discussion Paper: Regulation of commercial and bespoke insurance business

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to this Discussion Paper (DP) as it potentially impacts financial services protections available to sole traders and businesses buying standardised insurance product solutions. These businesses are unlikely to possess insurance expertise nor have access to professional or legal advisers to negotiate with insurers on an equal footing. The Panel view these “commercial” customers in many respects as requiring the same safeguarding, understanding, value, service and support needs as retail consumers and support the intention of the FCA’s rules.

Our long-held Panel position is and remains that consumers, microbusinesses and most smaller SME firms should enjoy the same level of safeguarding and protection as provided for in ICOBS, PROD, PRIN and the ability to bring cases to the Financial Ombudsman Service and Financial Services Compensation Scheme.

Whilst the majority of the questions in the Discussion Paper are applicable to insurers, intermediaries and trade organisations, the Panel has responded to those where we view a consumer voice is required.

Please find the Panel’s responses to the questions posed in Annex 1.

Yours sincerely,

Helen Charlton
Chair, Financial Services Consumer Panel

Annex A – Response to consultation questions

Q1. Do you agree with the concerns/issues we have identified above?

The Panel agree with the concerns and issues identified. In addition, we fully support the FCA's view that it is necessary to distinguish between larger commercial enterprises and both micro businesses and smaller SME firms who tend to have limited financial expertise and generally lack professional advisor support.

Our long-held Panel position is and remains that consumers, microbusinesses and most smaller SME firms should enjoy the same level of safeguarding and protection as provided for in ICOBS, PROD, PRIN and the ability to bring cases to the Financial Ombudsman Service and Financial Services Compensation Scheme.

Q3. Please tell us if there are other issues/concerns associated with the scope of application of requirements to commercial customers.

Please see response to Question 1.

The Panel's long-held position is and remains that consumers, microbusinesses and most smaller SME firms should enjoy the same level of safeguarding and protection as provided for in ICOBS, PROD, PRIN and the ability to bring cases to the Financial Ombudsman Service and Financial Services Compensation Scheme.

Q4. Of the 3 main options we have presented, please select the option you prefer.

The Panel prefer option 1.

Q5. Of the 2 supplementary options we have presented, please select which, if any, of the options you support.

The Panel support supplementary option 1 however have concerns that this approach may be overly restrictive. Whilst we understand the rationale for focussing on sole trade firms, there are likely to be many firms with only two employees (for example, husband and wife, parent and child) who are in no different position than a sole trader. The Panel would encourage the FCA to consider nuances such as these when developing policy changes.

Q6. Please explain your reasons for your answer in Q4 and Q5 including your reasoning for your preferred option and why you did not choose other options.

The Panel's long-held position is and remains that consumers, microbusinesses and most smaller SME firms should enjoy the same level of safeguarding and protection as provided for in ICOBS, PROD, PRIN and

the ability to bring cases to the Financial Ombudsman Service and Financial Services Compensation Scheme.

Q9. Please tell us of any advantages, disadvantages, or unintended consequences to firms and/or customers you've identified against any of the main or supplementary options.

The Panel's long-held position is and remains that consumers, microbusinesses and most smaller SME firms should enjoy the same level of safeguarding and protection as provided for in ICOBS, PROD, PRIN and the ability to bring cases to the Financial Ombudsman Service and Financial Services Compensation Scheme. Changes to regulation should not lead to any compromise in protections as an unintended consequence for consumers or SMEs. The Panel will expect the FCA to mitigate such circumstances if they occur.

Q12. Do the typical co-manufacturing situations we have identified above reflect current market practice? Are there any other co-manufacturing arrangements (which raise issues) that we have not identified?

The Panel agree that the typical co-manufacturing situations identified reflect the current market practice. The Panel has no further comments on other, non-identified, issues.

Q13. Do you agree with the concerns reflected above, about the way our rules currently apply to co-manufacturers?

The Panel agrees with the concerns identified and current application of the rules to co-manufacturers. We would like to add that it is essential that the rules provide appropriate and effective protection in all distribution arrangements including those with co-manufacturers.

Importantly, firms must be clear as to who is responsible and accountable for compliance and ensuring good customer outcomes.

Q15. Please tell us if there are other issues/concerns related to how our rules apply to co-manufacturing arrangements that we should know about.

Please see response to Question 13. Firms must be clear as to who is responsible and accountable for compliance and ensuring good customer outcomes.

Q16. Of the 3 main options we have presented, please select the option you prefer.

The Panel prefer option 1.

Q17. Please explain your reasons for your answer in Q15 including your reasoning for your preferred option and why you did not choose other options.

The Panel views it as essential that the rules provide appropriate and effective protection in all distribution arrangements including those with co-manufacturers. Importantly, that firms must be clear as to who is responsible and accountable for compliance and ensuring good customer outcomes.

Q18. Please tell us how 'lead' manufacturer should be defined and in particular, if there are any common market definitions we can use, please provide us with these.

The Panel view that a simple and transparent approach is required to safeguard consumers with the insurer taking the greatest proportion of the insurance risk and responsible for the management of service, support and claims should be the lead insurer.

Q19. Do you think the changes suggested under option 1 and 2, should allow an intermediary co-manufacturer to be the 'lead' manufacturer, or should the lead always be an insurer? Please explain your reasons for your answer.

The Panel do not think the changes suggested under option 1 and 2 should allow an intermediary co-manufacturer to be the 'lead manufacturer'.

Designating an intermediary as the co-manufacturer could give rise to a conflict of interest with the risks and issues presented by this not being fully appreciated by a customer who lacks ready access to an independent professional view.

Q24. As noted in Chapter 1, we have only considered rule changes to non-investment insurance products. Please tell us if you consider these changes should be extended to any pure protection insurance business for commercial customers too. Also, explain how much of your firm's business would be impacted by this, and disadvantages and advantages from such a rule change.

The Panel view that business protection insurances together with group income protection, life and critical illness insurance plus private medical insurance should be brought into scope as many of these products are purchased by microbusiness and small SME's who currently viewed by a number of insurers and intermediaries as commercial customers.

Q25. Do you agree with the issues we've identified? Please explain your reasons.

The Panel agree with the key issues the FCA has identified and believe that a simple and transparent approach is required to safeguard consumers with the insurer taking the greatest proportion of the insurance risk and responsible for the management of service, support and claims should be the lead insurer.

Q26. Do you agree with the potential changes we are considering to the ICOBS disclosure requirements? Please explain your reasons.

The Panel agree with the potential changes considered to the ICOBS disclosure requirements and believe that a simple and transparent approach is required to safeguard consumers with the insurer taking the greatest proportion of the insurance risk and responsible for the management of service, support and claims should be the lead insurer.

Q27. Please tell us how the 'lead' should be defined in this context and provide us with any common market definitions currently used which we can use.

The Panel believe that a simple and transparent approach is required to safeguard consumers with the insurer taking the greatest proportion of the insurance risk and responsible for the management of service, support and claims should be the lead insurer.

Q32. Please provide your views on whether we should broaden the scope of the current bespoke contract exclusion as discussed above, so that it applies to insurers as well as intermediary co-manufacturers.

The Panel view is that a consumer purchasing a bespoke product and associated services should enjoy the same safeguards and protections as any other consumer and we support the FCA proposal to introduce further guidance and clarification.

Q33. Do you agree that it would be useful for us to introduce rules or guidance to further clarify indicators of a bespoke contract? Please give us your views on our proposed list of indicators of a bespoke contract, including whether we should include others, remove or amend any currently on the list, and whether we should include additional rules or guidance to further clarify our policy intent. And, if so, what this should capture.

The Panel agree it would be useful for the FCA to introduce rules or guidance to further clarify indicators of a bespoke contract. We also agree with the list of indicators provided.

Q34. Do you agree that it would be useful for us to provide rules or guidance on products that should not be considered bespoke contracts?

The Panel agree that it would be useful for the FCA to provide rules or guidance on products that should not be considered bespoke contracts.

Q35. Please provide your views on the type of products that should not be captured by the bespoke contract exclusions, including whether we should include others or remove/amend any currently on the list.

The Panel agree with the current list provided by the FCA.