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Dear Joseph,

CP17/7 Insurance Distribution Directive Implementation – Consultation I

This is the Financial Services Consumer Panel's response to CP17/7 on the implementation of the Insurance Distribution Directive (IDD).

The Panel is pleased to see the requirement for firms to prohibit practices that would conflict with the duty to act in the customer's best interests. We believe this requirement goes much further than the FCA's treating customers fairly principle, as it spells out that remuneration of a distributor or its employees, and performance management of employees, must not conflict with the duty to act in the customer's best interests.

We urge the FCA not to rely on the existing TCF principle to enforce this duty. TCF is a weaker principle as it requires firms only to 'pay due regard to' customers' interests. There are also many instances¹ where TCF has not worked. We have, for a number of years been striving to see the law changed to introduce a statutory duty of care on providers of financial services as to ensure the effective protection of consumers. The principle as outlined in the IDD, if implemented properly, will act as a preventative measure, by removing conflicts of interest and preventing mis-selling and other poor behaviour towards customers from occurring in the first place. We would like the FCA to report on how it has implemented the new principle once IDD has come into force.

We agree with the proposal to, as far as possible, have a single set of standards across the industry. In particular, we agree that even those ancillary insurance intermediaries that are out of scope must comply with the same standards as insurance intermediaries as firms should be responsible for how their products are distributed.

Yours sincerely

Sue Lewis
Chair, Financial Services Consumer Panel

¹ https://www.fs-cp.org.uk/sites/default/files/duty_of_care_briefing_-_jan_2017_0.pdf

Answers to specific questions:

Q1: Do you have any comments on our proposed approach to the application of the IDD?

The Panel strongly agrees that end users should receive the same protections and meaningful disclosure standards throughout the value chain irrespective of whether the sale is direct or through an intermediary.

Q2: Do you agree with our proposed approach to incorporating the IDD knowledge and competence requirements? If not, please explain why.

The Panel agrees that competency requirements should be extended to all participants in the value chain. Competency requirements should apply to non-advised or scripted sales. Employees of these services must still have the knowledge and capability to assess product suitability and vulnerable customers.

The FCA should also identify the risks associated with non-advised or scripted sales.

Q3: Do you agree with our proposed PII requirements? If not, please explain why.

The Panel awaits the outcome of the FCA review of the PII market, which will inform our views on the IDD proposals for PII cover. The Panel would like to see cover that is meaningful and available to consumers when things go wrong.

The Panel agrees that requirements should be based on firm profits and complexity of products.

Q4: Do you have any comments on our intended approach to implementing the IDD requirements concerning the protection of client assets, in particular:

- a. The mandatory application of CASS 5 to reinsurance mediation?**
- b. Narrowing the scope available options for reinsurance contracts, for example only allowing risk transfer?**
- c. The potential application of CASS 5.8 to reinsurance mediation?**

The Panel believes that segregation of client assets offers the best protection for customers against risks of failure of distributors. The co-mingling of client assets introduces greater risks of loss for consumers. The reinsurance market is complex and consumers have difficulty knowing who is responsible in the event of failures. We welcome greater protection of end user assets.

Q5: Do you agree with our proposals for implementing the IDD requirements in relation to complaints and out-of court redress? If not, please explain why.

Yes.

Q6: Do you agree with our proposed amendments to ICOBS 2? If not, please explain why.

We are pleased that the FCA proposes to include a rule in ICOBS requiring insurance distributors to act in the best interests of their customers ('the customer's best interests rule') and a rule to prohibit remuneration and performance management practices that would conflict with the customer's best interests rule. However, we urge the FCA to enforce these rules, and not simply rely on the existing TCF principles.

The Panel believes that a duty of care² would provide greater consumer protection.

Q7: Do you agree with our proposed amendments to ICOBS 4? If not, please explain why.

² https://www.fs-cp.org.uk/sites/default/files/fscp_position_paper_on_duty_of_care_2015.pdf

The Panel supports greater transparency and meaningful disclosures to consumers at pre-contract (as well as following sales such as renewals), to enable them to make informed buying decisions.

The FCA should go further and require firms to tell customers explicitly that their remuneration may give rise to conflicts of interest but that they have considered existing conflicts and believe that current fee arrangements are consistent with the principle to act in best interests of customers.

The Panel would like to see meaningful value metrics, such as claims ratios, included in pre-contract disclosures, as well as those already being trialled by the FCA in its general insurance value measures pilot.

Q8: Do you have any comments on the illustrative examples set out in *Table 1* (in relation to remuneration disclosure)?

No Comment.

Q9: Do you have any comments on our proposal to amend the Glossary definitions of 'durable medium', 'fee' and 'remuneration'?

The Panel would support maintaining consumer rights to receive information on paper as a durable medium in order to avoid exclusion of those customers who may not have access to online services.

Q10: Do you agree with our proposed amendments to ICOPS 5? If not, please explain why.

Yes. Identifying customer demands and needs is critical to determining suitability of products for customers. The Panel looks forward to the work of EIOPA and the Commission on the Insurance Product Information Document (IPID). The Panel supports the requirement to provide a personalised explanation as to why a proposed product best meets a customer's needs, provided this is simple and clear. This should help meet the general principle to act in the customer's best interests.

The Panel believes that the FCA must identify the risks associated with non-advised sales and execution only sales to ensure that firms assess suitability when providing such services.

Q11: Do you have any comments on the illustrative examples set out in *Table 2* (in relation to requirements concerning the customer's insurance demands and needs)?

No. However, we do believe overall illustrative examples are a helpful guide to FCA expectations, and to establish best practices.

Q12: Do you agree with our proposed amendments to ICOPS Chapter 6 to incorporate the IDD cross-selling requirements? If not, please explain why.

The Panel believes the FCA should continue to regulate add-ons and cross-selling to protect consumers against predatory practices that lead to purchase of products without the full information about the separate component parts.

Q13: What are your views on the provision of an IPID or other form of pre-contractual disclosure for commercial customers? Are there particular commercial customers (such as SME customers) that have different information needs?

Many at the smaller end of the SME sector are sole traders or self-employed and have no experience of 'commercial' contracts. Commercial customers require specific information so that they are able to assess the impact on their underlying customers. Complex products will not be understood by the smaller business operator any more than by the individual retail customer.

Q14: What are your views on the practical considerations of format and content if IPID requirements were to apply to some or all commercial customers?

We believe the IPID should be modified for commercial customers in order to better target the information needs of micro enterprises and small businesses.

Q15: Do you agree with our proposal to extend the professional, organisational and prudential requirements to in-scope AIIs? If not, please explain why.

Yes. Ancillary products can present risk and detriment to customers (e.g. GAP). The Panel believes there should be a single set of requirements for all firms involved in the sale of products whether as ancillary, direct or intermediary. Customers are not in a position to perform an analysis of which firm is in or out of scope of regulatory protection. We await the HMT review of whether any change is required to the Connected Contract Exclusion (CCE) in light of IDD. This may inform our views on the exclusion of some of the IDD requirements for out-of-scope AIIs.

Q16: Do you agree with our proposal to align the conduct of business regime for in-scope AIIs with that for insurance intermediaries? If not, please explain why.

See above response to Q15.

Q17: Do you agree with our proposal to extend the professional and organisational requirements to CTI providers? If not, please explain why.

Yes, see above response to Q15.

Q18: Do you agree with our proposed conduct of business regime for CTI providers? If not, please explain why.

We do not agree that CTI providers should be excluded from conflicts of interest requirements. Where there is a personal recommendation, and the CTI provider sells more than one product, there should be an explanation as to why the recommended product meets the customer's needs.

Q19: Do you agree with our proposals for authorised firms distributing through out-of-scope AIIs? If not, please explain why.

The Panel believes that authorised firms should have the responsibility to ensure that any AII within their distribution chain adhere to the IDD rules.