

Financial Services Consumer Panel

AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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

Insurance Distribution Directive Consultation
Insurance, Pensions and Regulators
Financial Services Group
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

22 May 2017

Dear Sir/Madam,

This is the response of the Financial Services Consumer Panel (the Panel) to HM Treasury's Consultation on the transposition of the Insurance Distribution Directive (IDD) into UK law.

The Panel is pleased to see that the Government will not legislate for a broad exemption from the regulation for 'introducers' in the insurance sector. This will protect consumers and mitigate the risk of mis-selling activities.

While the Panel agrees, in principle, with an exemption for those who merely provide information, any conflicts of interests between the entity providing the information and the insurer should be fully disclosed to the consumer.

The Panel strongly supports the new general principle introduced by the IDD, which requires all insurance distributors to 'act honestly, fairly and professionally in the best interests of their customers. This requirement goes further than the FCA's 'treating customers fairly' (TCF) principle, as it specifies 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.

The general principles outlined in the IDD, if implemented effectively, 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. However, the Panel would urge the Government and the FCA not to rely on TCF principles to enforce this duty, as they are weaker than the IDD principle, and there are many instances¹ where TCF has not worked as it should to protect consumers.

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

Q1. Do you agree with continuing to regulate life and liability products sold as an add-on to a non-insurance product? If not, which such products do you believe should not be regulated?

Yes. The Panel agrees that life and liability products are complex and if mis-sold could lead to significant consumer detriment. Any exemption should be narrowly drawn and the primary sellers of products such as insurers and intermediaries should have the obligation to ensure that out-of-scope firms distribute products on a non-advised basis with appropriate information to customers.

Q2. Do you agree to extend the existing exemption for insurance products sold as an add-on to cover 'non-use of services' products? If not, do you have evidence of consumer detriment which would warrant their regulation?

Yes, the Panel agrees that 'non-use of services' products such as cancellation cover for tickets are typically low cost and accordingly pose lower risk for consumers, provided the exclusion does not apply when other types of products which are in scope are offered as an add-on.

Q3. Are there complex insurance products provided as an add-on to a good or service (except those in relation to travel) that should be bought into scope of regulation? What potential is there for consumer detriment in relation to these products?

The Panel believes that all extended warranties should be included in the scope of the regulation as there is evidence that mis-selling can occur in this supposedly low risk area. For example, a 2013 FCA thematic review² identified significant problems with the sale of mobile phone insurance, which could suggest this product is more complex than customers expect or understand.

Q4. Do you agree with removing the caveat that products must have a term of less than 5 years to qualify for the connected contracts exemption? If not, which such products introduce a significant risk to consumer detriment?

Yes.

Q5. Do you agree with increasing the threshold for premiums below which products are eligible for the connected contracts exemption?

No. The Panel believes that a number of policies would fall out of scope of the regulation if the premium is increased and that this could lead to consumer detriment.

The Panel urges HM Treasury to consider making use of the minimum harmonisation aspect of the directive and apply the exemption at a lower sum; ideally, lower than the existing IMD limit.

Q6. Do you agree insurance products sold as an add-on to travel products/services should continue to be regulated?

Yes, the Panel believes there must be regulation where the Government has identified evidence of mis-selling.

Q7. Do you agree that all motor warranties which are contracts of insurance should remain subject to regulation by the FCA?

² <https://www.fca.org.uk/publication/thematic-reviews/tr13-02-mobile-phone-insurance.pdf>

Yes.

Q8. Do you agree that firms who merely provide information in relation to insurance products or potential policyholders should no longer be regulated? If not, what risks of consumer detriment arise from these activities?

In principle, yes, but only if conflicts of interests such as those that relate to remuneration and information sharing arrangements between the entity providing the information and the insurer are fully disclosed to consumers.

In addition, the Panel is concerned about the data protection and privacy issues that may arise where policyholder (i.e., consumer) information is being shared between regulated and unregulated firms. We believe the Government and the relevant regulators (e.g., ICO, CMA and FCA, etc.) must cooperate with each other in order to identify risks where there is overlap in regulatory responsibility.

Q9. Do you agree that where firms do more than just provide information in order to conclude an insurance contract, e.g. attempting to persuade a customer, these activities should remain in scope of regulation? How will firms be regulated?

Yes, the Panel believes that introducers may have significant influence on the conclusion of an insurance contract and therefore should be subject to conduct rules.

Q10. Do you have any comments on the draft statutory instrument in Annex B which set out the requirements of the appropriate UK regulator with respect to the determination of applications and in the event of it taking supervisory action?

No.

Q11. Do you have any comments on the draft statutory instrument in Annex B setting out amendments required by IDD to the processes for UK firms intending to exercise passporting rights in the EEA?

No.

Q12. Do you have any comments on the draft statutory instrument in Annex B setting out the UK regulator's powers to intervene with respect to an EEA firm, operating under the freedom to provide services, contravening the Directive?

No.

Q13. Do you have any comments on the draft statutory instrument in Annex B setting out the UK regulator's powers to intervene with respect to an EEA firm, operating in the UK under the freedom of establishment, contravening the Directive?

No.

Q14. Do you have any comments on the draft statutory instrument in Annex B giving the appropriate UK regulator powers to enter into Article 7 agreements with regulators in EEA member states?

No.

Q15. Do you have any comments on the draft statutory instrument in Annex B that set out the circumstances in which the appropriate UK regulator is required to publish details of any Article 7 agreements it enters into?

No.