Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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Our ref: CP09/9

19 May 2009

Dear Mr Hicks

CP09/9* With-profit funds – compensation and redress**

This is the Financial Services Consumer Panel's response to CP09/9*** With profits funds – compensation and redress.

In its response to CP08/11 the Panel set out its strong view that shareholders should bear the risk of management failures, which we believe is the only approach consistent with the requirement on firms to treat policyholders fairly. Shareholders should be responsible for meeting any mis-selling and other management related costs. The current situation of permitting the use of the inherited estate to meet these costs effectively penalises policyholders for corporate failures. The latest revised proposal represents a backward step for policyholders with which we do not agree, given that in CP08/11 it was proposed that the rule change would take effect for payments for compensation and redress regardless of when the mis-selling occurred.

The FSA has the opportunity here to remove the considerable potential consumer detriment inherent in the current arrangements, but it does not intend to do so. We are disappointed too that given the questions that now exist over the fairness of existing rules in this area, the FSA has not reviewed its entire approach from the beginning. The Panel understands the challenges presented to the industry by the original proposals and it is important for the FSA to look at all the options to overcome them. But having uncovered unfairness, the FSA should resolve it.

We have set out our answers to the specific questions posed in the consultation paper below.

Q1: Do you agree with the proposals set out in paragraphs 2.1 to 2.4 above?

No. We support the fair treatment of policyholders and we believe that the proposals do not constitute fair treatment. The FSA has stated that this consultation is driven by considerations of fairness and this would suggest that that there is an argument for taking a completely new look at this issue, rather than simply making changes to the earlier proposals. The Panel understands that there were concerns among the industry in relation to the financial impact the original proposals may have had, for example on reserving and capital requirements. While we acknowledge these concerns, we would expect the FSA to mitigate these through its proposed approach to the introduction of changes.

Q2: Do you believe that this distinction should be made? If so, how would you suggest that we should differentiate?

The FSA refers here to the distinction between material payments caused by serious failures and other minor administrative errors that can occur in any organisation. We do not think that this is the right question. The issue is whether it is fair for policyholders to bear any of the cost of a management failing.

Yours sincerely

Acting Chairman
Financial Services Consumer Panel