Terminal Illness Campaign (Peter Bull) – 4th October 2023

Response by Peter Bull to: The FCA Review of terminal illness benefits within life insurance protection products
(published 02/10/2023)

Background

Peter Bull is the lead for Terminal Illness Campaign, he has a stage 4 terminal cancer diagnosed in 2015.
He started Terminal Illness Campaign in 2017, after being deferred and declined his insurance claim.
In the interests of transparency he would like it noted that he has a financial interest in the resolution of this issue and welcomes any reasonable request for further information on his financial situation or involvement.

TI Campaign applauds the FCA's recognition that, '*Customers seeking to make a terminal illness claim on their life insurance policies are likely to be extremely vulnerable, and engaging with an insurance company during this time will be an additional and unwelcome stress. There is also risk of significant consumer harm if insurers do not get their handling of claims right or offer the right customer support*.'

I would however suggest, that whether deliberate or not, your term '*additional and unwelcome stress*' sets the tone for the entire review by gently underestimating and softening the seriousness of the situation.

We challenge the reader to think of a worse situation for any human being, than being told you are going to die. For this reason, we perceive terminal illness insurance as unique amongst insurance products, demanding special treatment and understanding. The FCA is, for whatever reason, finding it difficult to embrace such an approach.

The reality is that the '*extremely vulnerable*' claimant is often frightened to make a claim because communicating the detail of their condition is a stark reminder of their limited mortality. The fact that most claims must be made by telephone makes the process unnecessarily difficult as they must articulate the facts of their predicament directly to a stranger.

That fear (self-preservation) becomes even more focussed when a terminally ill person has been deferred or declined. I would again invite the reader to consider how they would feel in a situation where they had no alternative but to argue the case that they will die sooner rather than later?

There can be no doubt that this last factor, greatly reduces the number of formal complaints. For that reason, I am very concerned that this may in turn have allowed the FCA to be complacent about the size and scope of the issue.

The Review Scope

The potential issues raised included:

- *The requirement for a terminally ill patient to have a 12-month prognosis of death from a medical practitioner.*
- *The quality of the claims process from the customer's first contact. This includes whether firms reasonably support such vulnerable customers, the challenges of providing medical evidence and the speed of claim decisions.*
- *The removal of the terminal illness benefits towards the end of a term assurance policy term (most commonly in the final 12-24 months of the policy).*

We agree and welcome the inclusion of the above three points but would point out the following serious omissions from your review. All of which were raised in our report 'Dying for a Payout' Published and delivered to the FCA by Peter Bull, Terminal Illness Campaign, in January 2022.

Serious Omissions:

1. How many terminally ill claimants have been deferred?

   This data is not only core to discovering how many souls have been affected.
   It is, under the FCA's own rules of engagement, responsible for setting the scope and depth of an investigation. This is a 'bootstrap' approach that relies on the initial interpretation of an issue being correct in order to determine the subsequent approach.

   There is an undeniable history of terminal illness insurance claim failures and their serious effect on claimants. This reached the public domain via BBC television in 2014. There have been multiple articles in mainstream media in the years since. Unfortunately, until TI Campaign raised the issue in 2022, we can find no historical evidence of any review or investigation by the FCA regarding the matter.

   It has now been 21 months since we submitted our report to the FCA and during that time we have consistently asked them to put everyone's mind at rest by refuting our verifiable calculation that up to 7336 souls had been exposed to discriminatory and suicide inducing deferrals in 2018 alone.
   Apart from the very worrying effects on consumers, it is worth also considering that at an average value of £81k per policy (Statista 2018), a potential £594 Million may have been withheld from terminally ill claimants. If the issue has perpetuated over the past ten years that figure amounts to nearly £6 Billion.

   To date, the FCA have been unable or unwilling to dispute our calculation in any way, and have stated, without explanation that '*We can find no credible industry data*'.

   We believe that readers will find it impossible to believe the FCA supposition that insurers who base their business on risk management and statistics do not hold this simple data.
   Our report supplied verifiable evidence that insurers and the Association of British Insurers (ABI) held this data back in 2015 and we can see no good reason, other than to mask the size of this issue, why they would have stopped doing so since that time.

   We would also point out that Equality and Human Rights Commission (EHRC) rely on communications via your MOU to act on and investigate human rights issues. If the FCA has failed to identify and inform them of the true number of terminally ill claimants effected, they cannot act. The EHRC has stated via a SAR request that it has received no communication from the FCA regarding this matter. The EHRC is unwilling to investigate further until it has confirmation from the FCA regarding how many are affected.

   In the absence of evidence to the contrary, we can only conclude that the FCA failed to act from 2014 onwards. Unfortunately, that failure is also an incentive for the Insurance Industry or FCA to 'cover up' or 'downsize' the issue to maintain their reputation.

   The FCA have the resources and power to assure all stakeholders that they have not failed in this matter by publishing their own verifiable calculation of how many vulnerable terminally ill people have been affected. Why have they not done so?

   If the FCA are unable to comply with this action, then given the potential size of the issue, and the regulatory implications, I believe our government must consider whether a full public enquiry is warranted.

2. Are the difficulties and complexity of meeting the 12 month rule apparent to the 'Average' consumer when purchasing a policy. We are now 21 months since submitting our report and the FCA have failed to produce any answer.

   Our evidence suggests that the 12 month rule is not fit for purpose, contravening both Consumer Contracts Regulations 1999 and the Consumer Rights act 2015 as detailed in our report.
   As such we recommend it should be dropped immediately because of the acknowledged potential serious harm or death it can cause.

   The likelihood that the average consumer would find difficulty in recognising any problems in meeting the 12 month rule is clearly evidenced by the fact that it took multiple expert peers to analyse the issues for the APPG/Marie Curie report 'Six Months to Live'.

   To date the FCA has made no comment regarding the legality of this key factor.

   We ask the FCA to commission an independent legal assessment of whether the 12 month rule is unfair to the consumer and thus in breach of consumer law.

3. Are terminally ill claimants discriminated against when making their first claim?

   We cited the Judicial review Cox v DWP in our report of 2022 in which Judge McAlinden found that terminally ill benefit claimants were, as vulnerable people, being discriminated against if their type of terminal illness excluded them from claiming when compared to other illnesses.

   We cited that this Judicial ruling was subsequently appealed by DWP and was partially successful in as much that the appeal court upheld the discrimination factor but pointed out that the law did provide for some discrimination only if it was an unavoidable result of the government having statutory obligation to supply a benefit service.

   Our legal advice disagrees with your 'in house' finding that the appeal courts found no discrimination in the matter. We also pointed out that insurance companies have multiple alternative methods available to deliver a useful and harmless product without any discrimination. Whereas the government had no alternatives and was bound by statute.

   We also queried the fact that you have only reviewed the legal implications internally. We would therefore respectfully suggest that matters of such high level are only properly reviewed by impartial senior Judges.

4. We note your acknowledgement that you are 'aware of individual instances of customers being unreasonably declined' (point 2, quality of the claims process and management information)

   What steps have been taken to retrospectively compensate the individuals known to have been affected? How many of these people were deferred?

Other Observations:

5. What adjustments have your investigations made to compensate for the fact that many deferred claimants will not complain, as per our explanation under background heading, above.

6. We disagree (in part) with your supposition regarding the use of internal medical experts (CMO)

   CMO's who are retained or in the direct employ of insurers are clearly financially biased in a way that would not be acceptable in public office. Why is it acceptable in the private sector where vulnerable people can be compromised?

   CMO's who regularly work with an insurance claims team are also at risk of being biased by the very powerful 'groupthink' culture that exists within risk based organisations.

   We agree that the use of an internal medical expert may be necessary to validate that the terminal illness diagnosis of a claimants clinician is authentic. This is similar to the purpose of a DS1500 form used by DWP to obtain clinical validation of a claimants terminal illness.

7. We believe that FCA's stated priorities may be at odds with protecting the vulnerable in our community and that this may be poorly influencing the FCA's review of terminal illness insurance failures.

   The FCA's stated operational objectives are:
   - Protect consumers.
   - Maintain market Integrity.
   - Promote competition in the interests of consumers.

   We asked if any of the three objectives, have an overarching superiority?'
   The FCA stated: '*We confirm that none of the three operational objectives, have an overarching superiority'*.

   We asked if physical, mental harm or death to vulnerable consumer(s) was seen to be caused by the past or ongoing actions of an FCA regulated client, would the need to protect the consumer(s) take priority over all other strategic and operational objectives mentioned above?
   The FCA stated: '*The FCA does not hold any recorded information responsive to this question.*'

Summary of Actions Still Required

8. How many terminally ill claimants have been deferred?
9. If the FCA cannot answer action item 8 then an urgent public enquiry should be convened to ascertain the number of people at risk.
10. An independent legal consideration of whether the 12 month rule breaches consumer law given the reasons cited in our report of 2022.
11. An independent review considering whether the discrimination of terminally ill claimants is allowable in that environment and situation.
12. How many '*individual instances of customers being unreasonably declined*' did the FCA find?
13. What is/has been done to compensate those customers who were found to be unreasonably declined?