

Report of a critical consumer protection failure within UK financial regulation pathway.

SUMMARY

New evidence has become known exposing a serious Financial Ombudsman Service (FOS) incident.

The FOS has persistently failed to identify and report critical complaint data to stakeholders.

This failure has resulted in significant long term harm and ongoing risk to a large group of vulnerable financial consumers.

Urgent action is required by Stakeholders to ensure that this vulnerable group, and those using other financial products are not compromised or left at risk.

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WHO THIS APPLIES TO

All stakeholders with a direct interest in the reputational status and proper functioning of UK financial regulation and protection of vulnerable financial consumers.

Initial Distribution List (Email):

- HM Treasury via Rt Hon Mel Stride MP
- Financial Conduct Authority
- Financial Ombudsman Service
- Equality and Human Rights Commission
- Information Commissioners Office

PUBLISHED BY

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1. WHAT HAS HAPPENED?

- a. TIC published its report 'Dying for a Payout' in January 2022.
The report cited breaches of consumer law and discrimination as the two factors enabling Insurers to cause significant, harm and distress by deferring the claims of 1000's of genuine terminally ill claimants each year. ([How this was calculated](#)) ([Dying for a Payout](#))
- b. The Financial Conduct Authority (FCA) published a review of terminal illness insurance benefits, in October 2023. The review acknowledged that there is *'a risk of significant consumer harm if insurers do not get their handling of claims right'*. They also stated, *'we also engaged with the Financial Ombudsman Service.'* and *'we did not see evidence of significant numbers of declined terminal illness claims.'* *'We could find no credible industry data on deferrals.'* ([FCA Review](#)), ([FCA letter to TIC](#))
- c. TIC found this incompatible with its own findings based on insurer statistics so submitted a freedom of information (FOI) request to the FOS.
The FOS confirmed that they had no search category which could identify 'terminal illness insurance' and that it would take a lot of work, at unacceptable cost, to manually extract that data. ([FOS FOI Response SR00784367](#))
- d. TIC re-examined the FOS Annual Reports, Ombudsman and Adjudicator databases. Within the public facing Ombudsman database we discovered and recorded hundreds of 'terminal illness insurance' complaints filed under noninsurance categories. FOS annual reports clearly show there are proportionally many more in the Adjudicator database which is not publicly accessible. ([FOS Hidden Records](#))
- e. Of further concern, TIC found it difficult to comprehend how FOS annual reporting could identify less than 10 complaints a year for many benign categories such as golf equipment Insurance but fail to recognise any life threatening terminal illness insurance complaints since current records began in 2013.
- f. TIC feels justified in concluding that the process supporting the FOS FCA MOU is not fit for purpose or there has been a strategic attempt to cover up the data.

2. WHY IS THIS IMPORTANT?

a. GENERIC

- i. The FCA take a proportional and risk based approach to regulatory reviews and enforcement. If they cannot see consumers at risk, they may not be able to act appropriately to protect them.
- ii. The Equality and Human Rights Commission (EHRC) depend on the FCA to inform them of significant numbers of vulnerable financial consumers that may be at risk. If the FCA cannot see significant numbers harmed, then the EHRC is also unlikely to act appropriately to investigate human rights issues.
- iii. FOS consumer complaint data may be the only indicator that consumers are being harmed. This is because financial companies are unlikely to be proactive in communicating their own mistakes.
- iv. The integrity of our financial markets forms a critical reputational asset for both financial institutions and the UK.

b. TERMINAL ILLNESS INSURANCE

- i. TIC believes the lack of FOS data has resulted in an inappropriately low proportionate response from the FCA.
- ii. In particular, the FCA stated, *'We have not commissioned external legal views on these points as we regard the use of our in-house legal counsel to be sufficient and proportionate.'* Yet in the review, was unable to clearly direct insurers, stating *'firms should not assume without evidence that the 12 month prognosis is fit for purpose'*. ([FCA letter to TIC](#)) ([FCA Review](#)).
- iii. More than 10 million policy holders remain at *'a risk of significant consumer harm if insurers do not get their handling of claims right'*.
- iv. An estimated 45,320 terminally ill consumers have been deferred since 2013. All were exposed to the 'significant consumer harm' reported in the FCA review.

3. CONSIDERATIONS

GENERIC

- a. Considerable reputational and financial assets exist which may form a motive to control the pathway of any investigation. We therefore feel it is reasonable to request that stakeholders nominate an independent work party to examine and report on the issues raised by this report. As a minimum the work party should consider:
 - i. Why have the 'true' number of 'terminal illness insurance' complaints not been identified and communicated by the FOS to the FCA?
 - ii. Are there other categories of complaint that have been missed by the FOS in the same way?
 - iii. Is the process supporting the FCA FOS MOU, fit for purpose?
 - iv. Are there weaknesses in the FOS process that identifies trends in complaints?
 - v. Are there weaknesses in the FCA proportional approach that has allowed inadequate regulatory enforcement and protection of vulnerable consumers?

- b. TIC proposes that the 'new' number of terminal illness insurance complaints identified by this report are significant. That proposal is further reinforced by the FCA's own acknowledgement that *'it is likely that terminally ill customers, or their representatives, may be less able to dispute a claim than other customers.'*
In view of this information the FCA should consider:
 - i. Revising their insignificant proportional approach to significant.
 - ii. Giving clear, time limited, regulatory yes/no direction to the insurance industry regarding the status of the two legal issues cited by TIC as the primary cause of significant harm to vulnerable consumers.

4. BACKGROUND

FINANCIAL OMBUDSMAN SERVICE

'As a public body set up by Parliament, we're open and transparent in how we work with other organisations. We share our knowledge and experience to help inform the regulation of financial services and improve the handling of customers' complaints.' ([FOS – Work with other organisations](#))

Most consumer complaints to the FOS are first considered by an Adjudicator. If the complaint cannot be resolved at this stage, the consumer can ask for an Ombudsman to consider the complaint.

All Ombudsman cases since 2013 may be viewed within a public facing database. This can be searched by date, financial product sector, business, upheld and text string. Cases resolved by Adjudicators are available in summary to the public within FOS annual and quarterly reports. For year 21/22, the total number of cases are available by business sector, category, and subcategory. It is of note that, 'new cases' which may indicate a harmful trend are available for many products, even those producing less than 10 complaints a year.

THE FINANCIAL CONDUCT AUTHORITY

The FCA's ability to regulate effectively, depends in part on FOS ability to identify trends in consumer complaints, then communicating that information on a timely basis to the FCA. Understanding the numbers affected is crucial to determining the FCA proportional approach.

The FOS numbers become critically important where financial institutions are not proactive in reporting negative customer activity. This process is formalised within a memorandum of understanding (MOU) which provides for cooperation regarding such issues. ([MOU points 4 and 14](#)).

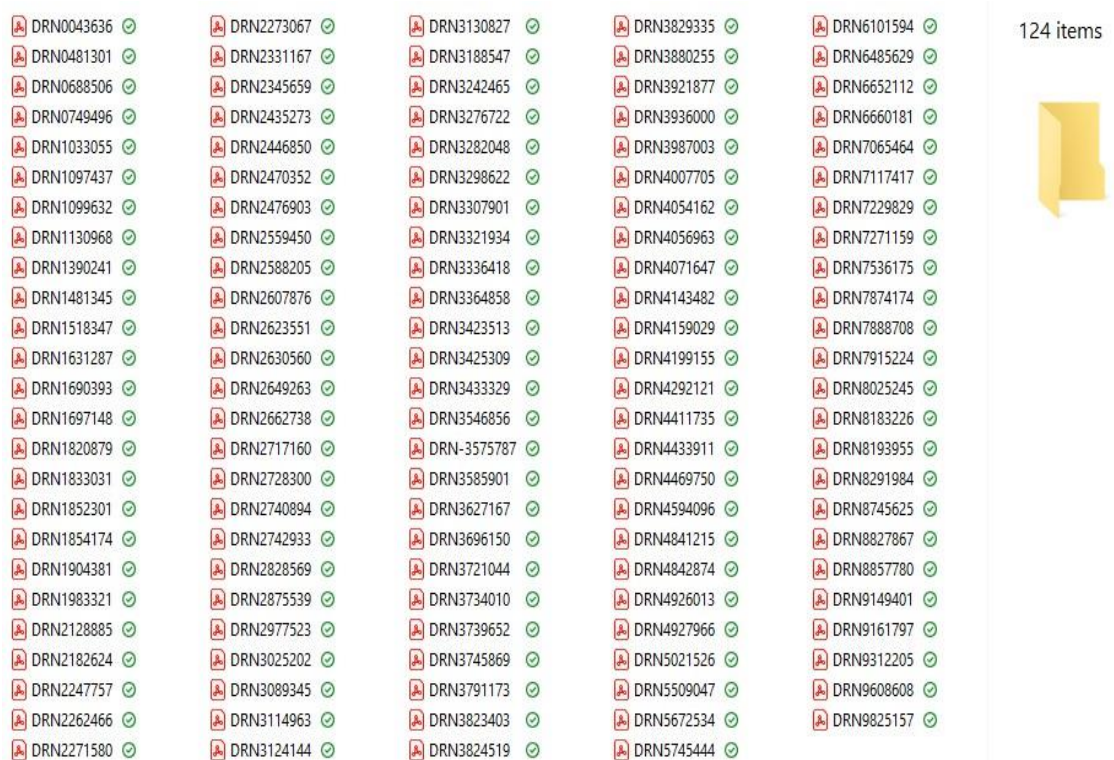
EQUALITY and HUMAN RIGHTS COMMISSION

Enforce equality legislation on age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation – these are known as protected characteristics. Terminally Ill consumers have protected characteristics.

The EHRC depends on the FCA to inform them of any substantial number of equality issues arising from financial consumers products. This process is formalised within an MOU between the FCA and EHRC. ([FCA EHRC MOU point 14](#))

5. HOW TIC CALCULATED THE ‘HIDDEN’ FOS RECORDS.

- a. TIC did not have the resources to examine all 328,805 Ombudsman records. We therefore opted to use one generic search phrase and focus on producing a quality minimum base line from which we could calculate the number of terminal illness insurance complaints handled by Adjudicators.
- b. We searched for records containing the text ‘terminal illness insurance’ the system returned 946 records. We manually examined each of those 946 documents to eliminate complaints that did not relate to a deferred claim, this returned 124 complaint files as listed here. [FOS Ombudsman database](#)



- c. The FOS 21/22 Annual report indicated an overall ratio of 16% Ombudsman complaints to 84% handled by adjudicators. We applied that ratio to our baseline 124 records to estimate another 651 complaints were handled by adjudicators. A significant total of 775 terminal illness insurance complaints. ([FOS Annual Report 21/22](#))
- d. Further preliminary searches using the alternate text ‘terminal illness’ and ‘terminal illness declined’ returned 1515 and 876 record sets, respectively. Whilst we were unable to manually examine every record we did find relevant new records in each set. The ‘true’ number is therefore going to be greater than our baseline above.

6. HOW TIC CALCULATED THE HARMFUL DEFERRED CLAIMS

- a. In 2018, using Statista, TI Campaign identified over 10,480,000 live UK insurance life policies that offered a terminal illness benefit. Those policies were issued by 21 different companies. We contacted each company individually and asked if they offered terminal illness benefit as standard with their term life policies. The top 5 companies held 50.3% of policies. ([TIC Statista Data](#))
- b. We used the latest published claim statistics available (2022), for the top 5 companies to determine that they received 70,798 combined life and terminal illness claims in 2022. To determine the number of combined life and terminal illness claims for the remaining companies we applied the ratio of 49.7% to 50.3% which yielded another 69,953 claims. This produces a total of 140,751 life and terminal illness claims from which can extract the likely % that were terminal illness claims.
- c. We know from [Cancer Research UK](#) that cancer is by far the biggest cause of terminal illness and was responsible for 25% of UK deaths in 2021. [The Office for National Statistics](#) showed other causes of death that could reasonably lead to a terminal illness claim, amounted to 21% of UK deaths in 2018. We added these two factors together and extracted 46% of the life and terminal illness claims total to calculate those 64745 claims related to terminal illness.
- d. TIC acknowledges that the majority of these claims will have resulted in the end of life 'peace of mind' that the policy was sold on. The significant harm that the FCA acknowledge is caused when claimants are deferred. The Association of British Insurers (ABI) refused to tell us the industry average percentage for terminal illness claims deferred but we did find a [presentation](#) to the UK Institute and Faculty of Actuaries, which still cites an ABI figure of 7% on pg 3. This figure is also compatible with the latest legal & General and Royal London statistics.

2022 Terminal Illness (TI) Insurance payouts drawn from company reports		
Top 5 Companies	Life & Terminal Illness Claims (A)	Estimated Deferred Policies (D)
Aviva Life UK	41,002	1,320
Legal & General	13,737	442
London & Victoria	5,400	174
Scottish Widows	8,555	275
Royal London	2,104	68
Top 5 totals (50.3%)	70,798	2,280
Others (49.7%)	69,953	2,252
Grand Total	140,751	4,532

TIC accepts that its calculations return a 'worst case' scenario of 45,320 over 10 years. That said, all genuine terminally ill claimants deferred will incur significant and unnecessary harm on top of their terminal diagnosis, some will die prematurely because of it.