

RESPONSE BY THE ASSOCIATION OF BRITISH INSURERS TO FSA CONSULTATION PAPER 91 – REPORTS BY SKILLED PERSONS

1 INTRODUCTION

- 1.1 We set out below the Association's comments on FSA Consultation Paper 91 on Reports by Skilled Persons.
- 1.2 The consultation paper recognises that the FSA's proposals represent an extension to the use of this regulatory tool in relation to insurers. We remain concerned that its use should be rigorously justified.

2 RESPONSES TO SPECIFIC QUESTIONS

- 2.1 *Do you have any comments on the proposed approach to the use of the skilled persons' tools as described in Chapter 3*

The footnote to paragraph 2.2 summarises existing powers to require additional information under the Insurance Companies Act 1982, although these are not covered in Chapter 4.

The framework set out in Chapter 3 allows skilled persons' reports to be commissioned for a wide range of purposes and using a wide range of professionals.

Overall, there are two main tests as to whether a skilled persons' reports can be demanded

- it should be the appropriate regulatory tool;
- it should be cost effective, again in the context of the concern being addressed.

Both these tests should be rigorously enforced and justified.

The consultation paper and draft rules state that the statutory powers should not be used as a reason to employ fewer permanent staff to meet statutory obligations, but external resources may be used as a substitute to committing FSA's own staff to an issue (paragraph 5.3.10). We consider that skilled persons' reports should not be used as a substitute for effective distribution of staff, as well as overall numbers of staff.

The use of skilled persons' reports to even out the distribution of work across FSA may lead to a cross-subsidy between companies or sectors in that firms may be required to pay directly for skilled persons' reports, while the FSA staff who might otherwise have covered the topic are involved in issues relating to other companies or other sectors.

- 2.2 *Do you think that Chapter 3 gives a clear account of the factors to which we will give consideration before requiring a firm to commission a skilled persons' report?*

Subject to the comments made, the requirements are clearly expressed

Paragraph 3.3.1 refers, in the fourth bullet point, to potential conflicts of interests in the context of reviewing work previously carried out by skilled persons. There are two circumstances in which skilled persons might have been previously involved with the company. Firstly, they could have been involved in providing professional advice and services directly to the company and secondly, they could have previously been involved in providing a skilled person's report. In the latter case, if the original appointment was approved and authorised by the FSA, the company should not be required to pay a second time for work to review the adequacy of their performance.

- 2.3 *Do you have any comments on the draft Supervision Manual chapter in Annex G?*

Following on from our comments above we would suggest the following amendments to the wording of the chapter.

Paragraph 5.3.10 - it was suggested that sub-paragraph 2 should be extended to say "bearing in mind the likely costs and benefits to the different financial sectors and firms".

Paragraph 5.4.7 Sub-paragraph 4 – to insert the words "acting in another capacity" after "skilled person".

- 2.4 *Do you think the extent of guidance provided in Annex G gives a clear explanation of the FSA's proposed policy on the use of skilled persons'?*

The FSA's policy is clearly expressed.

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