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Re: Conduct of Financial Institutions Options Paper

I am writing to you regarding the Options Paper, entitled *Conduct of Financial Institutions* (referred to as 'the Options Paper') released in April this year.

Cigna and OnePath (together called "Cigna") protect more than 450,000 New Zealanders with insurance policies. Our products and services include life, trauma, income protection, funeral, and travel insurance.

We are a member of Business NZ, the Financial Services Council and the Insurance Council. We broadly support the submissions made by these organisations.

We wish to concentrate our comments on a number of fundamental issues, and also on a number of issues that directly affect Cigna.

General Concerns

- The Options Paper relies on "identified key problems" without offering any substantive evidence that these problems are real and present in the New Zealand financial services industry, calling into question the case for reform.
- Significant change within the industry is already underway, particularly following the joint RBNZ/FMA conduct enquiries
- We are concerned about a lack of regard for concurrent and overlapping legislative reforms, for example reform to Financial Services legislation and proposed reform of insurance contract law.
- We have identified a particular lack of consideration of separate roles and responsibilities of manufacturers and financial adviser intermediaries
- Finally, reforms are likely to lead to an increase in compliance costs

Proposed Duties

The proposed duties, categorised into the broad categories, are as follows:

Over-arching / General

- a duty to prioritise the customer's interest to the extent reasonably practicable
[Cigna View: we recommend a duty to treat customers fairly rather than a duty to prioritise the customer's interest, for the reasons given by the FSC.]
- a duty to act with due care, skill and diligence (extending the duty currently applying to financial advisers to all financial institutions and their staff)
[Cigna View: no objection]
- a duty to pay due regard to the information needs of customers and to communicate in a clear and timely way
[Cigna View: no objection]
- a duty to manage conflicts of interest fairly and transparently
[Cigna View: no objection]
- a duty to ensure that complaints are handled in a fair, timely and transparent manner
[Cigna View: no objection]
- a requirement to have systems and controls in place that support good conduct and address poor conduct
[Cigna View: broadly no objection, but issue with suggestion that may involve prioritisation of investment towards identification and recording of issues that may require remediation. Expectations of manufacturers would need to appropriately recognise limitations on ability to control intermediaries.]

Product Design

- a requirement on manufacturers to identify the intended audience AND require distributors to have regard to the intended audience when placing the product
[Cigna View: no objection in principle but needs to recognise role and responsibility of intermediaries. In such cases manufacturer responsibility should be limited to providing product information to distributors. Many products are not targeted to specific audiences per se and are instead available to all customers generally, with suitability being assessed by the distributor. Propose that manufacturer duty only applies where product designed for a specific audience, and then is potentially limited to provision of information to distributor. Manufacturers may be expected to verify a product meets intended audience where reasonably practicable to do so, for example age restricted products.]
- giving the regulator the power to ban or stop the distribution of specific products with particularly poor consumer outcomes (e.g., insurance policies with very low successful claims rates)
[Cigna View: Poor value cannot be assessed in relation to a product as a whole, and will depend on individual customer circumstances. Value proposition is closely linked to poor information (uninformed decisions) and/or inappropriate selling. Any such ban should not apply to all products of a generic type but should instead only apply individual products of an individual manufacturer and then possibly only to specified distributors or distribution channels.]

- a regulator power to ban certain products that are poor value or that provide poor customer outcomes (not currently proposed by MBIE as a preferred option).

[Cigna View: generally object. Poor value cannot be assessed in relation to product types generally or in relation to a specific product as a whole. Value and outcomes will instead depend on individual customer circumstances. Undesirable outcomes are closely linked to poor information and/ or inappropriate selling. Any such ban should not apply to all products of a generic type but should instead only specific products of a particular manufacturer and then possibly only to specified distributors or distribution channels.]

Sales and Incentives

- a duty on product manufacturers to take reasonable steps to ensure that the sales of its products are likely to lead to good consumer outcomes. Reasonable steps in this context might include: staff and intermediary training, monitoring and quality assurance and setting clear expectations on the information to be communicated to the customer with appropriate checks to ensure that this occurs

[Cigna View: broadly agree, but needs to recognise separate roles and responsibilities of intermediaries, and manufacturers' limited control of them.]

- a duty to design remuneration and incentive arrangements that are likely to promote good consumer outcomes

[Cigna View: broadly agree, but, as above, need to recognise separate roles and responsibilities of intermediaries and limited control of manufacturers over them. Regulation may be required to fundamentally change established commission models.]

- a ban on target-based remuneration and incentives to both in-house staff and intermediaries

[Cigna View: broadly agree for intermediaries. However for in-house staff there needs to be the ability to use a balanced scorecard for bonuses, taking some account of sales performance]

- prohibit all in-house remuneration and incentives structures linked to sales measures (not an MBIE preferred option but proposed for feedback)

[Cigna View: disagree. Prefer balanced scorecard taking some account of sales performance.]

- regulate to impose parameters around the structure of commissions that can be paid to external intermediaries (not an MBIE preferred option but proposed for feedback)

[Cigna View: Regulation may be required to fundamentally change established commission models.]

Insurance claims

- a duty to ensure claims are handled in a fair, timely and transparent manner

[Cigna View: no objection]

- a requirement to settle claims within a set time, with exceptions for certain circumstances

[Cigna View: object. Arbitrary timeframes, subject to exceptions, are not an acceptable regulatory framework and are unlikely to lead to better customer outcomes. Rely on broad requirement to handle in a timely manner.]

Compliance

- empower and resource the FMA to monitor and enforce compliance

[Cigna View: no objection]

- introduce an entity level 'conduct' licensing regime – e.g. the Australian Financial Services licence covers organisational competence and compliance and the UK licensing process includes consideration of whether the firm is “ready, willing and organised to comply, on a continuing basis, with the requirements and standards under the regulatory system”.

[Cigna View: object. Not required and likely to impose unnecessary costs for no customer benefit. Could be considered in future if evidence of widespread misconduct.]

- give the regulator a broad range of tools – e.g., public warnings, stop orders, direction orders, court injunctions, enforceable undertakings

[Cigna View: no objection]

- impose strong civil pecuniary penalties to deter misconduct – e.g., (per current FMCA regime) the greater of (i) the consideration derived, (ii) three times the amount of the gain made or loss avoided or (iii) \$1m for individuals, \$5m in any other case.

[Cigna View: same as FSC and ICNZ]

- introduce executive accountability. MBIE notes that this generally has four elements: a requirement on senior management to be capable and competent; clear lines of accountability for monitoring conduct; individual penalties for failure to meet agreed standards, and rules of conduct for senior executives.

[Cigna View: disagree with individual accountability and liability, but broadly agree with requirements as to competence etc. Suggest rely on sanctions at entity level.]

- require whistleblowing procedures to be in place

[Cigna View: no objection]

- require regular reporting about the industry – e.g., summary data on remediation activities, loss/claim ratios for insurance products, reasons for declined insurance claims, number of complaints etc

[Cigna View: no objection but reporting should be at an aggregated level, not a granular level]

Conclusion

We strongly recommend that an exposure draft Bill be part of the consultation process.

Thank you for the opportunity to comment and we look forward to further discussions.

Yours faithfully



Gail Costa

Chief Executive Officer

Cigna NZ and OnePath NZ

PROACTIVELY RELEASED