Options Paper

Conduct of Financial institutions

QUESTION 1

From the perspective of general insurance we believe the following duties should be included in any new regime:

1. A duty to consider and prioritise the customer's interest, to the extent reasonably practical.

We believe this duty is an absolute core one that is essential in any financial institution, however we also believe that to ensure compliance and understanding of the duty there would need to be, as suggested in the options paper *"A code of practice developed by the regulator or an independent body, in consultation with the industry*".

Were this to be the case, those issues relating specifically to general insurance such as prompt settlement of claims in accordance with the policy, handling complaints in a fair, timely and transparent manner, proactively identifying issues that require remediation and proactively contacting policyholders after a natural disaster could well follow a prescribed form with overarching regulator control.

We agree with the Pros and feel the concerns about uncertainty raised in the cons would be alleviated by a regulatory regime.

2. A duty to act with due care, skill and diligence

Once again this duty is an absolute core one and is such a basic requirement that it is hard to think of any reasons why it shouldn't be included in any new regulatory regime. We are very much in favour of the same current duty of care that exists for financial advisers being extended more broadly to include all financial institutions and their staff. We agree with the Pros in this question and believe that any initial uncertainty could be addressed by a regulator.

3. A duty to pay due regard to the information needs of customers and to communicate in a way which is clear and timely

Somewhat different to the first two duties but equally as important in the general insurance industry today. Following the Christchurch earthquakes insurance policies have changed and are becoming more difficult to decipher as insurers recognise and evaluate risk in a more complex manner. Prior to the earthquakes the majority of insurance policies were for replacement on an as new/when new basis, today this is no longer the case as there are a number of different policies, which provide quite different outcomes for the customer, on the market. We therefore believe that there should be, at the very least, a principals-based obligation on the general insurer to;

- Proactively explain the benefits, risks and limitations of their products and services
- Clearly communicate changes to their products or policies
- Ensure customers can easily understand the products and services they are receiving including using customer focused plain English terms and conditions.
- Reach out to customers following an event that may lead to claim.

Ideally the above obligations should be able to be monitored by the regulatory regime when there are general issues that identify failure to comply. The possibility of an independent review could well provide an incentive to insurers to ensure they meet the above obligations and could hopefully assist in remediating some of the imbalance of power between insurers and consumers.

4. A duty to ensure complaints handling is fair, timely and transparent.

This duty is a critical one and given the thousands of policy holders that Community Law Canterbury lawyers have assisted with their claims since the Canterbury earthquakes, it is clearly an area which requires far more guidance and regulation. Whilst we agree that internal systems should be improved for the complaint process and that the suggestions set out in 143 & 144 of the Options paper could work well to improve the initial complaints handling process, we think that there is clear and an acute need to empower an independent regulator to monitor insurers claims handling practices and be able to examine, amongst other things, any attempts to settle claims for less than the insurer is obliged to settle for when there are clear indications that this may be happening on a wide spread basis.

QUESTION 8

3.5 0f Options Paper

1. Duty to insure claims handling is fair, timely and transparent

We agree with option 1, currently there are few external controls available to monitor insurer's claims handling systems and practices. We believe that, following the Christchurch earthquakes, public/consumer confidence in the

insurance industry's self-regulating systems is extremely low and that it is high time for the introduction of an independent regulator with a mandate to oversee bank and insurer conduct. Should this duty be adopted and there was FMA regulation, the checks and balances available under this would provide an effective way to ensure the duty was adhered to. We also agree that the inclusion of remedies such as statutory damages for affected customers would further encourage insurers to ensure their claims handling practices remained fair, timely and transparent.

QUESTION 9

Duty to ensure claims handling is fair, timely and transparent

In terms of the question of whether the words "fair, timely and transparent" be clarified, we believe that guidance on this should be provided by the regulator on the timely aspect because this will allow more flexibility and provide the ability to assess this on a situation rather than a prescribed basis. Obviously where there are large numbers of claimants involved these words will require a different interpretation to the situation where there is only one claimant. All claims should be handled in a fair and transparent manner so this area could be clarified.

QUESTION 10

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

Although this sound like an attractive option we do not believe that it is a realistic one and believe that it may be counter-productive for policy holders as it could result in expectations that are impossible to meet in terms of the time required to settle a claim following a major event, it may also mean that there will be further pressure applied by insurers to achieve settlement within the prescribed time frame even when the policy holder is still unsure about the terms of the settlement they are being offered. We note that the ECC Act 29(2) (4) requires payments to be made as soon as reasonably possible, and in any event not later than a year after the amount for damages has been duly determined. This didn't work particularly well after the Christchurch earthquakes where exceptions for the time limit were necessary on an ongoing basis. Once an exception is necessary the advantages of certainty, quicker claims processing and clarity recede.

We believe that reliance on an enforceable duty to insure claims handling is fair, timely and transparent and having this duty monitored by the FMA would provide a better and more realist option than a time frame which needs to be subject to exceptions.

QUESTION 11

Should the FMA be empowered and resourced to monitor and enforce compliance within the insurance industry

Yes it should, the current situation relies heavily on self-regulation, and this simply hasn't worked for the large numbers of policy holders Community Law has seen in the aftermath of the Christchurch earthquakes. The lack of an effective independent enforcement regime to oversee the insurance industry has led to an imbalance of power between insurers and customers which in turn has fostered many of the problems our clients have encountered. From our collective experience, one of the main obstacles to claims resolutions was the lack of an independent regulatory body that had the capacity to deal with the volume of issues that were presenting, accordingly we believe that inclusion of all insurance providers under the FMA could greatly improve outcomes for insurance customers. We agree with the pros that are set out and believe that the possibility of additional costs incurred by expanding the remit of the regulator should be assessed against the impact on health and welfare, and the associated costs involved, that an imbalance of power between insurers and customers can result in.

QUESTION 12

Feedback on the option to require banks and insurers to obtain a conduct license

Although initially it appears that a requirement to obtain a conduct licence would have little impact in the general insurance industry because most of the providers are large entities that will be considered to be part of the critical infrastructure, further investigation, especially of the UK Financial Conduct Authority, shows how a regulator under this sort of regime can effectively operate to provide overarching guidance in areas such as unfair contract terms and fair treatment of customers. We agree that the registration process itself could be used to ensure that each entity has the correct procedures in place initially and that they can be monitored by the regulator on an ongoing basis under the regime.

QUESTION 13

Broad range of regulatory tools

We believe that combining the powers and benefits provided by the licensing process and also bringing the insurance industry under the ambit of the FMA would provide a holistic approach that could ensure both preventive and remedial tools are available to the regulator. Both s20 and s48 of the FMA could be used by the regulator to

investigate and address wide spread incidents of noncompliance when there is a significant indication that there are a number of customers with the same complaint.
We also believe that the suggestion (option 7) that there be regular reporting about the industry on summary data, remediation activities, complaints and reasons for declined claims is a sound one and that it could result in more effective and robust self- regulation by the industry

QUESTION 19

Feedback on who the conduct regime should apply to

We are strongly in favour of Option 1 – under which the package would apply to banks and insurers in respect of all products and services offered to retail customers. We agree that within the retail sector is where the greatest evidence of risk exists and accordingly the need for consumer protection lies. However we do not favour the phased approach which proposes that only life insurance be included initially. Our experiences over the past six years clearly indicates that there is an acute need for regulation in the general insurance area which has very probably affected a far larger number of claimants and the risk of harm is as great. Public perception of the insurance industry and the need to ensure future good customer outcomes requires an immediate response to general as well as life insurance regulation.

Name
Sandra Spiller

Organisation
Community Law Canterbury

Email address
Privacy of natural persons

In what capacity are you making this submission
Community Law Canterbury Lawyer

Use and release of information

Can we include your name or other personal information in any information about submissions that we publish?
No don't include my name or other personal information - I am making the submission as a Community Law lawyer.

Can we include your submission on the website?

Yes you can publish my submission on the website

No I do not wish for my submission to be kept confidential