

<b>Your Name</b>
Susan Taylor , Neha Goyal
<b>Your organisation</b>
Financial Services Complaints Limited
<b>Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?</b>
<p>A1] We support the inclusion of all the duties mentioned and agree with the pros and cons to the extent mentioned in these submissions. In particular, we support option 1 (prioritising the customer's interests).</p> <p>We recommend an overarching duty not to engage in acts or omissions that will bring the profession into disrepute (or alternatively, an overarching duty to act professionally, reasonably and with integrity, or in ways that are fair, honest, ethical and just).</p> <p>We also support the inclusion of a duty to assist customers understand how the provider's financial products and services work (to address information asymmetry), and an overarching duty to act fairly and reasonably in all dealings with a customer.</p> <p>We support the inclusion of option 2 which mirrors section 44 of the Financial Advisers Act 2008. We also recommend including a duty to treat a client's information with care and confidentiality due to the sensitive financial and health information held by financial institutions.</p>
<b>Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?</b>
<p>A2] We strongly support the inclusion of Option 5. We recommend amending the duty to state "a duty to recognise and manage conflicts of interest fairly and transparently". It would be helpful if the description highlighted examples of what may be considered a conflict (such as being cognisant of crossing professional boundaries).</p> <p>For example, there is currently nothing precluding a financial adviser from being in a personal relationship with their past or present client, where they may be in receipt of a client's confidential financial or medical information. This creates a power imbalance which needs to be recognised and mitigated.</p>
<b>Is a code of practice required to provide greater certainty about what each overarching duty means in practice?</b>
<p>A3] A code of practice (such as the Fair Insurance Code) is helpful as it sets the expected minimum standards for a profession, provides prescribed duties to ensure compliance and enforcement of standards, and in turn, ensures greater public confidence.</p> <p>They are also helpful guidelines for Dispute Resolution schemes to use when resolving complaints.</p> <p>We see some confusion by consumers about the roles of financial institutions and the intermediaries that sell their products. A code would go some way in clarifying expected standards and duties towards consumers.</p>
<b>Which options for improving product design do you prefer and why?</b>
<p>A4] We agree with Option 1 (give the regulator power to ban or stop distribution of specific products) and 3 (identify and have regard to the intended audience when placing a product). The Fair Insurance Code, Responsible Lending Code and the Code of Professional Conduct for Finance Advice Services already require the organisations and advisers to whom the Codes apply to canvass and ensure the suitability of products that are sold. We suggest standardising the requirement across the sector to encourage market discipline and culture change.</p> <p>We recommend amending Option 1 to include the power to issue compliance notices or a notice to remedy where a poor performing product can be changed to better suit customer needs.</p>
<b>If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why</b>

A5] "Identifying an intended audience" and "having regard to the intended audience" are low thresholds that are not onerous. They should constitute basic market research before a product is developed, marketed and distributed. In our opinion, this will help to prevent mis-selling of unsuitable products. We therefore consider option 3 to be necessary for all products and not only some particular products.

**Which options to improve product distribution do you prefer and why?**

A6] We do not support a ban on commissions (other than soft commissions) due to the risks set out in paragraph 157 of the options paper.

We agree that restructuring incentive structures is well worth considering. From complaints we have investigated, some advisers have little to no contact with a customer once the initial advice is given and a sale is made. To encourage advisers to continuously look after their customers' interests, and to regularly review their customers' needs we think there is merit in paying the servicing or trail commission to the adviser that is providing the advice. The level of that commission should reflect the time the adviser will spend on servicing and reviewing the customer's needs.

By restructuring the level of commission that is paid at the start of the adviser/customer relationship, this may lead to fewer "churns" and fewer complaints when customers allege they have been sold a replacement policy for the adviser's benefit, rather than their own.

In general, we comment that it is generally recognised that:

- an important part of protecting New Zealanders' long-term financial well-being is to ensure that they have appropriate insurance in place to provide cover when the unexpected happens

- many New Zealanders are underinsured.

Intermediaries, or advisers, have an important role to play in ensuring that New Zealanders both understand the importance of having insurance in place for unexpected life events and in helping consumers to obtain appropriate cover for their particular needs. And, of course, advisers are entitled to be paid for the advice given.

In our view, exactly how the adviser is remunerated is, to some extent, irrelevant. What really matters is that New Zealanders can be confident that, in taking advice from an adviser, and in buying insurance, their interests are being placed first, they are receiving competent advice and a worthwhile product at a price they can afford.

This means ensuring that advisers:

- are competent to provide advice
- are programmed to put the client's interests first
- do their best to ensure that the client understands their duty of disclosure and have disclosed all they must to the insurer
- make adequate disclosure of how they are paid
- commit to ongoing professional development, and
- have a robust complaints process in the (hopefully unlikely)

event that something goes wrong.

**To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use**

A7] No comment.

**What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?**

A8] We support this option and note that it is in line with the Fair Insurance Code (We will manage your claims quickly, fairly and transparently). We do not think this duty should be onerous as it should already be in practice. It simply codifies the reasonable standard that is already expected from an insurer.

**If a duty to ensure claims handling is fair, timely and transparent were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean?**

A9] The duty should provide potential time-frames for processing claims, and what the insured can expect from the claims process (see paragraphs 27-33 of the Fair Insurance Code).

**What is your feedback on requiring the settlement of claims within a set time?**

A10] In principle, we support having specific time-frames with some exceptions where appropriate.

<p>For example, for complex claims, or those arising from natural disasters, it would be fair for the insurer to communicate in regular intervals with the insured giving the reason for the delay, next steps and an approximate time-frame for contact. We note that the Fair Insurance Code has similar requirements (an update every 20 business days). For the purposes of absolute clarity however, we urge careful drafting to ensure that the inclusion of a set time frame of 2 years to settle all claims does not lead to insurers delaying the final claim decision on simple claims, where a decision can be made much earlier.</p>
<p><b>Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?</b></p>
<p>A11] No comment.</p>
<p><b>What is your feedback on the option to require banks and insurers to obtain a conduct licence?</b></p>
<p>A12] No comment.</p>
<p><b>What is your feedback on the option which discusses a broad range of regulatory tools?</b></p>
<p>A13] Our preference would be to equip the FMA with a broad range of regulatory tools (both enforcing and monitoring compliance) rather than dual licensing. This, together with the appropriate marketing of a conduct code, could achieve most of the benefits of licensing. Infringement fines are a useful tool to achieve an immediate deterrent effect. Infringement fines also prevent lengthy court processes, and can be useful to address low-mid level offending. We also support the addition of the power to annotate the public register (FSPR) to record suspensions and conditions for conduct breaches. This will improve transparency and accountability in the sector. Breaches of conduct should also be made publicly available.</p>
<p><b>Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?</b></p>
<p>A 14] While we do not have a view on a maximum penalty, we are of the view that penalties need to be sufficiently onerous. Otherwise, there is the risk that institutions will make commercial judgements to pay the penalty and carry on with poor conduct behaviours. We also support the inclusion of additional penalties for 'serial offending'.</p>
<p><b>What is your feedback on the option of executive accountability?</b></p>
<p>A15] No comment.</p>
<p><b>What is your feedback on the whistleblowing option?</b></p>
<p>A16] We support having an external organisation (in addition to the SFO) to whom concerns could be reported. However, we also recognise that if information is provided anonymously, the regulator would need to have sufficient powers to "own motion" an investigation, or undertake an audit of the financial institution.</p>
<p><b>What is your feedback on the option of regular reporting on the industry?</b></p>
<p>A17] We agree that regular reporting could be beneficial to consumer groups if it is available in an accessible and easily understandable format. It would also provide more transparency and accountability.</p>
<p><b>What is your feedback on the role of industry bodies?</b></p>
<p>A18] We agree that, ideally, having industry bodies drive conduct and culture change would be the best outcome. However, we agree that the disadvantages as set out in paragraph 210 outweigh the benefits. An independent regulator, who can consider both the industry and consumer views is better placed to oversee the standard of conduct expected and drive the change in culture through the sector. We think the government [RBNZ/FMA] is best placed to bear this responsibility.</p>
<p><b>What is your feedback on the options regarding who the conduct regime should apply to?</b></p>
<p>A19] No comment other than to say that we do not think that the definition for retail and wholesale clients should apply to a code of conduct. The code's application should target culture change across the sector.</p>
<p><b>Your email address</b></p>
<p>Privacy of natural persons</p>
<p><b>In what capacity are you making this submission?</b></p>
<p>Other; Dispute Resolution Body</p>

**Can we include your name or other personal information in any information about submissions that we may publish?**

yes

**We intend to upload submissions to our website Can we include your submission on the website?**

yes

**You may ask us to keep your submission, or parts of your submission, confidential If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration**

no

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