

**From:** Tenancy No Reply  
**Sent:** Friday, 7 June 2019 12:27 p.m.  
**To:** Insurance Review  
**Subject:** Response to Review of Insurance Contract Law quick form

**What is your feedback on the overarching duties? Which option do you prefer and why?**

In considering the appropriateness of the overarching duty options we believe it is important to understand what part of the financial institution these apply to.

Financial Institutions for the most part consist of

1. Product Manufacturing
2. Marketing
3. Product Distribution.

Product Manufacturing is a one-dimensional process whilst distribution is or can be multi-dimensional with distribution being through a variety of sources, with or without associated advice.

Option 1: A duty to consider and prioritise the customer's interest, to the extent reasonably practicable

It is our view that Option 1 is not workable and is too vague and open for interpretation which results in inconsistency throughout the industry.

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

Option 2 could be applied but we believe only at the distribution level and should only apply where distribution is via methods where existing legislation doesn't already require due care skill and diligence. To apply it across the board would result in potential conflicts with say third party intermediaries who are already regulated and this will incur unnecessary costs which will ultimately be passed on to the consumer.

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

Option 3 has similar issues to above. Indeed, there should be obligations for financial institutions to provide material in clear and timely manner however under item 134 for example; proactively explain benefits, risks and limitations could easily see Insurers usurping the financial intermediary/adviser role to meet this requirement.

From a business point of view Financial Institutions to be successful and competitive would want to produce quality products and provide high quality explanatory material. But the overarching duties identified above should apply at distribution level not at manufacturer level.

Option 4: A requirement to have the systems and controls in place that support good conduct and address poor conduct

Option 4 – as above successful business will want to strive for this anyway however the Con (first bullet point) is critical in that cost of legacy systems will be substantial and any wind up of old products ultimately detrimental to the consumer.

Option 5: A duty to manage conflicts of interest fairly and transparently

Option 5 – if the duties are applied at distribution level rather than manufacturing then this should only be applied where products are distributed directly or via own employees – not applied where other third party intermediaries are sued as they are already covered under other legislation.

Option 6: A duty to ensure complaints handling is fair, timely and transparent

Option 6 – goes without saying. Good practice.

In summary many of the duties are unnecessary if you simply focus on the product delivery. Too much cross over with other areas of legislation which will only result in rising costs and poor customer outcomes as well as potentially change the structure of the independent advisory businesses resulting in less access to advice for consumers

**What is your feedback on the options to improve product design? Which option do you prefer and why?**

Product Design

Option 1: Give the regulator the power to ban or stop the distribution of specific products

Option 1 – agree with cons identified but this would be preferable to Option 2. .

Option 2: Ban certain products

Option 2 – “poor product” can be subjective. For example, in the absence of the availability for total life cover then accidental death cover is next best option.

Option 3: Requirement for manufacturers to identify intended audience for products AND a requirement for distributors to have regard to the intended audience when placing the product

Options 3 – product distributors will fall or if not should fall under the financial advisory based regulations that apply now or will do in the near future

**What is your feedback on the options to improve product distribution? Which option do you prefer and why?**

Product Distribution

Our comments here are restricted to adviser distribution and not internal remuneration of institutions.

Option 1: A duty to design remuneration and incentives in a manner that is likely to promote good customer outcomes

Option 1 – Item 162

This would also have the effect of rogue advisers picking up servicing payments from good servicing advisers who have provided a good service. In many cases advisers have taken low upfront remuneration in exchange for higher servicing payments. The loss of which comes at a substantial cost.

A better structure would be for the financial institution to ensure that the servicing payments are transferred to a new adviser upon evidence of a commercial transaction of purchase between the incumbent and new. At least one major insurer already does this. This would be a fairer outcome when adviser change occurs for genuine reasons.

Option 2: Ban target-based remuneration and incentives, including soft commissions (applies to both in-house and to intermediaries)

Option 2 – we agree with the banning of target base commission and soft dollar incentives.

Option 3: Prohibit all in-house remuneration and incentive structures linked to sales measures

Option 3 – no comment

Option 4: Impose parameters around the structure of commissions (i.e. commissions paid to intermediaries)

Option 4 – we have a philosophical issue with regulators or any government agency imposing parameters on the structure and level of remuneration paid to intermediaries. We are not aware of any other industry where the government dictates to the private sector how it remunerates its distribution network.

Commission paid by insurers is NOT a remuneration component for an adviser or adviser business. It is a gross revenue item out of which substantial costs are deducted for operational expenses and compliance.

We do recognise that a third-party payments in some cases can potentially influence where business is placed. However, we believe it is not the level of commission that influences this but the variation that exists between product providers. A requirement to remove target-based commission could easily see industry commission rates become more aligned.

Item 172 states that high upfronts encourages churn. Recent investigations by FMA on “churn” found very few cases of systematic churn (Initially 17 RFAs and 7 AFAs of which 4 got private warnings, 7 received compliance letters and 3 had further inquiries. Hardly an argument for monumental change. We argue that other regulations coming into force especially one Code of Conduct for all will be a far better tool to deal with such issues.

New disclosure regulations will require commission payments to be communicated to the client and

we are of the view that making this more transparent will be far more effective than capping or reducing commission rates. Since 2011 our business has operated under the AFA disclosure requirements and as such has disclosed commission rates for all providers to the client. In 8 years since, we have never had any query from clients on the amount of commission payable.

Capping or reducing commissions will:

- Have a detrimental impact on businesses as it reduces revenue during a time the compliance costs have increased significantly.
- Be a barrier to entry into the industry thus reducing the number of advisers and therefore access to financial advice.

Option 5: A duty on manufacturers to take reasonable steps to ensure the sales of its products are likely to lead to good customer outcomes

Option 5

We agree that financial institutions should have a degree of responsibility where it distributes their products via staff or direct to consumer, but we strongly oppose this where it is via intermediaries already subject to existing regulations such as FSLAA and the Code of Conduct.

If there is an overlap or perceived overlap of manufacturer responsibility with intermediaries already regulated this will only result in;

- increased product costs resulting from higher compliance,
- reduce independent financial advisers/businesses due to change in relationship with providers,
- reduce ability for advisers to be independent of providers,
- create substantial debate between qualified experienced advisers and product providers over what is the right or most appropriate advice - a debate that can be detrimental to the client.
- In the final outcome who is ultimately responsible for the outcomes of the advice where a product provider as argued a change from what the adviser has originally recommended.
- What are reasonable and significant steps. This can be interpreted differently by different providers resulting in intermediaries (already regulated) having to manage relationships with several providers at varying levels.
- Item 176 (bullet point 3) setting clear expectations about who will communicate what information etc.....this could substantially impact on the adviser/client relationship if advisers are restricted by product providers on what they can and cannot communicate – this could also result in conflicts with adviser obligations under current regulations.

We believe this duty if implemented should only apply to non-advised sales

**What is your feedback on the options relating specifically to insurance claims? Which option do you prefer and why?**

No comment

**What is your feedback on the options for tools to ensure compliance? Which option do you prefer and why?**

No comment

**What is your feedback on who the conduct regulations should apply to? Which option do you prefer and why?**

No comment

**What is your feedback on the initial preferred package of options?**

We have covered this in our answers above.

**Do you have any other general feedback?**

While the options document is focused on Banks and Life Insurers, some of the proposals would have a major impact on the wider financial advice industry. The advice industry has recently gone through another round of major change and the outcomes of this are yet to be seen but overall should be positive and address a number of the issues (perceived or real) identified in the paper.

Some of the proposals would potentially have the result of changing the whole structure of the advice industry, adding further costs which in many cases would be passed on the clients and

making financial advice less accessible.

In addition we also are of the view that this outcomes of this paper should apply to all financial institutions that offer similar services otherwise you simply create an uneven playing field

**Your name**

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Privacy of natural persons

**Your organisation**

First Capital Financial Services

**In what capacity are you making this submission?**

business

**Other capacity**

**Privacy act/release**

**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

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