

7 June 2019

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
WELLINGTON 6140

By email to: FinancialConduct@mbie.govt.nz

**Insurance & Financial Services Ombudsman Scheme (“IFSO Scheme”)
Submission on Options Paper - Conduct of Financial Institutions**

Thank you for the opportunity to make a submission on the Options Paper. The IFSO Scheme strongly supports an environment where conduct and culture in the financial sector delivers good outcomes for all customers. We agree with the proposed approach of having a principles-based set of duties, together with regulations and a regulator who engages with industry to achieve the best results for consumers.

Questions

1. Which overarching duties should and should not be included in the regime? Are there other duties that should be considered? Do you agree with the pros and cons of each duty? Do you have any estimates of the size of the costs and benefits of these options? Are there other impacts that are not identified?

The IFSO Scheme agrees with all of the overarching duties proposed in options 1 – 6. We are particularly supportive of option 6, relating to better complaints handling. In our experience, complaints are not always identified by front line staff or escalated at the earliest opportunity. Despite providing training and support for IFSO Scheme Participants about good complaints handling, there is still a lack of understanding generally across the sector about the value of complaints and how they can provide meaningful insights into customer satisfaction about the products and services provided.

2. 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? What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?

We believe that the best option is to keep the overarching duty broad. However, Codes could be helpful to give stakeholders direction. We note that, even within the large institutions, conflicts of interest can arise through the different roles required of their staff.

3. Is a code of practice required to provide greater certainty about what each overarching duty means in practice?

We believe it would be useful to provide guidance through a Code.

4. Which options for improving product design do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The IFSO Scheme supports option 1, as the Regulator needs powers that will act as a deterrent and change behaviour. We also support option 3, because there are certain products which provide poor outcomes and we believe products should be suitable for customers.

5. 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.

If option 3 were chosen, the IFSO Scheme believes it is more necessary for guaranteed acceptance products (where there is no or nominal underwriting upfront) option, together with products with significant exclusions. This is because, in practice, the products provide significantly limited cover, compared with their underlying implied promise of cover.

6. Which option to improve product distribution do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

We believe option 1 will help to shift industry focus onto customer service. We also support option 2, as poor outcomes for customers are generated as a result of target-based incentives, including soft commissions. For option 3, we do not believe that there is any value in making a distinction for internal staff and would prefer an option which creates consistency and, therefore, certainty for both internal and external sales models.

7. To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use (i.e. what are common structures, average amounts of remuneration/commissions, qualifying criteria etc)?

No comment.

8. What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of this option?

While the IFSO Scheme supports option 1 – a duty to ensure claims handling is fair, timely and transparent – it is not based on concerns arising out of the allegations made in paragraph 178. Reliance for the allegations has apparently been placed on “[s]ubmissions on the Insurance Contract Law Review and other evidence” which are neither included in this Options paper, nor specified.

From our experience of applying similar requirements set out in the Fair Insurance Code, it is very difficult to apply high level concepts to claims handling practice. All aspects are subjective and differ from case to case. We also believe that set timeframes are not workable, unless there is a significant degree of flexibility to take into account circumstances outside of the parties’ control. There are many instances where claims will take a substantial amount of time for legitimate reasons e.g. obtaining expert reports. Where strict times are enforced, it may be that fully informed decisions are not able to be made and lead to poor customer outcomes – the very thing this option is trying to avoid.

9. If this option were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean? Why? Why not? What are the benefits and costs of doing so?

Yes, because otherwise the terms are open to interpretation. We believe some guidance/ practice notes should be provided, given the difficulty in apply such subjective concepts.

10. What is your feedback on requiring the settlement of claims within a set time? Are there other impacts that are not identified? How do you think that exceptions should be designed? Should there be different time requirements for different types of insurance? Do you have any estimates of the size of the costs and benefits of this option?

Please refer to our answers in response to Questions 8 to 10. We reiterate our concern that strict deadlines could result in poor outcomes for customers, when insufficient time is allowed to make informed decisions.

11. Do you agree with this option to empower and resource the FMA to monitor and enforce compliance? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of this options?

We believe that the FMA should be properly resourced to monitor and enforce compliance. However, the FMA is already resourced to a certain extent to monitor conduct. The extent to which additional funding would be required is a question of

degree. We accept that expanding its remit will add cost and note that this will probably require additional industry or government funding.

12. What is your feedback on the option to require banks and insurers to obtain a conduct licence? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

While we agree that there are some benefits of licensing, the upfront compliance requirements would be significant, to both demonstrate that standards had been met and to provide continued monitoring.

13. What is your feedback on this broad range of regulatory tools? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

We agree the regulator would need the proper range of regulatory tools to require financial institutions to do, or refrain from doing, certain things. As an alternative to licensing, it might appear heavy handed if applied and lacking teeth if not. Potentially, it might be better in addition to licensing.

14. 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? Is there a case for making the penalties higher?

We agree that the penalties should be consistent with the existing FMC Act penalties.

15. What is your feedback on the option of executive accountability? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

General executive accountability already exists to a certain extent under the Companies Act 1997. Making directors and senior managers accountable and personally liable for ensuring their organisation complies with certain duties would probably discourage many individuals from taken on such roles.

16. What is your feedback on the whistleblowing option? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The IFSO Scheme believes a whistle blowing process is a necessity. Without it, it is difficult for people with concerns to raise issues about what is happening in the industry.

17. What is your feedback on the option of regular reporting on the industry? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

If the industry had to regularly report on, for example, remediation activities, it would be required to focus on remediation and have the processes in place to be able to monitor progress in order to then be able to report on its activities.

18. What is your feedback on the role of industry bodies? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The IFSO Scheme believes that active industry bodies are of great assistance in clarifying standards, and establishing and supporting best practice. They are able, in some cases, to be of significant assistance to regulatory bodies, by providing feedback and data about the work of its membership.

19. What is your feedback on the options regarding who the conduct regime should apply to? In particular: Do you agree with the pros and cons of the options? Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of these options? Which options do you prefer and why?

The IFSO Scheme does not have a firm view about who the conduct regulation should apply to. However, we note that there is a need to ensure there is a regime without dual or conflicting obligations, or the option to opt out of obligations.

We trust our comments are of assistance and encourage you to contact us if any clarification of the submission is required.

Yours sincerely



Karen Stevens
Insurance & Financial Services Ombudsman