

Your Name
Tony Dench
Your organisation
SHARE NZ Limited
Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?
<p>General view</p> <p>SHARE is a nationwide network of more than 70 financial advisers supported by a further 70 staff across 23 offices providing advice on Insurance, Investments and Mortgages. Around half of SHARE advisers are AFAs with the balance being RFAs. All SHARE advisers operate under the SHARE brand and SHARE currently provides policies, processes and procedures for advisers to follow. SHARE supports the intermediated advice model and it is likely that SHARE will apply to become a licensed Financial Advice Provider under the Financial Markets Conduct Act with all SHARE advisers becoming Financial Advisers under that licence.</p> <p>We fundamentally agree with the outcomes being sought as outlined in the Options paper and see this as an opportunity to bring the financial services industry into a new era. We are well prepared to look beyond our own self-interest to achieve better outcomes and we believe this is an opportunity that cannot be lost.</p> <p>We want to acknowledge that, in our view, the Report on Conduct and Culture delivered by the FMA and RBNZ was well balanced. This Options Paper broadly follows the same principles-based approach that we have seen in FSLAA and the associated new Code of Professional Conduct for Financial Advice Services.</p> <p>Our sector is currently absorbing a number of legislative and regulatory changes that have been delivered very well in a considered, phased and measured manner through extensive consultation with industry stakeholders. Nonetheless, for those affected, this has added to costs and has created a significant distraction from effectively managing their business and ultimately serving customers. Further regulation, delivered in a relatively short timeframe, risks overwhelming the sector and out-stripping some participants' ability to implement the required changes effectively whilst continuing to meet our customers need for quality advice.</p> <p>We are happy to discuss this in detail and happy to also offer our significant experience to MBIE should they need additional adviser perspective and knowledge.</p> <p>We agree with all of the overarching duties included in 3.2 of Options Paper.</p>
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?
<p>Once again, the general approach of a principles-based duty is preferable. While the outcome sought is to address conflicted remuneration, this wider, overarching duty as it is currently worded is appropriate.</p>
Is a code of practice required to provide greater certainty about what each overarching duty means in practice?
<p>The non-prescriptive nature of the duties creates a degree of uncertainty however, greater definition could encourage "playing to the edge" of the rule and may result in worse behaviour.</p>
Which options for improving product design do you prefer and why?
<p>Option 3 is preferred.</p> <p>This would require manufacturers to design products with a particular customer set in mind and distributors (including intermediaries advising a customer) to justify why the product fits a need as part of the advice process.</p> <p>This leaves a question of how to manage existing policies, especially where the customer sees value. Some products where there is no perceived value may in-fact provide value to some customers. Similarly, we believe that every existing customer should expect that their product will perform in the same way as a new customer might expect. A legacy product should be upgraded to the like-for-like equivalent current product rules and conditions. Reinsurers and shareholders would need to play their part in this.</p>
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

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

Options 1 and 2 are preferred.

In principle, we support a redesign in commission structures to remove all target-based bonuses including soft commissions and override in its current form. A commercial arrangement where an adviser group receives a payment from a product supplier for delivering services to advisers based on good customer outcomes may be acceptable. Any adviser group should be able demonstrate neutrality between product suppliers to avoid a material conflict.

We understand how some may see merit in a ceiling on up-front commission as this would remove a mechanism of competitive advantage between product suppliers. We do not support this position, however, if it were implemented, the level of any such ceiling would need to be sufficient to ensure that advice remains available from an extensive and sustainable adviser market and will most likely differ to that of the Australian model. The new licensing regime, FSLAA and the associated new Code of Professional Conduct for Financial Advice Services ought to provide sufficient legislative and regulatory tools to achieve this without the need for further regulation.

Renewal/Trail commissions should continue to be paid on all products where advice is provided, or available/offered to be provided. Service/Renewal commission should follow the client's adviser and, if a customer appoints a new servicing adviser, the new adviser should receive the service/renewal commission. This should be made clear to the client at the time of appointing a new adviser.

Option 4

We do not support option 4, however, we can see that a set level of commission is an effective way of taking remuneration out of the advice equation, would moderate the behaviour of some and could lead to improved outcomes for clients. This would remove any form of commission as a competing factor between product suppliers and, from an adviser perspective, equalise commission received irrespective of the supplier they recommend.

With regard to the churn, we need to ensure that we do not drive unintended consequences. We need to ensure customers receive good advice and often that involves replacing products that are no longer fit for purpose, have been over-priced or simply are no longer competitive options for the client. Removing or significantly reducing up-front commission for replacement business could drive behaviour where a customer does not receive the advice that they should. We believe that any churn issues will disappear through other changes where all advisers and all suppliers are subject to higher standards of care, diligence and skill.

Option 5

In principle, we agree with this, and the reasonable steps outlined. We believe that there should be a duty for any financial institution to know who is distributing their product, and how they are doing so. Product suppliers should be able to ensure that any distributor of their product is doing so in a manner they can support. They should know their distributor, and that the distributor is operating to the standards they expect.

To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use
What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?
This makes sense in seeking a good customer outcome.
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?
Guidance would be useful to both parties in the claim but to the customer, in particular.
What is your feedback on requiring the settlement of claims within a set time?
If the clarification referred to in Q9 above is provided, this would remove the need for anything other than a longstop deadline. Many claims would need to be settled earlier in order to be “fair and timely”. Any timeframe would be arbitrary, but a maximum of 2 years seems to be appropriate. There is a clear need for a deep understanding of the claims process and a close working relationship with the industry to create appropriate guidelines only if they prove necessary. Claim times and timing often depend on external inputs over which the industry has no control.
Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?
We agree that the FMA is the appropriate regulator to monitor and enforce a conduct regime. There is a balance to be found between resourcing the FMA appropriately and passing the burden of these costs to the industry at a time when organisations are already implementing processes to comply with increased regulation and legislation from, for example FSLAA.
What is your feedback on the option to require banks and insurers to obtain a conduct licence?
The costs associated with entity licensing appear to us to outweigh the additional benefits over and above those proposed in the broad range of regulatory tools noted in the Options Paper. We do not support the entity conduct licensing and this has not proven to be effective in preventing misconduct in other jurisdictions.
What is your feedback on the option which discusses a broad range of regulatory tools?
This option, without conduct licensing, is preferred for the reasons noted above.
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?
It makes sense for the penalties to be aligned with existing FMC Act penalties.
What is your feedback on the option of executive accountability?
Accountability underpins the culture and governance of any organisation. This option would attach consequences to executive accountability and the responsibilities noted in the Options Paper make sense. To operate effectively, the regime would need to determine some culpability rather than simply attaching consequences to the latest office holder. In particular, an organisation that identifies that it has areas to address in relation to conduct may be unable to attract or retain the right candidate to lead that work where it would expose that person to personal liability in the interim. This would, of course, be counter-productive.
What is your feedback on the whistleblowing option?
The whistleblowing procedures are an important method of enabling accountability under the overarching duties to govern conduct. Ultimately, the effectiveness of such procedures will be determined by the culture of the organisation.
What is your feedback on the option of regular reporting on the industry?
This would be a useful way of helping customers to make an informed choice by providing information to allow them (or the intermediary advising them) to compare suppliers. Asking the financial institutions to prepare the information themselves on a standard basis would assist those institutions to focus on what customers would use to compare them.
What is your feedback on the role of industry bodies?
There are numerous industry bodies in the financial sector resulting in a fragmented approach which

is less than effective. Industry bodies play a more successful and cohesive role in conduct regulation in other professions and other jurisdictions however this is not an environment that exists for the financial sector in New Zealand.

We see the role of industry bodies in the financial sector in New Zealand as being to advocate, promote and educate.

What is your feedback on the options regarding who the conduct regime should apply to?

The high-level outcome of this review is stated to be “to ensure that conduct and culture in the financial sector is delivering good outcomes for all customers”. It would therefore make sense for the conduct regime to apply throughout the sector and at entity level. A phased approach to this as discussed in the Options Paper would assist the transition.

Your email address

Privacy of natural persons

In what capacity are you making this submission?

business

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

PROACTIVELY RELEASED