Conduct of Financial Institutions Discussion Documents - MAS Response

Requirements for fair conduct programmes

1. Do you have any comments on the status quo i.e., no further regulations to support the minimum requirements for fair conduct programmes in the Bill?

We agree with MBIE's proposal, noting the spirit of the Bill is to retain flexibility and allow growth. Support may be better addressed by guidelines, which are more adaptable to changing environments. Guidelines can also better address the differing needs of each individual proposed licensee. We support ICNZ's proposal that any regulatory guidance should seek industry input first, with reasonable implementation timeframes agreed for any material changes required.

Consideration may also be required around which Act/s and regulation/s take precedence where there are inconsistent meanings, or contradictory obligations. For example, transparency requirements noted in CoFI versus Privacy Act 2020 obligations.

2. Do you have any comments on MBIE's proposal position that no regulations are needed at this time to support section 446M(1)(a)?

We agree with MBIE's proposal, noting the spirit of the Bill is to retain flexibility and allow growth. Support may be better addressed via guidelines.

Comments regarding paragraphs 40 – 42 Overlap with existing regulations

Consideration is required to ensure that there is consistent meaning and application where multiple Acts and regulations place similar obligations on proposed licensees. The scope should be sufficiently broad to consider the regulatory environment that applies to parent companies or controlling entities and their regulated subsidiaries which may also already be subject to market services licences issued under the Financial Markets Conduct Act 2013. Insurance (Prudential Supervision) Act, or similar financial services legislation.

For example, Medical Assurance Society New Zealand Limited (MAS), which is the parent entity of future CoFI licensees Medical Insurance Society Limited and Medical Life Assurance Society Limited (MIS and MLA), is already subject to conduct obligations through its existing market services licence (Financial Advice Provider licence) issued under the Financial Markets Conduct Act.

An example which highlights already duplicated compliance and reporting requirements, is the approaches taken to assessing fit and proper persons. Within our business model, we must apply differing approaches to fit and proper under the Insurance (Prudential Supervision) Act, the Financial Markets Conduct Act, the Financial Service Providers (Registration and Disputes Resolution) Act, and the Credit Contracts and Consumer Finance Act. Across all of these pieces of legislation, it is only the upcoming due-diligence requirements under the Credit Contracts and Consumer Finance Act which demonstrates a pragmatic approach whereby there is provision for an exemption pathway for individuals who are already subject to fit and proper oversight by specified regulators. A similar approach would be useful under CoFI (albeit in the licensing process and not within the fair conduct programme(s)).

We support ICNZ's comments regarding the need for relevant regulators to work collaboratively to ensure avoidance of duplication, inconsistencies and confusion around how various requirements will fit together. We note MBIE's comment in paragraph 41 that "financial institutions could draw on compliance work in relation to financial advice or

consumer credit contracts in order to meet some of the new requirements. In this way, overlap could be managed". As MAS is likely to take a holistic view to implementing CoFI obligations, we support this comment as it would help us to avoid additional compliance costs. We would appreciate further guidance on when and what compliance work we can rely on to support dual obligations.

3. Do you have any comments on the proposals regarding design and management of relevant services and products?

As MAS will likely take a holistic approach to implementing CoFI principles across MAS and all of our operating subsidiary companies we support a consistent application of consumer-centric principles.

In our view the proposals regarding design and management of relevant services and products are adequately addressed for proposed licensees who design and manage their own product base in section 446M(1)(ab).

We suggest that any concerns can be adequately addressed through guidance documents. This could include minimum information that needs to be publicly advertised about a product, and further information required to ensure that clients can make an informed decision whether to purchase the product (or not).

Comments regarding paragraph 45 Inadequate controls around the provision of no-advice
We are concerned that in some instances, strengthening controls around no-advice may inadvertently limit client's ability to choose product and/or services.

Our view is that it should *not* be incumbent on proposed licensees to prevent access in situations where clients have refused advice regarding the suitability of the product/service, and the adviser has made reasonable efforts to ensure that the client understands the nature and scope of the advice provided (Financial Markets Conduct Act s 431J). We believe the regime should not impinge on the rights of consumers to not seek advice if they do not want it, or to make choices about financial products themselves if they have the confidence and understanding to do so. The risk lies where clients who would benefit from advice may not have the opportunity to access it when engaging with entities that do not fall under the financial advice regime. For entities who are FAP licenced, we submit there are sufficient controls through the duties and obligations set under the financial advice regime.

In our view the requirements under the fair insurance programme (such as the requirement to consider client needs at all stages of the product lifecycle, offer regular reviews etc) should adequately address this concern. Requiring minimum information to be provided and disclosed about products/services should also provide additional protection. We note and support ICNZ's submission to alter the wording in s446B of the Bill from "likely consumers" to current or "prospective consumers".

4. Do you have any comments on MBIE's proposal position that no regulations are needed at this time to support section 446M(1)(ac)?

We support the Financial Services Council (FSC) submission that additional guidance and examples would be helpful to provide clarity, certainty and consistency. For example, we seek clarity around:

- the content and record keeping terms for the records mentioned in 446M(1)(ac)(iii);
- minimum standards and expectations of what "regularly review" means. We acknowledge the desire to retain flexibility, however, there could be a wide interpretation applied to the word "regularly". Understanding the regulator's intention of how section 446M (1) (ac) is likely to be used to support other regulatory reporting obligations, such as licencing conditions under other market services licences would be helpful to inform our thinking around what reporting terms we want/need to implement.
- how this requirement will integrate with existing risk management programmes.

5. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1(bb) to (bd)?

Misconduct of agents and intermediaries

We acknowledge and agree with the ICNZ's concerns regarding fit and proper requirements, noting that the definitions of agent and intermediary are to be confirmed. We submit that additional:

- clarification of what the term 'fit and proper' will mean in its application to "each" employee, agent and intermediary under CoFI is required. The term 'fit and proper' in its application under other legislation such as the Insurance (Prudential Supervision) Act, the Non-bank Deposit Takers Act, and the Financial Markets Conduct Act (which CoFI will be integrated into) prescribes certain persons as needing to be fit and proper. Typically these are directors, senior managers or other key or specified persons who have significant control over an entity. The current wording of the Bill appears to broaden the scope of fit and proper assessments to all employees, which in our view would be unnecessary and excessive.
- clarification that reasonable pre-employment checks are adequate to demonstrate compliance with this obligation for persons who don't meet the significant control criteria that would apply to persons currently needing to meet the fit and proper standard of the Financial Markets Conduct Act, where it is applicable.
- clarification how this obligation is expected to be applied to existing employees

6. Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?

We believe fair conduct programmes should adequately address remediation requirements. We agree with ICNZ submission that it is vital to retain flexibility to ensure that proposed licensees can respond appropriately to each situation as it arises.

Comments regarding paragraph 66 remediation requirements (regulations)
We note some concerns regarding the proposed regulatory requirement to take ALL reasonable steps to remediate ALL affected consumers. This requirement may not be reasonable in all circumstances. For example, an issue may have occurred many years ago, but has only recently come to light. The proposed licensee may no longer have the consumers details. At some stage, a line in the sand may need to be drawn regarding who to remediate and how, otherwise it could lead to unintended consequences, including excessive costs for the proposed licensee, which may be passed on to consumers. We agree that principles will provide greater flexibility. We agree with ICNZ submission that "reasonable steps" is a more appropriate threshold.

Comments regarding Transparency requirement
We support the FSC's submission that further clarity is required to confirm expectations around transparency. Remediation may not be able to be transparent in all situations due to Privacy Act reasons, or legal requirements (if remediation is agreed and settled in court).

7. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(be)?

No comment.

8. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?

We support MBIE's position that no regulations are needed at this time to support section 446M(1)(bf).

9. Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?

Regulations/guidelines may be required to address minimum standards and expectations of what "regularly review" means.

We acknowledge the desire to retain flexibility, however, there could be a wide interpretation applied to the word "regularly".

10. Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?

In our view these requirements are adequately dealt with under other provisions, such as licencing conditions for FMCA-regulated entities, dispute regulation scheme requirements and the Insurance Council of New Zealand (ICNZ) Fair Insurance Code requirements.

11. Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?

In our view these requirements are adequately dealt with under other provisions, such as licencing conditions for FMCA-regulated entities, dispute regulation scheme requirements and the ICNZ Fair Insurance Code requirements.

12. Do you have any comments on the proposed definition of 'handling and settling a claim under an insurance contract' means? If so, why?

We support the ICNZ submission on this point.

13. Do you have any comments on the discussion regarding customer vulnerability?

Providing regulations regarding vulnerable customers would help ensure that proposed licensees keep this issue front of mind. However, we consider that this topic may be better addressed via guidelines, which can be more flexible to changing needs. We note comments regarding initiatives in train by the FMA. Regulations could be implemented a later stage if these initiatives do not adequately address concerns.

14. Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?

No comment.

15. Do you think any further factors should be added by regulations to the list under section 446M(1A)?

No comment.

16. Do you think any other regulations that could be made under new section 546(1)(oa) are necessary or desirable? Please provide reasons for your comments.

No comment.

Sales incentives

17. Do you have any comments on the Status Quo (no regulations)?

No comment.

18. Do you have any comments on the option to prohibit sales incentives based on volume or value targets?

We request further clarification on the definition of "sales incentives" by way of guidance.

19. What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value-based targets?

No comment.

20. Do you have any feedback on a more principle-based approach to prohibiting some incentives?

No comment.

21. How could a more principles-based approach to prohibiting some incentives be made workable?

No comment.

22. If a more principles-based option was chosen, should there be some incentives specifically excluded?

We note the comments regarding performance benefits not being linked to sales targets will be excluded from regulations. We agree with this approach.

23. Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.

No comment.

24. Do you think there are any types of incentives other than those discussed in the paper that should be excluded from the regulations? (i.e., allowed to be offered/given)?

No comment.

25. Do you think there are any other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.

No comment.

26. Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?

No comment.

27. Do you agree/disagree that within financial institutions and intermediaries' sales incentives regulations should apply to all staff? Why/why not?

We disagree. In particular, we note and agree with ICNZ's submission. Executives can be expected to understand the regulator's expectations regarding setting and maintaining appropriate customer-centric cultures.

28. Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?

See comment above please.

29. Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?

Potentially. If it is not extended, a potential consequence could be that those who would be captured under the regulations (such as nominated representatives) may become agents/ intermediaries/ contractors to try to circumvent the regulations.

Contra to this, are there agents/intermediaries who may not necessarily have any impact on the sale of an item that may be unintentionally caught by the regulations? Examples could include loss adjustors. In this instance, they are unlikely to be materially influencing sales targets. If this obligation is extended to agents, contractors and intermediaries, we suggest a further review of who is captured under the definition of agent and intermediary.

30. Do you agree that both individual and collective incentives should be covered? Why/why not?

Yes, noting the comments above regarding retaining incentives at an Executive level (where appropriate and agreed under licencing conditions).

31. Do you have any other comments on the discussion related to incentives?

No comment.

Requirement to publish information about fair conduct programmes

32. Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?

We seek further clarification around the expectations of what information is deemed sufficient. This may be better addressed in guidelines, noting that guidelines are easier to change as the needs and understanding of what information is useful to consumers changes over time. FMCA regulated providers already have financial advice disclosure obligations, including complaints processes.

We also note ICNZ's proposal to give consumers a clear understanding of the service standard they should expect. This idea may be worthy of greater discussion.

Comments regarding para 196 (d) – complaints

We consider that the complaints process is already adequately dealt with under other legislation such as the Financial Markets Conduct Act, dispute resolution schemes and ICNZ requirements. Consumers are likely to want to access information when they are making a complaint. As such, any changes deemed necessary may be better addressed by considering changes required to existing disclosure requirements under the Financial Markets Conduct Act, rather than a separate regulation under CoFI.

33. This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?

We suggest providing guidelines and examples of industry best practice.

Calling in contracts of insurance as financial products under Part 2

34. Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?

No comment.

Exclusions of certain occupations or activities from the definition of intermediary

35. Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g., lawyers, accountants, engineers)?

We support this proposal.

We support the Financial Services Council (FSC) submission that further clarification is required regarding what is an advisory service. For example, would medical staff inadvertently be captured in the definition of agent/intermediary due to the nature of their role? We support the FSC's suggestion to include a list of excluded occupations and activities and examples.

36. Do you think that any other occupations or activities should be excluded from the new proposed definition of an "intermediary"? If so, why?

Requirements under s446M could be onerous in instances of one-off provision of services (E.g., a panel beater is commissioned on a one-off basis to repair a consumers car). A result of this requirement may be that insurers dictate the use of a limited range of suppliers who have received adequate training on the insurers fair conduct programme. This would have the unintended consequence of limiting who the insured could use.

Other comments

We suggest a review of your submission templates, as they currently refer to the Privacy Act 1993, rather than the Privacy Act 2020.

Treatment of Intermediaries

1. Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'?

Our view is that efforts should (for now) be directed at activities that pose the most risk of negative consumer outcomes.

2. Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks of arbitrage?

No comment.

3. Do you have any comments on Option 2?

We note the intent of the Bill and consider that initiatives to help improve the reputation of the industry as clients see that both the Government and the industry are working together to improve outcomes for consumers is in the best interests of all involved.

Our view is that efforts should be directed at activities that pose the most risk of negative consumer outcomes. As such, we support the narrowing of the definition. Professions such as lawyers, accountants, engineers and medical professions are indirectly involved in the sale of financial products. Their involvement may also be on a one-off basis (for example, assisting with a house purchase). We note that these professions are also regulated by their own professional bodies.

We would appreciate some further clarification of what professions will be included and excluded from definitions. This includes clarification around the definition of advisory services.

We note and agree with ICNZ's submission that it will be important to ensure that any professions not intended to be caught under the definition of intermediary are also carefully reviewed to determine if they should also be excluded from the definition of agent.

4. Do you think Option 2 would adequately exclude advisory services (e.g. lawyers, accountants) and other service providers to the financial institution who are not involved, directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers?

No, not in its current format. There is still room for confusion. We would appreciate further clarification of what professions will be included and excluded from definitions. This includes clarification around the definition of advisory services.

5. Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?

Professions regulated by their own professional bodies, such as doctors, lawyers and engineers. These professions are already held to a high standard, which includes codes regarding ethical treatment of clients.

6. Do you have any comments on the objectives regarding the treatment of intermediaries?

We support the principles and objectives that the Bill is aiming to achieve.

7. Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'?

If this option is progressed, we suggest further changes are required.

This includes some consideration around what requirements are necessary for the one-off provision of services. For example, a panel beater is commissioned on a one-off basis to repair a client's car (assuming that the panel beater is deemed an agent/intermediary). Current requirements under s446M could be onerous in these instances. A result of this requirement may be that proposed licensees will limit the range of suppliers clients can use to those who have received training on the proposed licensees compliance programme.

Managing or supervising versus monitoring

We suggest some consideration around implementing a risk-based approach relevant to the proposed licensee. This could be implemented in the following situations:

i. intermediaries who have demonstrated compliance with fair conduct principles could be subject to monitoring
ii. where the intermediary is being engaged in a one-off situation (or minimal use situation (definition could be number, or volume of funds), they will be subject to a low level of monitoring. If the level of engagement increases, the proposed licensee would complete further assessments to ensure the intermediary will meet requirements
iii. if gaps are detected in monitoring, the intermediary could be subject to increased supervision.

8. If Option 3 were pursued, do you think any other obligations in section 446M(1)(bb), (bc), (bd) or (bf) would need clarifying or amending? Why/why not?

If Option 3 is implemented, we suggest a wording change to section 446M(1)(bb)(ii) – "**must** follow."

We also request clarification on how Option 3 would impact requirements under section 446(M)(1)(bd)(ii) and (iii) conduct expectations and how to handle intermediary misconduct.

9. Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'?

This option would reduce the likely compliance costs of having to actively manage and supervise intermediaries, as well as reduce duplication of FSLAA obligations (for FSLAA intermediaries).

We agree with industry feedback that further consideration may be required to address a potential gap between monitoring an intermediary and the outcomes of any reporting.

10. What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "managing or supervising the intermediary to ensure they support the financial institutions compliance with the fair conduct principle", or "monitoring whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else?

We support the FSC's submission that monitoring should be considered sufficient, unless an issue is flagged, in which case further investigation will be undertaken, noting the FSC submission that the industry defines what monitoring means, with tangible examples.

Managing or supervising versus monitoring

We note that Section 446M(1A) could potentially be relied upon to justify a financial institution taking a more robust approach to non-advice intermediaries if appropriate and a less involved approach re financial-advice intermediaries, reflecting the fact that they are already regulated under the financial advice regime.

As such, we suggest some consideration around implementing a risk-based approach relevant to the proposed licensee. This could be implemented in the following situations:

i. intermediaries who have demonstrated compliance with fair conduct principles could be subject to monitoring
ii. intermediaries engaged in a one-off situation (or minimal use situation (definition could be number, or volume of funds), may be subject to a minimum level of monitoring. Where the level of involvement/engagement increases, the intermediary could be subject to a more rigorous investigation to ensure it complies with the spirit of the proposed licensee's compliance programme, its employees receive adequate training etc.
iii. If gaps are detected in monitoring, the intermediary could be subject to increased supervision.

We support ICNZ's proposal to hold collaborative industry consultation to determine what "monitoring" will look like in practice.

11. What standard do you think financial institutions should have to oversee their intermediaries to?

This should depend on the level of involvement the intermediary has with the proposed licensee, noting our comments around a risk-based assessment above.

12. Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?

No further comment.

13. How far do you think financial institutions' oversight of FSLAA intermediaries under Option 5 should extend? For example, should it cover the general conduct of the intermediaries, or more narrowly on product performance and related consumer outcomes (or something else)?

No comment.

14. Do you have any comments on the proposals regarding obligations in relation to employees and agents?

No comment.

15. Do you think there should be a distinction drawn between employees and agents? Why/why not?

Yes, as the legal requirements and rights attached to each role are different, as is the employers' likely oversight capability. We also note and agree with ICNZ's comments that a distinction would allow for a targeted approach (if necessary).

16. Do you think any amendments should be made to the obligations in 446M(1) that would apply to employees and agents?

Please refer to comments above. We suggest two standards:

i. Manage/supervise employees.
ii. Monitor agents and intermediaries. We also suggest some consideration around procedures for dealing with misconduct for agents and intermediaries.

17. Do you have any other comments or viable proposals?

No comment.