Submission on discussion document: Insurance contract law review

Your name and organisation

Name	Anna Black
Organisation	Fidelity Life Assurance Company Limited

Fidelity Life is New Zealand's largest locally-owned life insurer providing insurance for individuals, businesses and employers. Our purpose is to protect New Zealanders' way of life.

New Zealand has one of the lowest penetration rates of life insurance in the developed world and only a third of Kiwis have life insurance cover. We want to reach out to more New Zealanders and encourage them to protect their way of life. To provide them with peace of mind when they need it most. In our last financial year, we paid out over $105 million in claims to our customers.

The life insurance industry is facing consolidation, regulatory and technological change. We support the review of insurance contract law and modernisation of insurance legislation.

The output of the review should be quality legislation that brings long term certainty and ensures fair, efficient and transparent outcomes. The review must also balance business and consumer expectations, and this is particularly important regarding the nature of insurance.

Fidelity Life is a specialist life insurer. Our response is in the life insurance context. Other types of insurance may be different.

Fidelity Life's response to the specific questions in the review follows.

Responses to discussion document questions

Regarding the objectives of the review

1 Are these the right objectives to have in mind?

Fidelity Life is a specialist life insurer. Our response is in the life insurance context. Other types of insurance may be different.

Fidelity Life supports the objectives of the review to promote a fair, efficient and transparent industry. The objectives are however largely based on the purposes of the Financial Markets Conduct Act 2013 (FMCA). It is our view that the objectives need to better acknowledge the unique characteristics of insurance. These characteristics are inherent in the nature of insurance contracts and how they are distributed.

- To provide life insurance, an insurer must be able to accurately price risk. To do this, it depends on information from the consumer. It must be able to rely on this

	information. Trust plays a key part in the provision of the service. The consumer has significantly more information about the risk that forms the basis of the insurance than the insurer. • A life insurance policy can be set up in a number of ways. Through underwriting individuals or groups of people or, without underwriting at application stage. • Life insurers can also be bound by the terms of their reinsurance cover which, require insurers to follow agreed processes and assess claims against the agreed policy wording. • Purchasing insurance can deal with people contemplating negative situations such as death and trauma, which people can be reluctant to consider on their own. Generally, distribution of insurance is supply driven.
2	Do you have alternative or additional suggestions?
	We support the modernisation of insurance legislation. The insurance sector is already subject to prudential regulation, by the Reserve Bank of New Zealand. If there is further regulation of insurance, it is our view that the regulator needs to have a sound understanding of insurance principles and the insurance industry. We support the proposed changes to the financial advice regime as set out in the Financial Services Legislation Amendment Bill (FSLAB) ensuring consumers' interests always come first.

Regarding disclosure obligations and remedies for non-disclosure

3	Are consumers aware of their duty of disclosure?
	Fidelity Life is in the business of paying claims. It is important to us that consumers understand the duty of disclosure. As an insurer we take steps to ensure that the duty of disclosure is made known to consumers. Getting accurate information from consumers is of utmost importance in the assessment of the risk for the insurance being applied for. Prominent and plain language warnings about the duty of disclosure are included in our: • Application forms (whether paper or electronic); • Policy wordings; and • Welcome letters. We also explain to consumers (in the above documents) that the same duty to disclose applies to those matters that occur: • after signing an application and before a contract of insurance commences; and • before applying for an increase or re-instatement of insurance. We distribute our insurance products through financial advisers who are independent of Fidelity Life and who help ensure that consumers are aware of the duty of disclosure.
4	Do consumers understand that their duty of disclosure goes beyond the questions that an insurer may ask?
	It is important to us to ensure that consumers have good information about the duty of disclosure. As discussed in our response to question 3, we have clear disclosure to enable

	consumers to understand their duty.
5	Can consumers accurately assess what a prudent underwriter considers to be a material risk?
	We believe consumers do understand that they need to tell us about the things that affect their health, well-being and lifestyle and are guided by a range of questions set out in our application forms. The questions in our application are designed to prompt consumers and give them the opportunity to disclose fully. The support of our application process and financial advisers helps consumers identify relevant information which is then considered by the insurer when assessing the risk that forms the basis of the insurance.
6	Do consumers understand the potential consequences of breaching their duty of disclosure?
	We clearly set out the consequences of failing to comply with the duty of disclosure in our application forms and policy wordings. Refer to our response to question 3 also.
7	Does the consumer always know more about their own risks than the insurer? In what circumstances might they not? How might advances in technology affect this?
	In almost all circumstances, consumers know more about the facts that affect their health, well-being and lifestyle than we do. Life insurers on the other hand have access to better statistical information about risks. We rely on consumers to provide accurate information about their health, well-being and life-style, so we can fairly consider how certain risks apply to a particular consumer. Most consumers are able to accurately access all material information about their health, well-being and life-style because they are telling us about their personal experiences of their own lives. If consumers provide insurers with the best information, it enables underwriting to be efficient. Consumers are required to disclose all material information (including medical information) in the application. Life insurers then decide, based on these disclosures, if they need to undertake further investigation, such as collecting and reviewing medical records that relate directly to something the consumer disclosed. Life insurers do not, as a matter of course, collect all of a consumer's medical records at the underwriting stage. Even if a consumer discloses a health issue, the life insurer may decide it does not need to investigate further, such as if the disclosure on face value is for a non-material issue or the consumer has stated that the issue is in the past and they have fully recovered. If life insurers were expected to access all medical records at the underwriting stage it would increase the cost for all policyholders. The benefit of this increased cost would accrue only to the very few consumers who currently may withhold material information. Further, the Privacy Commissioner's report stated that the practice of insurers collecting full medical notes for a specified number of years should occur in limited situations.[1] Our response to this question is based on underwritten cover. This means the consumer is required to complete an application where they disclose their health, well-being, lifestyle and other personal information to the insurer. Based on these responses, the insurer decides whether to offer the cover the consumer has asked for and on what terms, such as the premium and whether to require exclusions or special terms. Any legislative changes need to be technology neutral and consider privacy implications.

[1] Collection of medical notes by insurers - Inquiry by the Privacy Commissioner, June 2009.

8	Are there examples where breach of the duty of disclosure has led to disproportionate consequences for the consumer? Please give specific examples if you are aware of them.
	We are not aware of any examples where breach of the duty of disclosure has led to disproportionate consequences. While on the face of it there can sometimes be very unfortunate circumstances, it is not fair to all the other policyholders who provided full material disclosure if we accept claims by a consumer we wouldn't have insured, because the disclosing policyholders will have to bear the cost in doing so. Further, all life insurers are bound by the terms of their reinsurance cover only to accept certain risks and only to pay valid claims. Licensed insurers are also required to carry on business in a prudent manner[2] which includes balancing risk and costs to ensure that business is sufficiently funded. Consumers can also make complaints through our internal Complaints Process or escalate complaints through our external Dispute Resolution Scheme (the Insurance & Financial Services Ombudsman Scheme (IFSO)).
9	Should unintentional non-disclosure (i.e. a mistake or ignorance) be treated differently from intentional non-disclosure (i.e. fraud)? If so, how could this practically be done?
	Our key concern regarding non-disclosure is to protect our company and our policyholders from the risk that we accept a policyholder who we should not have accepted, or on terms (including premiums) we should not have. Taking away the ability of life insurers to avoid a deliberate or reckless non-disclosure would significantly impact the pricing and availability of insurance in the New Zealand market. It is for the life insurer to decide if a consumer's non-disclosure was unintentional or intentional based on the particular circumstances, our investigation of the facts, and our experience. If the law is changed to differentiate between unintentional and intentional non-disclosure, we expect that there will be an increase in disputed claims and claims litigation, at extra cost to consumers.
10	Should the remedy available to the insurer be more proportionate to the harm suffered by the insurer?
	Life insurers need to be able to discourage deliberate or fraudulent non-disclosure or misrepresentation. The harm of non-disclosure is suffered by other policyholders who will bear the cost, through increased premiums. It is also important to note that life insurance policies are not generally yearly renewable policies where the risk can be reassessed on a yearly basis. This means that disclosure at the beginning of the contract is more important and can have an impact on a policy many years later. In addition to clarifying remedies, this review should recommend what happens to premiums when there has been a non-disclosure. In our view, where there is a deliberate or reckless disclosure, the insurer should be entitled to keep the premium. This is because when the fraud becomes known, the insurer will have altered its position on the basis of the insurance contract. For example, it will have paid reinsurance premiums. There are public policy grounds for encouraging careful disclosure and for deterring reckless or deliberate non-disclosure.

[2] Insurance (Prudential Supervision) Act 2010, sections 19 and 20

11	Should non-disclosure be treated differently from misrepresentation?
	The duty of disclosure and the duty not to misrepresent information are two aspects of the duty of utmost good faith. Utmost good faith is about the ability of the consumer to provide accurate information to the insurer, so that the insurer can assess the risk. There are no grounds to treat disclosure and misrepresentation differently, as both relate to acts of the consumer which prevent the insurer accurately assessing the risk. We understand that the reason behind modification of the law relating to misrepresentations by the Insurance Law Reform Act 1977 was because of concern about the widespread use of the "basis of the contract" clause. These clauses allowed an insurer to treat its obligations as discharged by a misrepresentation which was not material to the risk. Accordingly, the law for misrepresentation and non-disclosure are separate because of legislative response to a specific problem that related only to written misrepresentations. Any review that has in scope how insurers receive information from consumers should consider both written and verbal misrepresentations as well as non-disclosure. If there is any modification of the law it is important that the existing remedies for non-disclosure and misrepresentation are available.
12	Should different classes of insureds (e.g. businesses, consumers, local government etc.) be treated differently? Why or why not?
	Any definitions need to be considered for consistency with those set out in FMCA.
13	In your experience, do insurers typically choose to avoid claims when they discover that an insured has not disclosed something? Or do they treat non-disclosure on a case-by-case basis?
	We are in the business of paying claims. We also want the best possible outcome for our consumers especially in their time of need. Not paying claims leads to a lack of consumer confidence and ultimately to negative commercial outcomes for our business. Please also refer to our response to question 8 and 14.
14	What factors does an insurer take into account when responding to instances of non-disclosure? Does this process vary to that taken in response to instances where the insurer discovers the insured has misrepresented information?
	When responding to an instance of non-disclosure, we keep in mind our overarching purpose, that we are in the business of paying claims and that we always try to pay a claim if it is fair to other policyholders. We review a wide range of information and also take into account the following factors: • Whether the non-disclosure would have affected the underwriter's decision at the time of assessing the application; • The circumstances of the non-disclosure; • The terms of our reinsurance agreements.

Regarding conduct and supervision

15	What do you think fair treatment looks like from both an insurer's and consumer's

	perspective? What behaviours and obligations should each party have during the lifecycle of an insurance contract that would constitute fair treatment?
	At Fidelity Life, our purpose is to protect New Zealanders' way of life. Good conduct is about doing the right thing by all stakeholders including customers, employees, shareholders and the public and ensuring good customer outcomes. We are in the business of paying claims and we must do this in a way that balances the interests of all policyholders. Fair treatment in providing life insurance is about ensuring consumers are accurately assessed for the risk that they pose and are not impacted by those consumers where disclosure has not been adequate. We want to ensure that everyone is paying premiums based on their level of risk. In doing so, we try to balance the risk, making it fairer for all our customers. Our framework of governance and business processes ensures that consumers are adequately covered and fairly treated during the life cycle of a life insurance product. This framework ensures that we are designing suitable products, underwriting risk and handling claims and complaints fairly. We are also committed to consumers being able to access independent financial advice. We also offer a 14-day free look period for all policyholders which allows them to cancel their contract of insurance during this time for any reason with all premiums refunded.
16	To what extent is the gap between ICP 19 and the status quo in New Zealand (as identified by the IMF) a concern?
	Although life insurers are not regulated by one industry regulator, there is a network of regulation that controls every aspect of an insurers business. For example, life insurers are regulated: ○ As a licenced insurer by the Reserve Bank of New Zealand; ○ By the Commerce Commission (see for example, recent action taken again Youii for the mis-selling of insurance policies[3]); ○ As a financial service provider by the Financial Markets Authority, particularly by Part 2 of the Financial Markets Conduct Act 2013; ○ By Financial Markets Authority guidance including the Conduct Guide[4] As noted above we have governance and business processes in place to ensure fair treatment of consumers and ensure that any perceived lack of regulatory oversight does not pose a material risk to consumers. We also support the proposed changes in FSLAB to create a financial advice model where consumers interests are required to always come first.
17	Does the lack of oversight over the full insurance policy 'lifecycle' pose a significant risk to purchasers of insurance?
	Please refer to our responses to questions 15 and 16. We are in the business of paying claims, committed to ensuring that consumers' interests come first and that they have access to independent financial advice.

[3] http://www.comcom.govt.nz/the-commission/media-centre/media-releases/2016/youi-insurance-fined-320000-for-misleading-sales-techniques

[4] https://fma.govt.nz/assets/Consultations/160728-A-guide-to-the-FMAs-view-of-conduct.pdf

18	What has your experience been of the claims handling process? Please comment particularly on:
	• timeliness the information from the claims handler about:
	  ○ timeframes and updates on timeframes
	  ○ reasons for declining the claim (if relevant)
	  ○ how you can complain if declined
	• The handling of complaints (if relevant)

	The purpose of our business is to pay claims. We have a Claims Management framework in place to ensure that claims are managed appropriately, including, • ensuring our employees are appropriately trained and educated; • that we have review processes and committees in place; • that expert advice is sought when necessary; and • and that audits of claims files and process are carried out to ensure that claims are being handled appropriately. Premiums are set based on the expectation that only claims that fall within the policy terms and conditions of cover will be paid. Prudential management requires us to not pay claims that do not meet these terms and conditions, so that funds are available to pay claims that do. Where a claim is not within the terms and conditions of a policy our reinsurance arrangements also restricts our ability to pay the claim. Where a consumer is not happy with any outcome, they can make a complaint through our internal Complaints Process. If a consumer does not feel that their complaint has been resolved they can also escalate the complaint through our external Dispute Resolution Scheme (IFSO), and have any decision reviewed. We engage with the Dispute Resolution Scheme to try and find an acceptable solution for the consumer.
19	Have you ever felt pressured to accept an offer of settlement from an insurance company? If so, please provide specific examples.
	In our experience, only in rare circumstances would a claim go to court. In such circumstances, Fidelity Life is represented by external lawyers who are bound by professional conduct rules preventing them from pressuring consumers to accept offers. Generally, consumers, are also represented by their own lawyers who should further protect them from any pressure to settle a claim.
20	When purchasing (or considering the purchase of) insurance, have you been subject to 'pressure sales' tactics?
	As a life insurance product provider, we predominantly distribute our insurance products through financial advisers who are independent of Fidelity Life. We have distribution agreements in place with independent financial advisers who are expected to comply with the law. The proposed changes in FLSAB will also require anyone who is providing financial advice to ensure the consumer's interest come first.
21	What evidence is there of insurers or insurance intermediaries mis-selling unsuitable

	insurance products in New Zealand?
	Fidelity Life's product governance ensures that our products are designed to be suitable for consumers. Products are developed using a significant amount of research, by people who have the appropriate skills and understanding, and with the appropriate level of review and oversight.
22	Are sales incentives causing poor outcomes for purchasers of insurance? Please provide examples if possible.
	There is an under-insurance problem in New Zealand and that financial advisers can play an important role in addressing this problem. It is important to note that insurance is largely supply driven. Consumers are not inclined to buy insurance as the benefit of insurance is not immediately obvious. Purchasing insurance deals with negative situations such as death and trauma which people are reluctant to consider on their own. As such, insurance is often distributed through financial advisers and there are various incentive models in place. We recognise that conflicts of interest may exist in all distribution channels. Fidelity Life expects the independent advisers who advise on our products to always put their customers' interests first and manage conflicts of interest. We also expect advisers to disclose remuneration and incentives in accordance with legislation and in a way that is clear and easy for customers to understand. We support the proposed changes in FSLAB will require that anyone giving financial advice, gives priority to the client's interests if there is a conflict of interest.
23	Does the insurance industry appropriately manage the conflicts of interest and possible flow on consequences that can be associated with sales incentives?
	At Fidelity Life we have processes in place to manage conflicts of interest and we focus on good customer outcomes. As discussed in our response to question 22, we acknowledge that conflicts of interest may exist in all distribution channels. The proposed changes in FSLAB and the disclosure requirements will help ensure consumers have the right information, at the right time, to make informed financial decisions.

Regarding exceptions from the Fair Trading Act's unfair contract terms provisions

24	Are you aware of instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for consumers? If so, please give examples.
	We are not aware of any instances where the current exceptions for insurance contracts from the unfair contract terms provisions under the Fair Trading Act are causing problems for consumers. Everything we do is about giving good outcomes for our policyholders. This includes ensuring that our contracts are well drafted and that our policyholders always receive insurance cover

	on terms that are fair and reasonable.
25	More generally, are there terms in insurance contracts that you consider to be unfair? If so, why do you consider them to be unfair?
	Insurance contracts are unique contracts that enable a consumer to transfer risk to an insurer for peace of mind. If the risk eventuates, the insurer will pay money to the consumer or to persons nominated by the consumer. These unique contracts depend upon: • Prudence - The insurer must carry on business in a prudent manner so that it is able to pay claims, even if a claim is not made for many years. • Trust – The insurer must trust the consumer to provide an accurate description of the risk; the consumer must trust that the insurer will be able to pay a claim. The exceptions in section 46L(4) are those terms that are reasonably necessary to protect the legitimate interests of the insurer. Without these exceptions there would be a risk that an insurer would have to establish at court, that the term is reasonably necessary to protect the insurer's legitimate interests. Acting prudently, an insurer must price the risk of the cost to defend its core policy terms. Accordingly, without these exceptions, insurance would be more expensive for consumers. We note that the unfair contract terms provisions of the Fair Trading Act only took effect relatively recently, on 17 March 2015. Sufficient time should be given to assess the effectiveness of the changes before further reviewing the legislation.
26	Why are each of the specific exceptions outlined in the Fair Trading Act needed in order to protect the "legitimate interests of the insurer"?
	The Fair Trading Act unfair contract terms provisions do not apply to any term in any standard form contract that is reasonably necessary to protect the legitimate interests of a contracting party. The Commerce Commission may apply to court seeking a declaration that a contract term is unfair. The court may not declare a term to be an unfair contract term to the extent that it: • Defines the main subject matter of the contract; or • Sets the upfront price payable under the contract. Upfront price means the consideration (including any consideration that is contingent upon the occurrence or non-occurrence of a particular event) payable under the contract, but only to the extent that the consideration is set out in a term that is transparent. • Is reasonably necessary to protect the legitimate interests of the party who would be advantage by the term. The following terms define the subject matter of the contract. For us, this means that they define the risk that is the core subject matter of the insurance contract or our ability to obtain information about the subject matter and to properly assess the risk: • A term that identifies the uncertain event or that otherwise specifies the subject matter insured or the risk insured against (s46L(4)(a)). • A term that specifies the sum or sums insured or assured (s46L(4)(b)). • A term that excludes or limits the liability of the insurer to indemnify the insured on the happening of certain events or on the existence of certain circumstances (s46L(4)(c)).

	• A term relating to the duty of utmost good faith that applies to parties to a contract of insurance (s46L(4)(f)). • A term specifying requirements for disclosure or relating to the effect of non-disclosure or misrepresentation, by the insured (s46L(4)(g)). A term that provides for the payment of the premium is a term that set the upfront price payable under the contract (s46L(4)(e)). A term that describes the basis on which claims may be settled or that specifies any contributory sum due from, or amount to be borne by, an insured in the event of a claim under the contract of insurance (s46L(4)(d)) is a term that is reasonably necessary to protect the legitimate interests of insurers.
27	What would the effect be if there were no exceptions? Please support your answer with evidence.
	Insurance business is based on actuarial science and statistical models. Insurers need to be able to assess risk with a degree of certainty to accurately price cover in a way that allows consumers to buy that cover. Without the exceptions, insurance cover would increase in cost as insurers would need to price in the risk that the fundamental nature of the insurance bargain could change. In some circumstances, this may make the insurance uneconomical for the consumer. Long term it may lead to a reduction in competition as less insurers could afford to operate in New Zealand which would ultimately lead to further under-insurance of New Zealanders. We would like to see more New Zealanders have access to financial advice and insurance protection, not less.

Regarding difficulties comparing and changing providers and policies

28	Is it difficult for consumers to find, understand and compare information about insurance policies and premiums? If so, why?
	Insurance policies can be long and sometimes complex. Financial advisers are often best placed to offer comparisons about insurance policy terms and conditions and premiums. Financial advisers can work closely with consumers to understand their needs and personal circumstances.
29	Does the level of information about insurance policies and premiums that consumers are able to access and assess differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	We have no comment as our experience is in providing life insurance.
30	What barriers exist that make it difficult for consumers to switch between providers?
	It can often be difficult for consumers to understand the implications of switching or terminating a life insurance policy, particularly if health issues have arisen since a policy was first issued. When applying for a new policy or switching to a new provider, further disclosures may be required and if so, this could mean higher premiums, insurance is issued on different terms with different benefits, or exclusions may apply. See also our response to question 28.

	The disclosure requirements in the new financial advice regime will help ensure consumers have the right information, at the right time, to make informed financial decisions.
31	Do these barriers to switching differ depending on the type of insurance? E.g. life, health, house and contents, car insurance etc.
	We have no comment as our experience is in providing life insurance.
32	What, if anything, should the government do to make it easier for consumers to access information on insurance policies, compare policies, make informed decisions and switch between providers?
	It is important that the government continues to recognise that the adviser model is a valuable one for consumers and we support a robust independent adviser channel. Financial advisers have a valuable and much needed role to play in ensuring consumers understand insurance, how it works and suitability. We support any initiatives to meaningfully improve the financial education of New Zealanders and to ensure that they understand the importance of being adequately protected in times of need. The disclosure requirements in the new financial advice regime will help ensure consumers have the right information, at the right time, to make informed financial decisions.

Regarding third party access to liability insurance monies

33	Do you agree that the operation of section 9 of the Law Reform Act 1936 (LRA) has caused problems in New Zealand?
	No comment
34	What are the most significant problems with the operation of section 9 of the LRA that any reform should address?
	No comment
35	What has been the consequence of the problems with section 9 of the LRA?
	No comment
36	If you agree that there are problems with section 9 of the LRA, what options should be considered to address them?
	No comment

Regarding failure to notify claims within time limits

37	Do you agree that the operation of section 9 of the Insurance Law Reform Act 1977 (ILRA) has caused problems for “claims made” policies in New Zealand?
	No comment

38	What has been the consequence of the problems with section 9 of the ILRA?
	No comment
39	If you agree that there are problems with section 9 of the ILRA, what options should be considered to address them?
	No comment

Regarding exclusions that have no causal link to loss

40	Do you consider the operation of section 11 of the Insurance Law Reform Act 1977 (ILRA) to be problematic? If so, why and what has been the consequence of this?
	No comment
41	The Law Commission proposed reform in relation to exclusions relating to the characteristics of the operator of a vehicle, aircraft or chattel; the geographic area in which the loss must occur; and whether a vehicle, aircraft or chattel was used for a commercial purpose. Do you agree that these are the areas where the operation of section 11 of the ILRA is problematic? Do you consider it to be problematic in any other areas?
	No comment
42	If you agree that there are problems with section 11 of the ILRA, what options should be considered to address them?
	No comment

Regarding registration of assignments of life insurance policies

43	Do you agree that the registration system for assignment of life insurance policies still requires reform?
	We agree that the current requirements for a valid transfer and mortgage of life insurance policies under Part 2 of the Life Insurance Act 1908 are out of date.
44	If you agree that there are problems with the registration system for assignment of life insurance policies, what options should be considered to address them?
	A simple process where a notice of assignment is sent to an insurer is more appropriate. Any process should not require any particular formality and be technology neutral.

Regarding responsibility for intermediaries' actions

45	Do you consider there to be problems with the current position in relation to whether an insurer or consumer bears the responsibility for an intermediary's failures? If possible, please

	give examples of situations where this has caused problems.
	Section 10 of the Insurance Law Reform Act 1977 can produce an unjust outcome for an insurer due to the wide drafting of section 10(3) which deems as agent of the insurer any person who receives *"from the insurer commission or other valuable consideration for such person's arranging, negotiating, soliciting, or procuring the contract of insurance".* Generally, section 10 needs updating as it was drafted prior to the Financial Advisers Act 2008. Any provisions regarding agency should be consistent with the financial advice regulatory regime.
46	If you consider there to be problems, are they related to who the intermediary is deemed to be an agent of? Or the lack of a requirement for the intermediary to disclose their agency status to the consumer? Or both?
	The problems with this provision are related to who the intermediary is deemed to be an agent of. Disclosure of the agency status to the consumer may provide a solution. Further consideration should be given as to whether this aspect of the regime should be consistent (or dealt with) in the new regime for financial advice (FSLAB).
47	If you consider there to be problems, what options should be considered to address them?
	See response to question 46.

Regarding insurance intermediaries – Deferral of payments / investment of money

48	Do you agree that the current position in relation to the deferral of payments of premiums by intermediaries has caused problems?
	No comment
49	If you agree that there are problems, what options should be considered to address them?
	Any regime should be equitable, transparent and consistent with the broker provisions of the FSLAB.

Other miscellaneous questions

50	Are there any provisions in the six Acts under consideration that are redundant and should be repealed outright? If so, please explain why.
	No comment
51	Are there elements of the common law that would be useful to codify? If so, what are these and what are the pros and cons of codifying them?
	No comment

52	Are there other areas of law where the interface with insurance contract law needs to be considered? If so, please outline what these are and what the issues are.
	• Section 65(5) Administration Act 1969 provides that it is lawful on death of an insured person for a life insurer to make a payment to certain persons without requiring administration of the estate of the deceased person. The identity of the persons to whom the insurance monies can be paid are not clear from section 65(2) of the Act. To ensure that the insurer is paying a person lawfully, and to provide protection to the insurer from further claims, this could be simplified. • The law enabling life insurance for children needs to be reconsidered. In particular, the current limitations on payment amounts in respect of death of minors, as set out in the Life Insurance Act 1908. Current limitations may not be enough to cover funeral costs. • Fidelity Life acknowledges that the recent changes introduced on 1 January 2018 by the Interest on Money Claims Act 2016 have improved the rate of interest payable on unclaimed life claims. However, the rate of interest awarded is significantly in excess of the rates that insurers can earn from prudentially sound investment on funds safely held in the statutory fund. The beneficiaries of the estate have failed to claim the monies which are invested with other policyholder funds in a statutory fund.
53	Is there anything further the government should consider when seeking to consolidate the six Acts into one?
	No comment

Other comments

	We welcome any other comments that you may have.
	No comment