

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?

Yes and No!

Hard for consumers to know where to seek financial advice

The fundamental premise that consumers go looking for financial advice is flawed. The reality is that the vast majority of engagements between advisers and consumers are initiated by the adviser. The reason that consumers do not go looking for advice is not that advice is hard to find, but rather that the majority of consumers do not even think about the possibility that they might need financial advice. In particular, in respect of life and health insurance, as there is no immediate gratification, consumers typically do not seek advice. Further, it has been suggested that people cannot conceive of the world without them alive in it... Probably the only times when the majority of consumers look to arrange life or health insurance is when it is mandated by a third party as a requirement for another transaction, e.g. a new mortgage; or when a close relative has died or had a serious illness or injury.

Financial advisers, insurers, banks and other service providers spend significant money each year on advertising their services or products. Any consumer looking for advice is almost bombarded with messages from the various service providers.

If there is confusion caused by the use of the words “authorised” and “registered” and “qualifying financial entity”, this would easily be resolved by discontinuing the use of the term “financial adviser” and substituting more descriptive terms for the various adviser types. E.g. investment adviser, life and health insurance adviser, fire and general insurance adviser, mortgage adviser, etc.

The use of the term “broker” in the regime is confusing. This confusion would be alleviated if the regime used “broker” to mean the same as is understood by everybody else! An insurance broker arranges insurance for the client and has the ability to place such business with a range of insurance companies. Similarly a mortgage broker deals with a range of providers.

The statement in the Options Paper that “feedback indicates that it is not widely known about or used by consumers” supports my view expressed in the first paragraph above. People don’t go looking for financial advice and for that reason are unaware of the FSPR. Further, the information on the FSPR it can hardly be described as “useful”.

Certain types of advice aren’t being provided

The second bullet point in this section of the Options Paper implies that the supposedly “advice gap” is caused by RFAs not “upgrading” to the AFA label. The paper then suggests that the more onerous compliance obligations imposed on AFAs is responsible for RFAs staying with that label. I suggest that the reality is that the

number of life and health insurance advisers, fire and general insurance advisers and mortgage advisers who had no interest whatever in becoming investment advisers, is the real reason for their staying with the RFA label.

Further on in the paper, it is suggested that there is a “status” associated with the AFA label and that changes proposed would give an enhanced “status” for RFAs to aim for. I suggest that the majority of RFAs are quite happy doing what they do and don’t need any illusory “status” conferred by the AFA label or the regime.

Consumers may be receiving advice from people without adequate knowledge, skills and competence levels.

Agree

Certain conflicts of interest may be leading to suboptimal outcomes for consumers

I strongly support the proposal that all advisers should be required to place consumers’ interests above their own.

The implication that remuneration by commissions is responsible for behaviour that is not in the consumer’s best interest is simplistic. The inescapable reality is that there are people with low ethical standards in every business or profession irrespective of how they are remunerated. The Ross case is graphic evidence of this.

The only problem in the life and health insurance space is the question of replacement of in force policies where such replacement is not demonstrably in the consumer’s best interest. This problem could easily be addressed by requiring an adviser who proposes to a consumer that an in force policy be replaced, present such advice in writing with a detailed comparison of the two products in support of the recommendation. Such detailed analysis has been part of our process for some years and we have experience of clients expressing their appreciation of the detail provided.

Appendix 1 contains a sample of our detailed analysis of two products.

Consumers don’t always understand the limitations of different types of advice.

Disclosure documents are, I suspect, a waste of time.

Our external disputes resolution service, the ISO has prescribed format for our mandatory Disclosure Document. It is a simple document that identifies the external disputes resolution service. In reality, it adds no value. This is evidenced by the fact that a very, very small proportion of complaints received by the ISO are about the activities of life and health insurance advisers or advisers in general.

In my practice we provide clients with a second Disclosure Document which spells out much more information that the client might find valuable. I am unsure whether either document is read. I have never had a client ask any question in a subsequent conversation about the content of a Disclosure Document.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
No comment

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?

My only concern is with option three - it is short on detail on how advisers would be authorised/selected to provide complex or high-risk services.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

I struggle to find any real or meaningful benefit to any participant or consumers.

5. Are there any other viable options? If so, please provide details.

No comment

4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?

It will not make any difference.

7. Should high-risk services be restricted to certain advisers? Why or why not?

In principle, this sounds like a good idea but without access to the detail, I do not believe that I can have a valid opinion.

Is it not just another degree of complexity that will add confusion rather than clarity?

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?

No comment

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?

No comment

10. How, if at all, should requirements differ between traditional and online financial advice?

There should be no difference

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?

No comment

4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?

The ethical obligation to put clients' interests first should apply to everyone giving advice.

There is no easy answer to the question of monitoring and enforcement. If the ethical obligation is enshrined in law, then routine monitoring by the FMA should uncover breaches. Further, advisers will encounter breaches and report them.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?

The "sales" concept will only serve to perpetuate the excesses of the QFE adviser system. It would remove any obligation of in the QFE organisation or adviser to put the client's best interests first. Accordingly, I am opposed to the whole idea of different rules for "sales" people.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?

There should be no legislative interference in contractual arrangements between product providers and advisers. There is no evidence to support the notion that what is termed 'conflicted remuneration' could be replaced with any other system without catastrophic consequences in a significant reduction in adviser numbers and thus a reduction in the availability of advice.

4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?

Establish a minimum standard of knowledge and skill that would be required to be demonstrated prior to a new entrant being granted registration. Allow life insurers and

mortgage providers to oversee the examination. Such examination should not be delegated to education service providers in any way shape or form.

This will have the effect of motivating the insurers and mortgage providers to ensure that applicants are appropriately trained to provide competent advice. New entrants could be required to work in an 'understudy' role for a period prior to registration. The danger of this is ensuring that the remuneration paid to them is fair to them and to the party paying them.

Option 3 under section 4.4 of the options paper raises a question of mandatory and structured CPD. This causes me some considerable concern as for some years now, I have not observed any CPD offered by any of the associations or education providers that would add value to my practice and my clients. Thus, my opinion is that mandating CPD would simply enhance the revenue creating opportunities for the associations and education service providers.

As far as insurance products are concerned, any CPD should address any new needs for the various covers that might arise all the products offered to meet those needs. Such CPD can best be provided by the insurance companies.

16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?

Yes, all advisers should be subject to minimum entry requirements, but these requirements will differ between the various disciplines involved. The entry-level for people giving insurance and mortgage advice should not be as onerous as for those giving investment and savings advice.

4.5 Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?

There could be benefits for advisers working in a corporate environment where the corporate entity could accept responsibility for the bureaucratic requirements imposed on advisers. However, entity licensing in the absence of adviser licensing would only perpetuate the unprofessional behaviour of many QFE advisers.

18. What suggestions do you have for the roles of different industry and regulatory bodies?

Associations should look to add value to their members. I would strongly oppose any attempt to make Association membership mandatory on advisers. Associations will earn the respect of their members by performing and adding value.

I should note that I am a past National President of the Life Underwriters Association

of New Zealand Inc, a predecessor association to the IFA, and past National VP of the Life Brokers Association Inc.

4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?

No comment

20. Would a common disclosure document for all advisers work in practice?

No comment

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?

In 47 years as a life insurance adviser I have never had a client or prospective client ask or express any concern about how I get paid.

Although not required to, I have disclosed the fact that I am paid by commission in my (voluntary) Disclosure Statement, and have never had any reaction to it.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?

No

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?

I see no reason for change.

24. Should professional indemnity insurance apply to all financial service providers?

No. Surely the decision to ensure is one that should be left to the individual adviser or business.

4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?

It is irrelevant. Consumers generally do not go looking for an adviser. Certainly in the life insurance space, the vast majority of engagements between advisers and consumers are adviser initiated.

The statement under option one on page 36 that claims that a portal with information for consumers would increase consumers' understanding of financial advice is nonsense. Such a portal would be an expensive white elephant. The very few consumers who go looking for advice might access such a portal, the vast majority who are introduced to an adviser and consent to an engagement, will not bother accessing such a portal.

26. What terminology do you think would be more meaningful to consumers?

I agree with the idea of renaming QFE advisers to identify their employer.

I believe that the category "registered financial adviser" should have the name changed to accurately reflect the work the adviser is competent to perform, e.g. Registered Life Insurance Broker, Registered Mortgage Broker, Registered Fire and General Insurance Broker, etc.

People providing sales only should be identified by the name of their employer the word salesman or saleswoman, e.g. ANZ Bank Salesman.

The term "Broker" should only be used with a descriptor that describes what product or service the individual offers, e.g. Stockbroker, Life Insurance Broker, etc.

4.9 Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?

"Financial advice" definition should be extended to include the work that insurance advisers do helping clients restructuring, altering and managing claims on their insurance products.

Exemptions from the application of the FA Act

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.

No comment.

Territorial scope

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?

30. No comment.

31. How can we better facilitate the export of New Zealand financial advice?

No comment.

The regulation of brokers and custodians

32. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?

No comment.

Chapter 5 – Potential packages of options

33. What are the costs and benefits of the packages of options described in this chapter?

Package 1, as the least intrusive, will be best for advisers and the industry. It will cost least for the negligible benefits to any party that it offers.

Package 2 will be expensive for the industry and will provide negligible benefits to consumers.

Package 3 will be best for QFEs and unscrupulous operators. It will add no value to consumers and in fact will increase the risk of consumers being sold inappropriate products.

34. How effective is each package in addressing the barriers described in Chapter 3?

None of the packages will address the suggested Barrier number one. It is not hard for consumers to know where to seek financial advice now.

None of the packages will address the suggested Barrier number two in the insurance space. Advice is available but people do not want to pay for it. Advisers cannot work for free. They need to feed their families.

All packages, by requiring a higher competency test on advisers giving advice on class II products might result in a reduction in the possibility that consumers may be receiving advice from people without adequate knowledge, skills and competence. I suggest that the number of advisers with inadequate knowledge and skills and competence is very small, but I do not object to a realistic entry bar for new people to the industry. Such bar must be set with reference to the industry, and not to education service providers who clearly have a vested interest.

Barrier number four: the issue of ensuring that advice is in the client's best interest will best be addressed by the ethical requirement - the fact that insurance and mortgage advisers are remunerated by commission is largely irrelevant. Clients do not

read Disclosure Statements and thus any disclosure of commissions is unlikely to be taken into account by clients. Irresponsible or unethical replacement of in force policies would be better addressed by requiring advice in writing with detailed comparison is of products.

35. What changes could be made to any of the packages to improve how its elements work together?
No comment.
36. Can you suggest any alternative packages of options that might work more effectively?
No comment.

Chapter 6 – Misuse of the Financial Service Providers Register

37. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
No Comment.
38. What option or combination of options do you prefer and why? What are the costs and benefits?
No comment.
39. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
The comment.
40. Would limiting public access to parts of the FSPR help reduce misuse?
No comment.

Demographics

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3. Are you providing this submission:
 As an individual
4. Please select if your submission contains confidential information:

I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE. No

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