Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

Submission on Options Paper

Chapter 3 – Barriers to achieving the outcomes

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

   Generally agree that the barriers identified in the options paper exist across the financial services industry for consumers but the extent of the barrier will depend upon the particular sector. In the insurance sector advisers are readily available and common used by both consumers and business.

   While there is a difference in the required competency between AFAs and RFAs, in the insurance sector, the lack of having a defined competency standard for RFA insurance advisers has not meant clients receive inadequate or inappropriate advice.

   While insurance advisers are usually remunerated by way of commission from the provider, insurance intermediaries already have obligations to act in the best interests of their clients. In the fire and general insurance the nature of the insurance covers (usually annual renewable covers) and consistent commission structures across insurers and products means changes to different insurers is motivated by the needs and interests of the client rather than the interests of the adviser in promoting a change.

   We agree that consumers do not understand the regulatory framework and distinctions between Category 1/Category 2 products, RFA/AFA/QFE, wholesale/retail and personalised/class advice which make the regime very complex.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

   No

Chapter 4 – Discrete elements

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

   Change is clearly necessary to the current restrictions on the provision of advice. Simplifying the regime and removal of the restrictions that apply between class and personalised advice and product categories is essential. Numerous definitions in the legislation have only confused the consumer or alienated them.

   Having all financial advisers subject to a relevant Code is essential to ensure appropriate ethical behaviour and client care. The Code should include minimum standards of competency.

While disclosure is part of the answer in reality it is not very effective. For it to be of value to consumers it needs to be clear, concise and effective. Disclosure is not only necessary for advice but also where a sales process applies. The distinction between sales and advice needs clarification.

Dispute resolution has proved to be a positive part of the regulatory regime and with a few minor changes should remain as a key component of the legislation.

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

Removing the numerous definitions around who can provide advice would reduce compliance costs on advisers, their business and therefore the consumer. Prescriptive regulation fails to provide efficient protection for consumers and introduces complexity which helps no one.

A Code for each sector of financial services would ensure a level playing field for all providing professional benchmarks for the advisers and certainty for consumer's expectations. The costs associated with producing a Code should not be great whereas the benefits for all parties are significant.

Disclosure is essential however it needs to be kept simple and relevant to the end user, the consumer. Simplicity and consistency in statements for all advisers will deliver a benefit to the consumer and should reduce cost.

Dispute resolution costs only apply directly to the adviser which is appropriate if the consumer is to have access to such services. Containing these costs is vital if they are not to feed through and impact consumers. An element of competition therefore in the provision of these services is helpful for all participants in financial services.

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 would make relevant advice easier to access for consumers with advisers simply being required to match advice to consumer's needs or demands. The boundaries as they currently stand are too complicated for advisers and consumers.

Removal of the distinction itself needs to be based on the underlying consumer demand and reflect that the advice can be tailored to meet the specific need of the consumer. Generally the distinction for insurance brokers is not an issue given the advice is usually personalised for the insurance buyer. A better distinction would be one based on sales vs advice.

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

Given that it is difficult to sustain a distinction between categorising some products as "high risk" and "low risk" (i.e. Category1 and Category 2); it would be difficult to sustain the need to create a subset of advisers for high risk or complex products. It would restrict access to only those who have met specific obligations and retain a layer of increased complexity for consumers who would need to know what type of adviser to see.

Creating a separate adviser category for high risk services negates the benefit of consolidating the current group of AFA/RFA/QFE advisers. If there is a competency obligation there is no need to distinguish between high and low risk advice. The adviser should only provide advice on areas in which they are competent.

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?

It depends on what additional compliance obligations apply if the net of retail consumers is widened under the Act. Generally in the insurance broking sector, the distinction is difficult to apply in practice as brokers provide advice to a range of customers both retail and wholesale.

The distinction is also largely irrelevant as disclosure is provided to all clients. If the compliance costs for RFA advisers were significantly increased as a result of the opt–in approach to being a wholesale client, then this may lead to increased costs to advisers and businesses.

4.2 Advice through technological channels

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

All sectors of advice within financial services should be subject to a relevant code with core standards common to all codes plus other standards specific to a sector.

Robo-advice is no exception, having a code which is adaptable would be beneficial. Compulsory PI insurance should be required as well as entity licensing where advice is being provided via a platform to ensure there is accountability and consumer protection and redress.

We support the requirement that the ethical obligation to put the consumer's interest first is extended to all financial advisers. This reflects the current obligation on insurance brokers who are acting as the agent of the client and not the agent of the product issuer.

In situations where the adviser is not acting in that role, it needs to be made clear that the adviser is not acting as an 'independent" adviser. This maybe in a situation where the adviser is acting as tied agent and only providing a product of a particular provider. In effect the adviser is acting as a distributor of product as part of a sales process rather than as a financial adviser.

The Code Committee should be given the task of producing the various versions of the code with a code for technological channels being one.

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

Ideally there should be little difference from a consumer perspective e.g. the consumer should have the same access to redress with all relevant code standards applicable.

One issue is whether the advice being offered is independent and based on the interest of client taking into account the client needs. Any limitations on the extent of the advice being given needs to be clearly spelt out to the customer, and the entity providing the advice must to be accountable for the advice.

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?

We support the requirement that all sectors of advice within financial services should be subject to a relevant code. Core standards such as the ethical obligation to put the consumer's interest first must be common to all codes with other specific standards added for each sector.

The client first obligation reflects the current position for insurance brokers who are acting as the agent of the client and not the agent of the product issuer. IBANZ already has a code which resembles the AFA Code.

In situations where the adviser is not acting in that role, it needs to be made clear that the adviser is not acting as an 'independent" adviser. This maybe in a situation where the adviser is acting as tied agent and only providing a product of a particular provider. In effect the adviser is acting as a distributor of product as part of a sales process rather than as a financial adviser.

The Code Committee should be given the task of producing the various versions of the code. The obligation should be monitored and enforced by the regulator under its powers in the Act with customers able to seek redress via the external dispute resolution scheme of the adviser.

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

It is the consumers view of what they receive which is important. As we have seen with the existing legislation a definition imposed through legislation does not connect with the average consumer.

At the moment financial products can be sold as incidental services and not subject to the FAA. In those situations customers would generally understand that it is purely a sales transaction and financial advice is not being given. An example of that is the sale of travel insurance by a travel agent. Customers understand that the insurance is being sold as part of the travel services and that the product being sold to them while suitable for their purposes is not being personalised for their needs or that there is a choice of provider.

However when a customer is dealing with a financial service provider the lines between sales and advice can become blurred and the expectation of the consumer is likely to be different. Because the definition of financial advice is so wide it captures the sales process for financial products and as a result consumers may believe that their best interests are being taken into account.

While we recognise there is a distinction between sales and advice, if such a distinction is to be recognised under the FAA, consumers need to be made aware not only that it is a sales transaction but the implications and limitation of that for them. In particular that the specific needs of the client have not been taken into account and that other products from other providers maybe available. Appropriate warnings to be provided to customers as part of the sales process.

Most importantly if a distinction is to be drawn between sales and advice, a clear exclusion would need to be applied to the definition of "financial advice". More importantly sales need to be subject to an obligation for the product to be suitable for the consumer.

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

We don't believe a ban on commissions (brokerage) or similar forms of "conflicted" remuneration should be imposed. Acting in the best interests of the client does not mean receiving commission from the product provider to distribute their products is in conflict with that ethical obligation.

The remuneration paid to the insurance broker reflects the advice being provided by the broker and the risk for that advice along with a range of other services which are undertaken for the benefit of the provider, including calculation and collection of premium and statutory levies, collection of information and assistance on claims.

If commissions were banned it would likely lead to underinsurance, reduction in advisers and access to advice for consumers. While disclosure is not the panacea for addressing adviser motivation, it at least informs consumers of those conflicts as part of their decision making process around purchasing a financial product.

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?

Currently there is a significant number of RFAs involved in insurance broking providing advice to clients on their insurance arrangements. While we realise a balance needs to be struck between increasing the competency standard and costs being appropriate to the benefits for consumers, the requirement to have a minimum qualification as a measure of competence would be a significant burden and cost to RFAs and employer organisations. The likely consequence is the reduction in the number of advisers and or the increased cost of advice to consumers.

The issue with competency of RFAs is how to measure it; setting a minimum qualification does not prove competency. Ongoing competency, as distinct from having a minimum entry level requirement, is best addressed through continuing professional development.

Through having a Code the standard for ongoing development can be addressed. The current AFA requirements for continuing professional development seem reasonable although we would advocate having an annual requirement with some flexibility is better than a requirement over two years.

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?

Having a stepped pathway for new advisers as suggested in Option 2 would enable employers to take on new advisers and provide a career pathway which is attractive to potential entrants to financial services.

However there are a large number of existing advisers who will see no benefit in undertaking an entry level qualification. This would be irrelevant, time consuming, costly and likely to result in a loss of experienced advisers to the industry thereby reducing access for consumers to quality advice.

Appropriate transitional arrangements should be considered for those who are already experienced and competent.

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?

The insurance broking market consists mainly of RFAs working for companies rather than self-employed advisers

For the larger companies the existing regime of registering a large number of RFAs is a cumbersome exercise and doesn't recognise that the organisation is responsible for the advice and compliance obligations of its advisers.

However the QFE model equally doesn't work for these organisations whose advisers are providing advice and services to customers using a number of product providers.

A hybrid model that acknowledges the role of the company but also the individual adviser's obligations would be the best outcome for consumers and adviser businesses.

All advisers whether individually licensed or not should have obligations under a code. However because of the great variety of business models for advisers within financial services each of the different sectors will have different requirements for a code.

Thus there should be a number of versions of the code with some areas such as ethical behaviour common to all plus specific standards in each version relevant to the sector to which it applies.

In our view there are two obvious downsides to entity licensing:

i) The lack of individual accountability for advisers. What would prevent an unethical adviser moving from company to company without being held accountable?

ii) A considerable, and at this stage undefined, increase in compliance and therefore cost to the entity. While a large corporate may have the resources to at least handle the compliance obligations most of our members are small entities which lack the resource to cope with additional compliance. The end result will be either a loss of these businesses or increased costs to consumer, both of which are contrary to the desired outcomes of this legislation.

In fact we would argue that entities are already managing client obligations, they have to if they are to survive as a business. These are business risks already manged by the entity; there is no reason to turn them into regulatory risks as well.

If there is a justification for introducing entity licensing then the evidence would be visible in the dispute resolution. The low level issues reported from the schemes and their ability to resolve any issues which arise clearly indicates a lack of evidence to support a change to entity licensing.

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

In developing specific code standards for a sector, such as competency standards, professional associations such as IBANZ can be a valuable resource for the Code Committee. While the Committee should continue to have ultimate responsibility for producing a code there is an opportunity for professional associations from specific sectors to be involved thus ensuring relevancy.

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?

    A standard and consistent format for all advisers. Consistency via a prescribed format to improved consistency of information being disclosed and to provide easier comparability for consumers.

    Disclosure statements need to be short and cover only information that is relevant to a consumer and delivered in a way that they can understand.

    Disclosure should be provided prior to the engagement of the adviser and updated if the details of the adviser change.

    The adviser or the employing organisation should be able to provide disclosure via website or by link to a website. Online statements are actually more beneficial to most consumers as they can be accessed at any time, much easier than having to dig out a paper statement when needed when it may have been received months earlier.

    The logical location for online statements would be as part of the FSPR.

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

    Yes provided required general forms of disclosure on key areas such as products/services provided, how the adviser is remunerated and other arrangements with providers and experience or qualifications.

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

    Given that the actual remuneration of an adviser in general insurance will depend upon the final decision of the client in terms of the products purchased or product supplier, it is therefore only possible to disclose the method of adviser remuneration in advance of giving advice. The method is normally by way of brokerage (commission) and / or a fee.

4.7 Dispute resolution

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

    From the experience of our members there is no evidence that having multiple schemes has led to poor outcomes for consumers. Having choice promotes delivery of service and cost effectiveness to the scheme member and consumers.

    Maintaining a public register of advisers and dispute schemes provides consumers with information on which dispute scheme applies for the adviser. From our experience and that of our members there is little evidence of “scheme hopping” to gain some commercial benefit. In fact due to the membership rules, notice requirements and need to change disclosure statements, the ability of members to change schemes easily is significantly reduced.

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?

Not necessarily. Given there is now a consistency in the cap this addresses the main area which was initially seen to be providing some competitive advantage. We don't have any information or experience that suggests having a consistency of rules and processes would provide a better outcome for scheme participants or consumers. Schemes should be free to allow innovation in the way they improve their service to consumers and advisers.

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

We have some bias in this matter given our members act as insurance brokers to a range of professional advisory firms and individuals and would benefit from advocating some form of compulsory professional indemnity insurance.

However as professional advisers in this area we believe maintaining some form of professional indemnity insurance is an integral risk management tool to protect both the consumer from bad advice and protect the adviser's ability to continue in business. It is usually an expected requirement of any regulated advisory industry that its participants maintain a level of professional indemnity insurance as a consequence of licencing.

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)?

A combination of both government, through the likes of the FSPR and FMA, and industry bodies in terms of what services its members provide to consumers

The FSPR should be an important source of information on advisers. Unfortunately it does not provide sufficient relevant information to guide a consumer in their search for an appropriate financial adviser. The current register needs to be upgraded to provide this service if it is to have any relevancy or value for the consumer or indeed the financial service industry.

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

Current distinctions between personalised and class advice, and between types of advisers (registered vs authorised), and types of products are technical and confusing for consumers and are seen as barriers to consumers.

One area which has caused confusion for our members and the public is the term "broking services" as our members and the public equate this with insurance broking services which are the intermediary services we provide rather the specific services of handling client premium.

Attending to these distinctions and perhaps renaming terms such as "broking services" would assist but needs to be in conjunction with information that would enable consumers to understand what an adviser is and where and how to find access to advice. There is no advantage in renaming professionals or the service they provided if it does not reflect the terminology used by the public.

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'?

    The current definition is wide and captures the sales process for products and services. If the sales were to be distinguished from advice, it still needs to be regulated as a financial service and subject to its own specific obligations for consumers.

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?

    No comment

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

    No comment

The regulation of brokers and custodians

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

    See comments above relating to the use of this term. In terms of current exemption for client funds in the Insurance Intermediaries Act we believe this should continue as it provides appropriate protection for insurance monies held by insurance brokers on behalf of clients.

Chapter 5 – Potential packages of options

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

    No comment

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

    No comment

34. What changes could be made to any of the packages to improve how its elements work together?

    No comment

35. Can you suggest any alternative packages of options that might work more effectively?

    IBANZ has chosen not to specifically address any of the packages as we believe none of these are suitable final structure. We have instead focused on the discrete elements which are relevant to the general insurance broking sector.

    In our view there are some key decisions which need to be made before any overall package can be proposed. Of the three options prosed in the paper the second makes the most sense however as we say first the elements need to be addressed.

    IBANZ would hope that we can continue the dialogue with MBIE on a final package after all the submissions have been reviewed and final elements are being combined into an overall package.

Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    No comment

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    No comment

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    No comment

39. 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
   ☒On behalf of an organisation
   (Describe the nature and size of the organisation here)

4. Please select if your submission contains confidential information:

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Reason: N/A