Your Name

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Your organisation

Chris MacKay Financial Planning Ltd

Which overarching duties should and should not be included in the regime? Are there other duties that should be considered?

1. All six options are appropriate

Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration?

2. No answer

Is a code of practice required to provide greater certainty about what each overarching duty means in practice?

3. Yes, why not?

Which options for improving product design do you prefer and why?

4. I think you need to be careful about even thinking of banning or stopping the distribution of specific products. This would be "nanny state" legislation.

Here's an idea. Companies would have to provide not only their financial strength rating, but also what percentage of claims to premiums they paid out in the last year and over the past three years for any particular product. Industry averages could also be included. They could have an FMA "risk" type indicator included. For example, a 10% claims pay-out ratio would get one out of ten (poor value for money). A 50% would be 8/10 (very good value for money).

If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why

5. There are too many "fish hooks" with this option. However, maybe manufacturers and distributors should be "encouraged" rather than "required" to identify the intended audience for products.

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

6. Firstly, full marks for not considering a total ban on commissions. If you did institute this communistic anti free market directive, you would kill the insurance industry in NZ and as you so rightly say, financial advice would become more expensive and difficult to obtain for the average [and less well-off] consumer.

Under #162, you suggest that financial institutions …[pay] the servicing on trail commissions to the adviser that is providing the advice, rather than locking this to the original adviser. This is not as straightforward as it might seem. Renewal commission is not necessarily servicing commission. I'll give you an example. One company we deal with will pay an upfront commission of 165% plus ongoing renewal commission of 4%. Alternatively, advisers could opt for 85% upfront plus 20% ongoing, or 145% plus 7% ongoing or 125% plus 12% ongoing, or 110% plus 15% ongoing. The ongoing renewal commission is not servicing commission but instead is deferred upfront commission. Perhaps only half of the base 4% is actually servicing commission. It would be criminal if a regulator required that the ongoing commissions be automatically transferred to a new "servicing" adviser without a number of requirements including payment. Most companies we deal with will facilitate a transfer of renewal rights to a new adviser assuming a confirmation of purchase of the renewal rights by payment to the originating or current adviser. Where there can be problems, are when the originating adviser or current owner of the renewals, refuses to sell. Perhaps there could be some rules around compulsion, including some workable formulae for calculation of the payment price. I'm sure the industry itself could come up with a suitable remedy if encouraged by the regulators. Without a prudent solution in place however, allowing a new adviser to steal an existing adviser's renewal stream simply by having a letter of appointment signed by the client is analogous to a communist government nationalising/ stealing an industry. Think of Russia, Cuba or Venezuela more recently.

To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use

7. If you truly want sustainability of the insurance industry and of independent financial advisers

(assuming you don’t want banks being the only place where kiwis can buy KiwiSavers, investments and insurance), then you need to let the market set the remuneration structures. If commission is too high, then the companies will become uncompetitive, and policies won’t be sold. If it’s too low, then advisers won’t promote it. You will now already have a good idea on average Life insurance commissions. Our firm – comprising five AFAs and six administration staff – is comfortable with upfronts of around 150 to 160 percent and ongoing renewals of around 20%. Medical insurance for our firm tends to be around 30% upfront and around 15% renewal. We can live with the latter as the process involving fact finding, recommendation of solutions and implementation for Medical insurance takes a lot less than for the process of arranging Life, Trauma, Disablement and Income Protection insurance, and which therefore requires a far greater upfront commission to fairly compensate financial advisers for their expertise, experience and time.
The Australian model is completely flawed. If you want to ruin the life insurance industry in NZ, bring in a similar regime. Insurance sales in Australia have already dropped as a result. “If regulators want an indication of what might happen if they regulate insurance adviser commissions, they could look to Australia. Over the Tasman, regulators have capped commission for life insurance policies at 80% of the first year’s premiums as of January 1 last year, dropping to 70% from this January and 60% from January 1, 2020. Data by DEXX&R shows that preceded a major fall in the amount of individual lump sum – death, TPD and trauma – was at its lowest level in five years.” (Retrieved from https://www.goodreturns.co.nz/article/976514388/aussie-new-insurance-business-falls-after-commission-capped.html). If you did the same in NZ, independent financial advisers will get out of the business. New advisers won’t be able to enter. The very potential customers you are hoping to protect will end up being unable to afford the additional fees that independent financial advisers would have to charge on top of any commission received in order to run sustainable and profitable businesses. Don’t fix what isn’t broken. The current system has worked well for over 150 years.
As far as “soft” commissions are concerned, it seems that your concerns are bad customer outcomes and mis-selling. You could fix the problem relating to “churning“ if any churned or replacement sale was excluded from any calculation in meeting “soft” commissions target figures. Simple. Furthermore, by way of example, is it wrong if a hard-working adviser, in addition to a normal work day, goes out every evening to see prospective clients and because of the additional sales generated, qualifies to go to a conference in Queenstown? Are you trying to stymie productivity and free enterprise? A South Island adviser recently told me that he had done exactly this in order to qualify for a conference. He was experienced, already profitable and didn’t need the commissions to survive in business, but he was working extra-long hours to make the cut off. Show me how this is creating bad customer outcomes. As someone who has been going to financial advice conferences for over 40 years, some subsidised, some not, some onshore, some offshore, I can advise you of the huge advantages one receives from attending these conferences in being able to network, “pick brains”, develop professionally, become more educated and become a better financial adviser for the benefit of my clients.
Personally, I’m past being productive enough to qualify for “soft” commission conferences, but I believe you are being heavy handed in banning them outright for the next wave of young financial advisers.
As far as placing a duty on manufacturers to take reasonable steps to ensure the sales of its products are being likely to lead to good customer outcomes, I agree.
Advisers should be accredited in the various products available to be sold. This happens already. Product providers should not be required to audit advisers; however, some organisations like one I belong to (Plus4) have an audit mechanism whereby Statements and Records of Advice are periodically audited by an independent and approved third party. Our firm also is required by the FMA to have an AML/CFT audit every two years.
If advisers had to provide an independent audit report once a year or every two years to the various providers, those providers could be assured that good customer outcomes were being achieved. Likewise, continuing professional development records could go to the providers or they could form part of the audit. Some providers already require proof of Professional Indemnity cover and of advisers’ disputes resolution schemes. The audit could cover these too.
In conclusion, I have had over 42 years in providing financial advice. I have generally experienced a fair, timely and transparent claims’ handling process. I calculate that my firm has been instrumental in paying out tens of millions of dollars in Medical, Life, Disablement, Trauma and Income Protection

claims. This is what we are in business to do. Occasionally, I have needed to "go into bat" for my clients when I think they are not being treated fairly, but this is the exception. I would have thought that "good customer outcomes" with relation to life insurance (and its related products) would mean that if there's a claim, then it's going to be paid. One of the CEOs from a company we deal with told me recently that 98% of all claims made to them are paid. I would have thought that this indicated "great customer outcomes". You need to be mindful of the fact that according to the FSC, approximately $1.3 billion was paid out in "Life" insurance related claims last year. This is approximately 50 per cent of premiums received. Independent financial advisers created much of this money – cash available at a time when kiwis needed it the most. This cash also prevents these same kiwis becoming a burden on the state.
What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?
8. This question seems to be more directed to the general insurance industry. In my 42-year experience with the mainstream Life insurers, I have generally experienced fair, timely and transparent claims handling.
If a duty to ensure claims handling is fair, timely and transparent were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean?
9. By all means.
What is your feedback on requiring the settlement of claims within a set time?
10. Makes sense.
Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?
no answer
What is your feedback on the option to require banks and insurers to obtain a conduct licence?
no answer
What is your feedback on the option which discusses a broad range of regulatory tools?
no answer
Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties?
no answer
What is your feedback on the option of executive accountability?
no answer
What is your feedback on the whistleblowing option?
no answer
What is your feedback on the option of regular reporting on the industry?
no answer
What is your feedback on the role of industry bodies?
no answer
What is your feedback on the options regarding who the conduct regime should apply to?
no answer
Your email address
Privacy of natural persons
In what capacity are you making this submission?
business
Can we include your name or other personal information in any information about submissions that we may publish?
yes
We intend to upload submissions to our website Can we include your submission on the website?
yes
You may ask us to keep your submission, or parts of your submission, confidential If so, you'll need to attach reasons and grounds under the Official Information Act 1982 for consideration

no