Questions

Options for overarching duties

Section 3.2 of the Options Paper discusses a number of options for overarching duties.

Question 1

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

All of the duties have a place, but it will be critical how these are introduced and managed to easily achieve the practical outcomes desired.

In particular:

Do you agree with the pros and cons of each duty?

At the base level, these duties seem appropriate, but it is the interpretation and implementation of the duties that carries the risk of missing the mark.

Do you have any estimates of the size of the costs and benefits of these options? No

Are there other impacts that are not identified?

is it premature to be introducing a new range of measures without having allowed sufficient time for all of the other industries changes to have an impact?. It could be prudent to allow these to have an impact first before creating another layer of obligations.

Over-regulating runs the risk of pushing independence out of the market and creating barriers to entry for new players that ultimately could undermine the access to financial advice for New Zealanders.

We would also ask you to be mindful that intermediated financial advice needs to be sustainable.

Question 2

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?

We consider that a general overarching duty would be appropriate so that it aligns with Code standard 2 of the code of professional conduct for financial advisers. Limiting the duty solely to conflicts of remuneration creates a two-tier level of obligation within an organisation , one for Adviser behaviour and one for the rest of the non-adviser organisation, and therefore creates complexities and paramountcy of different regimes at the juncture of the two codes

In particular:

What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives? Examples include:

1. Enterprise-wide conflict between shareholders and clients.

2. Delaying of, or outright blocking of third party requests to a product provider for information about clients
3. A product provider refusing to action requests because they do not use a “specific company form or format”
4. Conflict created if product providers look through to Advisers and exert their market power through pressure by providers:
    a. Having too much oversight of independent advisers that can offer many alternatives
    b. Terminating, or threatening to terminate supply of products to Advisers by refusing to offer supply to Advisers who do not place a certain level of business through that provider within a timeframe. For example, some mortgage Advisers may be cut off by a particular product provider if they have not placed a minimum level of business with that product provider

Question 3

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

More detail can assist until it becomes too directive and reduces the abilities of entities to deliver practical outcomes to clients.

Options to improve product design

Section 3.3 of the Options Paper presents some options to improve product design.

Question 4

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

No option identified on its own will solve the current problem. It will need a combination of options that should focus on “suitability” from a design perspective (possibly with guidance from a product manufacturer) rather than targeting advice at distribution stage, particularly because financial advisers are already regulated when giving advice.

In particular:

Do you agree with the pros and cons of the options? Largely, yes. This implies that one option would suffice, whereas the options each have a place in the timeline of the product development and can work together. Having awareness of the product option requirements may assist to improve targeting clients, but the downside is that while this can be used as a broad measure people don’t always fit in a box. Designers don’t think the same as the people who interface with the clients.

Banning products removes all choice but there does need to be some control on product designers to design products that work as intended. Mobile phone insurance is an example of a product that is poorly understood and is sold, rather than purchased. The product is pushed (often by direct staff that don’t understand the insurance industry) without any understanding of the overlap of cover with existing personal or business insurance. Customers may feel pressured to buy something that they don’t understand and may duplicate something they are already covered for.

Are there other impacts that are not identified?

Product providers reaching through to intermediated advisers at distribution stage can create more conflict of interest.

Are there other options that should be considered?

Yes, increasing the requirements around products features, in particular the limitations and who the product is not designed for and any legislative warning requirements. This could be achieved with guidance notes for the use of the product.

Do you have any estimates of the size of the costs and benefits of the options? No.

Question 5

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.

Most of the problem products identified in this paper are not those offered by mainstream intermediated financial advisers but are in-house products.

Option 3 falls outside of just product design and impacts on distribution, and at distribution stage, where advice is given, the FSLAA rules already largely apply.

Options to improve product distribution

Section 3.4 of the options paper discusses options to improve product distribution.

Question 6

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

Option 1 combined with option 5 is the preferred approach. Many of these products by their nature are "sold", not "bought". Product distribution should be able to reward success to recruit and retain skilled personnel provided that the remuneration and rewards promote good customer outcomes (or do this could be better expressed as not detracting from good customer outcomes). We do not favour a prescribed approach but instead prefer a general obligation. We would not be opposed to ceasing lifetime vesting for new contracts, with a sunset date on existing contracts.

Option 2 is very specific and bans target-based remuneration and incentives, including soft dollar commissions. This is a step too far. Soft-dollar commissions have already been deleted in relation to targets. They should not prohibit, for example, being taken out for dinner. Materiality should be applied. The focus should be to ensure only that the reward is not enough to create a conflict of interest, and that is achieved with option 1 and option 5.

Option 3 only relates to in-house sales and it could assist with in-house product sales, but this is very prescriptive, could have unintended consequences and could equally be achieved more broadly with option 1 and option 5.

Option 4 imposes parameters around the structure of commissions. Commissions are not the problem and actually have many benefits in providing access to advice for clients who would otherwise not be able to receive it. There is a significant cost to run an advice business. High upfront commissions do not lead to churn. Restricting commission rates or imposing caps will quickly reduce access to financial advice for consumers. There is no opposition to prohibiting tiered commission structures (linked to volumes) as they could be perceived to create a conflict of interest.

In particular:

Do you agree with the pros and cons of the options? Largely ,yes.

Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models?

This may impact on having and monitoring staff KPIs.

NZ has a high level of self-employed distribution that carry the financial risk of non-remuneration in their business risk and also offer many functions for no extra cost to the consumer , which at times is client critical. Any changes that reduced income flows, would affect the consumer, when at times they are at their most vulnerable and least able to pay.

Removing sales incentives completely will likely result in less access to financial products than currently. Clients do not generally seek out insurance to protect their financial futures, and if someone is not incentivised to get a client to think about the issue, there will be a corresponding drop in the level of private insurance and an increased reliance on the State.

The concept of insurance is a societal and socialist pooling of risk to create affordability and protection to many people, who without insurance may face financial uncertainty

The commission structure is an extension of that, in that the quantum of income allows advisers to look after many people who, in isolation may not pay their way and would not be economic to deliver a service to

Reducing the commission levels overseas has not seen a reduction in insurance costs to the end consumer, it has merely increased the profitability to the providers and moved the client relationship to that of non-advised. A flow on is that as less insurance is sold, iNsurers exit the market and the competitive nature of the remaining insurers reduces , the end consumer has less choice and possibly higher pricing

Are there other options that should be considered?

Yes, having a materiality clause should be considered. This area has come under scrutiny and, in particular, soft-dollar commissions. The results are now starting to be more apparent (in particular intermediated distribution) and there needs to be more time to allow these changes to impact.

Previous publications have found that soft dollar incentives in NZ have a minimal impact on client outcomes (when looked at as a total) and when the providers stop paying soft dollar, is there any direct correlation back to consumer benefit?

Do you have any estimates of the size of the costs and benefits of the options?

No.

Question 7

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

In particular:

What are common structures, average amounts of remuneration/commissions, qualifying criteria etc.?

Common structures for product types:

1. Home Loans: Most of the work is at the time of initiating the loan so product providers tend to have a set approach (either all upfront commission with no ongoing service commission but possibly a small refix fee contribution, or a lower upfront commission with an ongoing service commission to reflect the advice that will be required throughout the life cycle of the loan as clients need advice to refix or restructure).
2. Fire and General Insurance: This is commonly a set percentage (differs based on the type of cover – e.g. lower for vehicle insurance than property and liability insurance) that is the same for a new client compared with retaining an existing client. There is not a great incentive to go and find new clients, but rather a focus on retaining existing clients. There is an incentive to deal with larger clients with multiple products rather than smaller clients with one product (e.g. one vehicle to insure) which potentially reduces the availability of advice for smaller clients who may be the least sophisticated and most in need of advice.
3. Life insurance: This is a combination of higher upfronts to levelled trail over extended periods. There is a 24 month period where income is at risk if the client cancels or reduces the product. There has been a voluntary movement to more level commission income. There is an increase in adviser numbers on wages (and therefore increased financial costs/risk at business level)

Persistency measures may affect the ability for advisers to continue advising on a client's product (potentially conflict of interests between product provider and Adviser/client relationships, in particular advisers that have choice of product provider for the client and where product providers are not offering market competitive solutions).

Intermediaries are facing increasing business costs (including compliance), and reducing commissions has an immediate impact, which cannot necessarily be matched by reducing operating expenses.

Options relating specifically to insurance claims

Section 3.5 of the options paper discusses options relating specifically to insurance claims.

Question 8

What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent?

In particular:

Do you agree with the pros and cons? Overall, yes, we do agree with the pros and cons. A general duty has the advantage that it works equally well for different types of insurance (e.g. Life, income, trauma, home, vehicle, travel etc). It will constrain insurers from taking advantage of clients suffering under financial duress where they may be currently motivated to accept a cash settlement that is less than what their entitlements are under a policy, often without advice from an intermediary. This is not isolated to Fire and Genral insurance claims

Are there other impacts that are not identified?

Are there other options that should be considered?

Will this duty be based on EQC and other like organisations?

Do you have any estimates of the size of the costs and benefits of this option?

No.

Question 9

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?

In particular:

Why? Why not? Yes,

these are subjective terms and they leave room for considerable argument. However, clarification can become too prescriptive and then require increased exceptions. This area could be treated in commercial capacity, such as individual entity values-based statement thereby using consistent positive client outcomes as a point of difference

What are the benefits and costs of doing so?

The benefit is it creates a benchmark and awareness of conduct.

Question 10

What is your feedback on requiring the settlement of claims within a set time?

This needs the reasonableness test, set times do not consider external parties that are outside an insurer's control, such as local/central government bodies or actions, or lack of professional resources such as architects etc, nor in times of common losses such as flood.

A set time period may be too generous for some types of claim, the advantage of a general obligation is that it creates a pressure on product providers to settle the claim in a reasonable timeframe relative to the situation.

In particular:

Are there other impacts that are not identified?

Advisers play a large role in advocating for clients at claim time, which helps to reduce the power imbalance between insurers and clients. Insurers should have a requirement to give information to Advisers so they can work in their client's interest for a good outcome.

How do you think that exceptions should be designed?

Should there be different time requirements for different types of insurance? This would be very complex and could leave room for misjudging the timeframe (too short or too long) and undermine the very purpose or encouraging a shorter timeframe for settling the claim.

Do you have any estimates of the size of the costs and benefits of this option?

See above

Options for tools to ensure compliance

Section 3.6 of the options paper contains options to contribute to the effectiveness of new conduct obligations.

Question 11

Do you agree with the option to empower and resource the FMA to monitor and enforce compliance?

In particular:

Do you agree with the pros and cons? Yes

Are there other impacts that are not identified?

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of the options?

Question 12

What is your feedback on the option to require banks and insurers to obtain a conduct licence?

In particular:

Do you agree with the pros and cons? Yes, in particular, a conduct licence could be meaningless for the reasons outlined in the paper.

Are there other impacts that are not identified?

Are there other options that should be considered?

Align the requirements with the existing Licencing regime to create a subset and avoid complexities.

Do you have any estimates of the size of the costs and benefits of the options?

Question 13

What is your feedback on the option which discusses a broad range of regulatory tools?

In particular:

Licencing is the entry to the game; the broad range of tools is the policing of the game and are therefore targeting different areas, a range of measures may be more appropriate

Do you agree with the pros and cons?

Are there other impacts that are not identified?

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of the options?

Question 14

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?

In particular:

Is there a case for making the penalties higher?

Alignment reduces complexity and another set of rules

Alternatively, if a penalty is intended to deter a behaviour, then it needs to be proportionate to the offender's ability to pay (a set $ penalty may not hurt a large provider, but seriously punish a small provider).

Question 15

What is your feedback on the option of executive accountability?

In particular:

How do you legislate for executive ignorance via things such as large corporates that have multiple layers and each layer has an incentive to potentially minimise negative news by filtering, so that ultimately the executive board is ignorant of the operational activities of its management and staff?

Do you agree with the pros and cons?

Are there other impacts that are not identified?

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of the options?

Question 16

What is your feedback on the whistleblowing option?

In particular:

Do you agree with the pros and cons?

Are there other impacts that are not identified?

Are there other options that should be considered?

NZ corporate culture does not encourage whistle-blowing. Whistle-blowers face challenges, in particular, where the whole entity has an inherent culture that can lead to conflicted outcomes.

Whistle blowers face power inequality in the areas of legal and financial strength and bullying. They can face financial and emotional ruin.

Do you have any estimates of the size of the costs and benefits of the options?

No.

Question 17

What is your feedback on the option of regular reporting on the industry?

In particular:

Do you agree with the pros and cons?

Current publications focus on the negative components of the industry (and in reality, the exceptions to the rule, such as a claim not paid). Including Publishing data in a more positive light could help to increase the confidence of consumers in NZ financial services, which is one of the broad objectives of the RBNZ and FMA. It could also encourage consumers to take an increased interest in this area.

Are there other impacts that are not identified?

If the data released new information about the individual entities, it may improve information and increase transparency for the front line intermediaries who offer choice and increase independence of advice in NZ by helping advisers be better informed about the financial entities, in particular client outcomes as often final client outcomes are many years down the track from the initial advice.

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of the options?

Question 18

What is your feedback on the role of industry bodies?

In particular:

Do you agree with the pros and cons?

Are there other impacts that are not identified?

The FSLAA is yet to play out and it will have an impact on the number and makeup of the bodies. It would be useful to revisit this area once the industry has had time to adjust.

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of the options?

Who should the conduct regulation apply to?

Part 4 of the options paper discusses who the proposed options might apply to.

Question 19

What is your feedback on the options regarding who the conduct regime should apply to?

Apply preferred package of options to all those financial services providers that offer similar services to banks and insurers. It needs to apply broadly to create a level playing field.

In particular:

Do you agree with the pros and cons of the options?

Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions?

Are there other options that should be considered?

Do you have any estimates of the size of the costs and benefits of these options?

Which options do you prefer and why?

Your details

Your name: Privacy of natural persons

Your organisation: The AMP Advisers and Adviser Businesses Association

Your email address

In what capacity are you making this submission?

Industry group

Use and release of information

The Privacy Act 1993 applies to submissions. You may choose how your personal information is used.

Unless otherwise requested, we may also share submissions received with relevant government agencies such as the Financial Markets Authority.

Can we include your name or other personal information in any information about submissions that we may publish?

No, don't include my name or other personal information

We intend to upload submissions to our website. Can we include your submission on the website?

Yes, you can publish my submission on the website under the The AMP Advisers and Adviser Businesses Association

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, I do not wish for my submission to be kept confidential