

18 June 2021

Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington

By email: financialconduct@mbie.govt.nz

SUBMISSION on "Regulations to support the new regime for the conduct of financial institutions" discussion document

1. Introduction

Thank you for the opportunity to make a submission on the "Regulations to support the new regime for the conduct of financial institutions" discussion document. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to advocating on behalf of New Zealand consumers. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. General comments

Consumer NZ strongly supports the introduction of regulations for the new financial institution conduct regime. Our answers to selected questions from the discussion document are set out below.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

Aneise Gawn
Consumer Advocate

Q1: Do you have any comments on the status quo i.e. no further regulations to support the minimum requirements for fair conduct programmes in the Bill?

We strongly oppose maintaining the status quo. Evidence shows financial institutions have inadequate systems to identify, manage and remedy conduct issues. This has resulted in a real risk of serious misconduct, as well as numerous incidents of actual misconduct.

Although the Bill goes some way to address conduct issues in the industry, we do not believe it will be sufficient by itself. Financial institutions are likely to narrowly interpret their obligations under the legislation, resulting in outcomes for consumers continuing to be poor.

Without requirements in regulations, financial institutions are also likely to adopt varying approaches to their fair conduct programmes. We consider this will undermine the intent of the legislation to improve conduct in the market and ensure fair treatment for customers of these institutions.

We therefore support the introduction of regulations to better protect consumers and give financial institutions direction on what is expected of them.

Q3: Do you have any comments on the proposals regarding distribution of relevant services and associated products?

We support the proposals regarding distribution of relevant services and associated products. Specifying this information in regulations will help ensure consumers' interests are taken into account during the design and distribution phase. Regulations will also help to prevent the sale of poor value products.

Q6: Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?

We support the proposal to specify further minimum requirements regarding remediation of issues. We're particularly concerned that institutions are using confidentiality agreements to resolve issues, requesting individual customers sign these agreements and waive their rights to take further action.

We've had recent cases where customers have complained about being mis-sold products and been offered a settlement on the proviso they sign a non-disclosure agreement. We believe these agreements are being used by institutions to mask problems and discourage customers raising issues publicly.

Q5: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bb) to (bd)?

Please see our submission on the treatment of intermediaries discussion document.

Q7: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(be)?

The obligation on financial institutions to design and manage incentives to avoid their actual or potential adverse effects on consumers will be an improvement on the status quo. However, we remain concerned about conflicted remuneration and the fact financial institutions will still be able to offer remuneration and incentives not linked to sales volume or value. See our answers to the questions in part 3.

Q8: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?

We do not consider an over-arching obligation on financial institutions to communicate in a clear, concise and effective manner will be sufficient. We continue to receive

complaints about the way in which financial institutions communicate with consumers and consider regulations will be needed.

In respect of insurance products, for example, we consider there should be requirements for insurers to provide simplified policy summaries, outlining key cover.

Without this sort of detail specified in regulations, we are concerned financial institutions will continue to communicate with consumers in ways that do not provide them with the information they require to make informed decisions. Clear information is essential to minimise the risk of products being mis-sold.

Q9: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?

In our view, further guidance is required about what a regular review would entail. For example, is it a review every three months or every three years? We consider financial institutions should have to review the effectiveness of their programmes at least annually.

Q10: Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?

We support the introduction of further obligations regarding handling of consumer complaints. In particular, we support obligations requiring financial institutions to:

- deal with complaints in a fair, timely and transparent manner
- keep thorough records of all complaints and any action taken in relation to them
- communicate the progress and outcomes of complaints in a clear, concise, timely and effective manner.

However, it is not sufficient to just require financial institutions to have systems and procedures in place to identify trends in complaints. The financial institutions must take appropriate action to remedy any issues identified by the trends.

We also agree that the term complaint should be defined. Often consumers will complain but their complaints are not always dealt with as such.

Q11: Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?

We support the proposal to specify further minimum requirements regarding claims handling and settlement. We receive frequent complaints about poorly handled complaints and settlements.

In a 2019 Consumer NZ survey, nearly a quarter of policyholders reported having a problem with their insurance company. The most common complaints were:

- having a claim unreasonably declined (25 percent)
- poor customer service (16 percent)
- expensive premiums (16 percent)
- feeling pressured to accept a settlement (11 percent)
- mistakes in processing a claim (seven percent)
- being sold an unsuitable policy (six percent)
- incorrect charges (five percent)
- having a policy cancelled (three percent).¹

Having specific regulations about claims handling and settlement would go some way to address these issues.

¹ Data are from a 2019 nationally representative survey of 1069 New Zealanders, aged 18 years and older.

Q13: Do you have any comments on the discussion regarding customer vulnerability?

We support introducing specific regulations regarding vulnerable consumers for the following reasons:

- we are not confident financial institutions will use a consumer vulnerability lens when considering their obligations under the regime,
- vulnerable consumers are at increased risk of suffering poor outcomes.

MBIE has acknowledged further guidance is required on the issue so we consider this guidance would be best set out in the regulations.

In the UK, the FCA Handbook requires firms to establish and implement clear, effective and appropriate policies and procedures to identify and protect vulnerable consumers. We'd like to see similar protections in New Zealand's regulations.

Q14: Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?

For the reasons outlined above, we support the option of including vulnerable consumers in section 446M(1A).

Q17: Do you have any comments on the status quo (no regulations)?

We do not support the status quo. Although banks and some insurers have taken steps to remove some incentive structures, they were not required to do this by law. If regulations are not introduced, we believe the problematic incentive structures will eventually be re-introduced.

As stated in previous submissions, our preference is for a ban on conflicted remuneration. However, given this approach has been ruled out, we support the introduction of further regulation to minimise the risk of consumer harm arising from conflicted remuneration.

Q18: Do you have any comments on the option to prohibit sales incentives based on volume or value targets?

In our view, this option is not broad enough on its own. It only addresses incentives based on volume and value targets. We remain concerned about conflicted remuneration and the risks this has for good consumer outcomes. We therefore consider the regulations should cover a wider range of sales incentives.

Q19: What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value-based targets?

We consider banning sales incentives will be positive for consumers and significantly reduce the risks of being sold poor value products.

Q20: Do you have any feedback on a more principle-based approach to prohibiting some incentives?

Our preference is for regulations to cover a broad of range of incentives to minimise the harm to consumers that arises from conflicted remuneration.

The UK and Dutch experiences show banning incentives has not led to access or availability problems in those jurisdictions.²

Q21: How could a more principles-based approach to prohibiting some incentives be made workable?

² https://www.beuc.eu/publications/beuc-x-2019-046_the_case_for_banning_commissions.pdf

We consider MBIE should review the experience of the UK and the Netherlands to see how those countries have made it workable.

Q23: Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.

A combination of the preferred approach and the alternative approach could be considered. That is, a ban on volume or value targets, together with a more general prohibition. We consider such an approach would be more effective than each approach alone.

Q24: Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e. allowed to be offered/given)?

No, we do not consider there is any justification for allowing particular volume or value targets.

Q25: Do you think there are any other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.

No. We disagree that linear sales incentives are less risky than targets. In our view, these incentives still create a conflict of interest that cannot be managed and should therefore be banned.

Q27: Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?

We agree regulations should apply to all staff and intermediaries. Our research indicates sales incentives paid to intermediaries are leading to poorer consumer outcomes.

Our satisfaction surveys show consumers who purchase insurance through a broker are significantly less likely to be satisfied with the service they get, compared with those who buy directly from an insurance company.

We have similar concerns about the mortgage broking industry. Our 2017 survey found only half (51 percent) of those who saw a broker in the past five years were very satisfied with the service they got. Only 48 percent were satisfied the broker acted in their best interests.³

If the regulations don't apply to all staff and intermediaries, financial institutions could easily find a way around the regulations.

Q28: Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?

We disagree that regulations should only apply to frontline staff and their managers for the reasons mentioned above.

Q29: Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?

We support the regulations applying to as broad a range of incentives as possible. We therefore support the regulations applying to both internal and external incentives.

Q30: Do you agree that both individual and collective incentives should be covered? Why/why not?

We agree both individual and collective incentives should be covered.

³ See <https://www.consumer.org.nz/articles/mortgage-brokers#article-commission-issues>

Q32: Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist consumers in their interactions with financial institutions?

Yes, we consider more detail is required to assist financial institutions to meet the requirement and to assist consumers in their interactions with financial institutions.

Q33: Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?

We support prescribing further minimum requirements. If the minimum requirements are not specified in the regulations, financial institutions will be left to set their own standards. This approach has failed consumers to date.

Prescribing further detail will ensure better consistency across financial institutions, provide better clarity for consumers, and ensure information is published in a form that is likely to be more accessible to consumers.

Q35: Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?

We support the proposal to declare contracts of insurance as financial products under Part 2.