

1 February 2022

The Manager
Advice and Investment Branch
Retirement, Advice and Investment Division
The Treasury
Langton Crescent
Parkes ACT 2600

Review of the quality of financial advice – Submission on Draft Terms of Reference

Dear Sir/Madam

I have reviewed the draft terms of reference with a view to identifying anything that may be relevant to the Review that is not referred to, may be overlooked or may be seen to be outside the terms of reference as drafted.

My perspective is one of a person whose career has embraced many aspects of financial services over a long period from both private sector and public sector experiences. In this context I have been deeply involved in a range of contemporary adviser issues including remuneration aspects of both life and general insurance.

My overall observation is that the terms of reference are broad and do not seem restrictive against the purpose described in Paragraph 1 but there are some points that I wish to make that may assist the drafting.

A. Disclosure

Paragraph 3.1.3 refers to “Financial advice disclosure requirements including statements of advice”. In my experience there is substantial evidence that disclosure on its own is often ineffective because the form of disclosure is not transparent and not visible to the consumer, whether that be the informed consumer or one who is not very familiar with financial services.

It would therefore be helpful to make reference to terms such as ‘transparency’ or ‘visibility’ in Paragraph 3.1.3.

B. Paragraphs 4.3 and 2

In paragraph 4.3, the reference to “level of demand for advice and the needs and preferences of consumers” seems to suggest that the anchor point here is the current level of demand, current needs and current preferences. It seems evident, however, that a wider interpretation is required because, for example –

- In life insurance, the LIF reforms were such as to reduce the initial commissions for many smaller and medium policies to such an extent that much of the demand seems to have disappeared. Therefore to look at the current demand, preferences and needs may overlook the social and
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economic desirability of making advice more readily available to what may be thought of as the middle market and the smaller end of the market.

Similarly, paragraph 2 might be expected also to refer to this point but as drafted it does not, i.e. it does not follow up the “affordable and accessible” point in Paragraph 1.

- The other side of these same LIF reforms to initial commissions has given added incentive to advisers to seek out the top end of the market because commissions at higher premium levels are lucrative. While affordability and accessibility may not be an issue at this end of the market, there is a question of conflict of interest – see further below.

C. Conflicts of interest

The only reference to conflicts of interest is in paragraph 3.1.6 which effectively nominates the legal definition in the Corporations Act of ‘conflicted remuneration’ and presumably also refers to ASIC’s guidance RG246 on such ‘conflicted remuneration’. This reference concerns only the existing legislation and guidance on conflicted remuneration and makes no reference to any wider questions of conflicts of interest.

It would be useful for the terms of reference to extend 3.1.6 in such a way as to ensure both that the existing definition and interpretation of conflicted remuneration remain appropriate and that wider questions of conflict of interest are explored. In the latter camp would be other forms of remuneration or of commercial connections among service providers that can or do create conflicts of interest which do not fall within the definition of conflicted remuneration and associated guidance, e.g. fees charged by or paid to intermediaries that are additional to commissions or fees and not paid by the product issuer but by another intermediary or service provider, or any fees or charges that are paid by the issuer but not classified or not disclosed as commissions and not transparent for the consumer.

It may be that these circumstances are already covered or intended to be covered under ASIC’s RG246. If they are, it suggests a need for revisiting the construction or the drafting of RG246.

The reference to exemptions to the ban on conflicted remuneration seems to suggest that the exemptions should either stay or go. It would be possible of course to modify the existing remuneration arrangements for life and/or general insurance in such a way that conflicts of interest are modified. In other words it may be useful to indicate that the choice of banning or allowing conflicted remuneration is not necessarily a binary choice and that there may be a case for continuing to exempt some ‘conflicted remuneration’, perhaps under conditions or according to concepts that the review might explore.

A related point is that commissions are generally thought of as payments that are a percentage of premiums such that the higher the premium, the higher the commission. That is not always the case, however, and with that in mind the question of conflict may revert solely to whether a payment made by the insurer instead of the customer constitutes a conflict of interest.

I therefore wish to recommend that 3.1.6 be extended in some way to ensure that it covers conflicts of interest more broadly than might be implied by the legislated term ‘conflicted remuneration’.

D. Process

Paragraph 6 states that “The review will be led by an independent reviewer supported by a secretariat based in Treasury.”

The review relates to many financial advice questions in three industries (investments, life insurance and general insurance). Noting the substantial scope and depth of the review,

- It would be helpful to understand whether “led by an independent reviewer” means that the review will be conducted by a single reviewer responsible on his or her own for the review or will be led by a single individual with another one or two or three members of a small team responsible for the review?
- Are we to presume that “based in Treasury” does not limit the secretariat to relying exclusively on Treasury personnel? If that is so, it might be useful for Paragraph 6 to make reference to potential access to external experts.

These two points are made not to call into question exactly how Treasury proposes to handle the review but to assure interested stakeholders that appropriate resources and expertise will be applied to the review.

Yours faithfully

John Trowbridge

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