FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Summary of key themes: Consultation on the proposed standard conditions for financial advice provider full licences and classes of financial advice service

Submissions – Part 2

15. Financial Advice New Zealand
16. Financial Services Complaints Limited
17. Financial Services Council of New Zealand
18. FINSIA
19. Finzo NZ Limited
20. Fisher Funds Management Limited
21. Forward Planning Limited
22. Full Balance
23. G3 Financial Freedom Limited
24. H W W Limited (Delray)
25. Health Service Welfare Society (Accuro)
26. IAG New Zealand Limited
27. Insurance & Financial Services Ombudsman Scheme
28. Insurance Brokers Association of New Zealand
29. Insurance Council of New Zealand

Return to FMA website: Consultation: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

Feedback to FMA: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

DATE:	7 AUGUST 2020
NAME OF SUBMITTER:	[redacted]
ENTITY:	FINANCIAL ADVICE NEW ZEALAND
ORGANISATION TYPE:	INCORPORATED SOCIETY WITH AROUND 1600 FINANCIAL ADVISER MEMBERS
CONTACT NAME:	[redacted]
CONTACT EMAIL	[redacted]
CONTACT PHONE:	[redacted]

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Condition 1: Record Keeping

4.1(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
Agree, with clarification.

We agree that good record keeping is an essential component of giving good advice and an area that the regulator should be requiring and monitoring.

We welcome the clear guidance on the timeframe records are required to be held for under this condition. However, there are some areas that we believe need to be enhanced/clarified in this licensing condition.

Adequate records - We note the use of the word "adequate records" without much explanation. Such an ambiguous term makes it more likely a FAP could inadvertently breach the condition, with the best of intentions. We would prefer clearer guidelines in this area to ensure the right records are being recorded from the start of the new regime.

Clarity of scope of records - The records referred to in the explanatory note to this condition are much wider than implied in the condition itself. We are concerned that FAPs will fail to see the extent of the scope and concentrate on client records. We believe this should be made clearer in the condition to avoid misunderstanding.

Pre-advice records - We seek clarification on the extent to which you need to keep client records about an interaction which did not progress to the advice stage.

4.1 (b) What written records do you currently keep for your financial advice business?

4.1 (c) Would the proposed standard condition create any additional compliance costs for your business?
Yes.

There will be additional costs of keeping all records for seven years, especially with the widened scope to include much more than the client records; website disclosures, collateral, social media posts etc. The additional costs include considerable staff time to carefully manage and log all these records across many channels to ensure they are captured at the right time, logged and made accessible within the timeframe required and for a rolling 7-year period.

4.1 (d) Would the proposed standard condition have any other adverse impact on your business?
No.

4.1 (e) Does this proposed standard condition create a barrier to enter the market?
No.

4.1 (f) Do you have any other comments on the proposed condition or how it is drafted?
Yes

Privacy - In general, privacy rules would appear to prohibit the sharing of this client information with the regulator unless explicitly authorised by the client. We encourage the regulator to take this into consideration in the final drafting of this condition and to include a requirement that the FAP ensures they have the client's permission to share this information if required.

Former client records - There are some difficult practicalities to consider around the 7-year requirement regarding customers moving between FAPs. The explanatory note says, “Records may be kept by another person … on your behalf providing you ensure that person complies with this condition and that you can retrieve the records if required”. From a practical perspective, it will be hard to maintain leverage with the purchaser of a client book to ensure this continues to happen over such a long timeframe. This condition will create new costs, and duplication across the sector, if every FAP that deals with a client has to keep their own copies of all the records even when a client has chosen to move their business and records to another provider.

Recommendation - An alternative approach, for licence condition purposes, would be to include in this condition a statement that the FAP purchasing a client must continue to keep the records on behalf of the previous FAP if they have been supplied this information at the time the policy/client was transferred.

Condition 2: Internal complaints process

4.2 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
Agree.

We agree that having a documented and followed internal complaints process is an appropriate condition for the regulator to require and monitor. It is also good business practice and it makes sense to bring all the components of the complaints process together.

4.2 (b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?
Not applicable.

4.2 (c) Would the proposed standard condition create any additional compliance costs for your business?
No

4.2 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
No

4.2 (e) Does this proposed standard condition create a barrier to enter the market?
No

4.2 (f) Do you have any other comments on the proposed condition or how it is drafted?
No

Condition 3 – Regulatory returns

4.3 (a) Do you agree or disagree with the proposed standard condition?
Agree.

This is a sensible and necessary standard to provide information to the regulator in a comparable and consistent way across the sector.

4.3 (b) Would the proposed standard condition create any additional compliance costs for your business?
Routine and high-level information will be readily available in most advice businesses without significant cost however it is difficult to comment precisely on cost without knowing the level of detail required.

4.3 (c) Would the proposed standard condition have any other adverse impact on your business?
No

4.3 (d) Does this proposed standard condition create a barrier to enter the market?
No

4.3 (e) Do you have any other comments on the proposed condition or how it is drafted?
We note and support the intention to consult further on the "Regulatory Return Framework and Methodology" which will set out the detail of the information required under this standard condition.

We note and support the intention that recurring regulatory returns will not be required within the first two years of the new regime.

Condition 4: Outsourcing

4.4 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
Disagree.

Whilst we agree all businesses should have a good degree of rigour around the selection and monitoring of their outsourcing providers, this licence requirement that FAPs must ensure these arrangements will meet their regulatory and legislative requirements at all times goes too far and we believe it is beyond the role of a regulator.

Regulatory stretch - This is a big reach into the ongoing business of a FAP and creates a new level of compliance for this sector far beyond other sectors' regulation and we believe extends the scope beyond the intention of the legislative framework. The obligation on the FAP should be to meet its obligations as set out in the Act and in any licence conditions and the regulator should not have oversight of the "how" this is achieved. The "how" is a commercial decision for the FAP to determine. We believe this whole condition should be removed.

Knowledge gap - One of the core purposes of outsourcing is to allow someone with more expertise or efficiency to manage a part of the business on your behalf. Outsourcing, in many cases, provides a better outcome to the consumer. This gap in expertise of the FAP (filled by the outsource partner) will often mean the FAP itself does not have the skills to monitor the ongoing performance of the outsourced provider to the degree required by this condition, particularly in specialty technical areas. We also question how the regulator would have the knowledge to assess and monitor compliance against this condition, except at the point of a failure.

4.4 (b) What core financial advice services do you currently outsource?

4.4 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
Yes.

The cost of policing a 3rd party provider to the level required and the cost of additional training to learn enough about the outsourced partner to be able to provide the level of oversight required.

4.4 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
Yes.

Retraining - For businesses who outsource for efficiency and effectiveness, this condition would require them to gain enough knowledge in that outsourced area to have the level of oversight required. Regardless of knowledge, it is an impossible goal to be 100% certain of the actions of another business.

Impact on commercial arrangements - In preparation and anticipation this proposed condition many product/supplier agreements are already requiring advice providers to attest they can meet this condition. The regulator's proposed condition is having an inappropriate and significant effect on the commercial arrangements between suppliers and FAPs.

4.4 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
Yes.

It requires another level of understanding required for new entrants to the market. They can no longer rely on outsourced partners. The level of oversight from the regulator, and proof that this is being performed, is likely to be a higher barrier than the general good business practice of managing an outsourced provider.

4.4 (f) Do you have any other comments on the proposed condition or how it is drafted?
Yes

Better clarity required - The current wording of the condition is too broad, and the explanatory notes and comments do not make it clear enough as to what "material" outsourcing agreements need to be covered by this condition. The gap between what is included "review of compliance processes" and "hosting of technology that supports digital advice" and what's not included "office cleaning" is too large, too simplistic, and doesn't give enough guidance on the middle areas.

Recommendation: We recommend this condition is removed. If this condition is retained, we strongly recommend the wording is changed from "**must** ensure" to "**take reasonable steps** to ensure". This would include having appropriate contracts in place, requiring reports on outages etc but not go as far as this proposed condition requires.

Condition 5: Professional indemnity insurance

4.5 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.
Disagree.

As an association representing 1,500 advisers, we support and encourage everyone to have Professional Liability insurance (we have a PI product available to members and are have developed a FAP PI offering) however we don't feel this condition is appropriate to have as a licence requirement and that it may have serious unintended consequences for the sector.

Regulatory stretch - We cannot see how the legislation which sits above these licence conditions provide the framework for requiring compulsory PI insurance.

Client compensation - Looking at the proposed condition and explanation, the FMA states "The purpose of this standard condition is to ensure that retail clients can be compensated for financial loss as a result of a breach of a professional duty by a financial advice provider and those they engage." We do not believe requiring PI insurance is the right mechanism to meet this purpose. PI insurance is for the defence and protection of the insured, which is the financial adviser, not the consumer. Therefore, under any circumstances, the consumer is not a party to the PI contract and cannot be regarded as either a claimant or a beneficiary to the contract. Whilst a PI policy does not directly compensate a consumer, it can provide indemnity to the adviser (or FAP in future) to settle a civil claim against them. However, policies do not generally include cover for dishonest fraudulent or criminal act or omissions. The mechanism in this condition doesn't achieve the purpose of the condition.

Price impact - In terms of unintended consequences, mandating PI insurance in a small market like New Zealand gives too much power to a small number of providers. Currently PI insurance is a competitive product with the product providers able to select and price risks. If everyone must have PI insurance as enforced through regulation, this could lead to rapidly rising premiums, hardening of underwriting or claims, or both. None of which benefits the consumer.

Perceived increased risk - We are concerned that the PI providers will see the mandating of PI by the regulator as an indication that there is new or increased risk in this sector under the new regime. This may amplify the supply side issues of providers choosing to reduce their risk in this market and/or increasing the pricing to compensate for new perceived risk.

Supply impact - As an industry we have no control over the provision of PI insurance, or how insurers are likely to behave in the future. The sector is already facing significant difficulty securing certainty for PI. The combination of uncertain regulatory and market environments could reduce the level of risk that providers are willing to tolerate. This has already happened - one of the largest Professional Indemnity Insurance providers recently announced their intention to exit the market later this year. Having this sector reliant on another sector to be able to operate is a dangerous position to be in.

Commercial impact - Finally, there is no precedent that we can see where such a commercial decision is stated in licensing conditions for an entire sector. This distorts the commercial environment and commercial decisions which determine both supply and demand in the marketplace.

4.5 (b) Do you currently hold professional indemnity insurance covering financial advice service activities?
Financial Advice NZ offers PI insurance to its members and has a FAP PI policy in preparation for the new regime. In addition, in most instances the market already requires PI as seen in contracts between product provider and advice businesses. There is no need for this to become a regulatory issue as it is already a market condition, where the market has considered it appropriate.

4.5 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.
Yes.

Price increases - In a hardening market we are concerned this may mean it becomes extremely hard to secure PI in the first instance, and with a limited number of providers the pricing for those that do secure a policy, will inevitably increase.

4.5 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
Yes.

The cost increase due to PI Insurance mandated through licensing may put pressure on the sustainability of business models and is likely to lead to a reduction in advice availability or a reduction in consumer choice.

Impact on FAP licence decision – Depending on the PI providers' market response, we believe this condition may impact advice business' decisions on whether they should gain their own licence – an unintended consequence. Firms may be forced away from their preferred business structure due to the impact of this condition. The following contrasting impacts may occur;

- ***Push to larger FAPs.*** Small firms who are concerned about the ability to gain suitable access to PI due to their small size and inability to negotiate acceptable terms and price may feel they need to not gain their own licence but instead join a larger FAP where they can be part of a wider group PI scheme. This reduces consumer choice.
- ***Push to smaller FAPs***. If the regulator is concerned about the adequateness of group schemes due to the size of their caps, or if a large FAP sees a large claim have an adverse effect on PI pricing and availability, firms may be forced to move back to smaller FAP structures to meet the regulator's licence condition.

4.5 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
Yes.

This proposed licence condition in this uncertain market for PI is likely to create a significant regulatory barrier for both new and existing adviser businesses. We have concerns about this condition stifling innovation in the sector and becoming a barrier to new firms – if firms cannot get PI insurance for new business models, they will not be able to operate. Especially in terms of new ways of providing advice that insurers are too risk averse to underwrite, simply because the approach has not been implemented.

4.5 (f) Do you have any other comments on the proposed condition or how it is drafted?
Yes
Inconsistency across licences: As we understand it, DIMS and MIS licences do NOT have PI insurance as a mandated requirement incorporated in their respective Standard Conditions. Instead, PI insurance is a minimum standard the licence applicants are required to show they meet. The applicants for the licence get an opportunity to explain to the regulator:

- Why they think they do not require PI cover (if this is the case); and
- Where they cannot get suitable PI cover, then they get the opportunity to explain the steps they took to try and get that cover.

Financial Advice providers are coming into the 'same' regime of the Financial Markets Conduct Act 2013 as the other licensed providers and we do not believe there is a reason to treat them differently and mandate PI for just this part of the sector.

Recommendation: We recommend this condition is removed. If this condition is retained, we believe this condition should be adjusted to relate to the intent more closely: a condition that requires a degree of financial adequacy for the licence holder. This condition could be satisfied through appropriate PI Insurance and/or through financial reports showing a strong balance sheet. This capital adequacy test is already used in other regulator licences, namely Discretionary investment management service (DIMS) or Managed investment scheme (MIS) licenses.

Condition 6: Business continuity and technology systems

4.6 (a) Do you agree or disagree with the proposed standard condition?
Disagree.

Having a good Business Continuity Plan (BCP), technology and cyber security strategies is good business practice which we support and encourage across the sector. However, we do not believe it should be condition of a licence to operate, as assessed by the regulator.

Regulatory Stretch - We cannot think of any other industry where 'best practice' around succession, security of information, and contingency planning is a legislated prerequisite for participation. This is an over-reach by the regulator into the commercial arrangements of the business.

Business Continuity - In a practical sense, how is the regulator going to assess and monitor each FAP's BCP plan to check appropriateness and compliance? This area is purely subjective. The regulator can only monitor failures, therefore having appropriate measures can only be viewed historically.

Technology Systems - Similarly, cyber security is often outsourced, for good reason and best efforts can still result in breaches which can be completely outside the scope of influence for a FAP. No check by the regulator is going to see this potential gap ahead of time.

Monitoring - Regardless of our view that monitoring this area of business is not the regulator's role, we do not see how the regulator could measure, assess, and monitor this condition.

4.6 (b) Do you currently have a documented business continuity plan?

4.6 (c) Do you currently rely on critical technology systems to deliver a financial advice service?

4.6 (d) Would the proposed standard condition create any additional compliance costs for your business?
Yes, this condition would increase the costs of compliance;

- Internally, to develop, monitor and test to the level required – and document that it has been done.
- 3rd parties will charge more for the additional proof and/or levels of service required to meet this condition

4.6 (e) Would the proposed standard condition have any other adverse impact on your business?
Yes.

Outside scope of influence - As an example, a failure of a major cloud provider – which is outside the control of a FAP – could cause an adverse report against this condition. If the cloud provider was hacked and data was accessed, what would this mean under this condition? What would that mean for a FAP's licence?

Commercial Impact - This proposed condition is already resulting in supplier agreements asking to see BCP plans. The snowball effect across to commercial agreements is significant.

4.6 (f) Does this proposed standard condition create a barrier to enter the market?
Yes.

We believe this condition would add unnecessary cost and complexity and become another barrier to gaining a licence and therefore a barrier to entry. A new entrant could outsource some of this planning function, but that too would have to be heavily monitored by the FAP to meet other proposed conditions.

4.6 (g) Do you have any other comments on the proposed condition or how it is drafted?
Yes

Timeframe - The 5-day notification period for cyber security breaches is too short. The first priority of the FAP should be to stop the breach and minimise the harm. For a major breach, it's unlikely five days would be enough time to have investigated the issue enough to be able to provide the FMA "details of the event, the impact on your financial advice service and clients, as well as your remediation activity".

Legislative crossover - This condition and its timeframes does not consider other legislative requirements, such as the mandatory reporting of a notifiable privacy breach under the Privacy Act 2020. The proposed condition, if retained, needs to be aligned to ensure there is no unnecessary duplication or and conflicting requirements to notify.

Recommendation - We recommend this condition is removed. If this condition stays, we strongly encourage the wording under technology systems to be changed from "**must at all times** ensure" to "**take reasonable steps** to ensure" and the timeframe for notification be extended.

Condition 7: Ongoing capability

4.7 (a) Do you agree or disagree with the proposed standard condition?
Agree

We agree in principle that all FAPs should have the obligation to continue to meet the eligibility criteria. However, as the Financial Advice Provider Licensing Application Guide has not yet been published, we cannot yet comment on the detailed requirements of this proposed standard.

4.7 (b) Would the proposed standard condition create any additional compliance costs for your business?
Not that we can see.

4.7 (c) Would the proposed standard condition have any other adverse impact on your business
No

4.7 (d) Does this proposed standard condition create a barrier to enter the market?
No

4.7 (e) Do you have any other comments on the proposed condition or how it is drafted?
We request consultation on the Financial Advice Provider Licensing Application Guide to ensure it does not introduce new requirements, or new level of requirements not previously consulted on.

Condition 8: Notification of material changes

4.8 (a) Do you agree or disagree with the proposed standard condition?
Agree.

We agree that the FMA should be notified of material changes to nature or manner, but we question the need for the notification to be within 10 days of the start of implementation.

Urgency questioned - As the notification is related to changes allowed within an existing licence, we do not see the immediate urgency of notification of changes. The purpose of the condition is noted as allowing the FMA to better understand the risk profile to allow appropriately monitoring efforts. We feel the notification time frame could be extended to 30 days without altering the intent of the condition.

4.8 (b) Would the proposed standard condition create any additional compliance costs for your business?
No.

4.8 (c) Would the proposed standard condition have any other adverse impact on your business?
No.

4.8 (d) Does this proposed standard condition create a barrier to enter the market?
No.

4.8 (e) Are there any other material matters other than those detailed in the explanatory note that should be notified to FMA?
No.

4.8 (f) Do you have any other comments on the proposed condition or how it is drafted?
Yes

We feel the term “commencing to implement” is subjective and should be better defined or worded. For example, if a firm’s material change was to “engage any nominated representatives to provide regulated financial advice on your behalf”, at which point is the “commencing to implement” clock started? It could be deemed as the day the nominated rep starts, or when the job ad was published, or even earlier when the FAP determined this was the approach they were going to take.

Financial advice provider full licence classes

4.9(a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes?
We support classes, but have concerns about other aspects of the proposed structure.

We support the idea of having different classes of licences at application stage as it recognises and allows for the different scale, structure, and complexity of financial services businesses.

Missing detail - In regards the classes, we question the purpose of the classifications as apart from the application itself, it appears there are no additional/reduced conditions proposed relative to each Class. Even the one-off application fees are not differentiated except for the expected time the application will take to complete. However, we do not yet have the detail of the Licence Application Guide which we hope will highlight the variation of review the regulator is looking at between the classes.

Query the need to be consumer facing
We question what purpose the publication of these classes is to the public. We do not see the need for this tiered system to be a public facing disclosure. It should instead be a condition on a FAP not to operate outside their licence class.

We believe the publishing of this information is likely to create public confusion. We are concerned that providing classes will create a view that there are three levels of FAP standard, service, scope, or quality – when that is not the case. All the licence conditions apply to all the licence classes.

The licence type only highlights the arrangements as to who can give advice, not what advice can be given, the scope of the advice or any measure of quality of advice. Therefore, there is no discernible difference for the consumer to understand in terms of what class the FAP licence falls under.

We want to encourage more people to seek out financial advice with the goal of increasing New Zealanders' financial health wealth and wellbeing and do not want a licence class to create a barrier.

Recommendation – We recommend the licence class is not publicly disclosed. If the public disclosure of the licence class is retained, we call for a better naming convention to ensure there is no unintended wrong messages being portrayed to the consumer. We cannot dismiss that in most people's eyes, "A" is better than "C". We support naming the Classes what they are, such as; Single adviser licence, Multi-adviser licence and Comprehensive licence. We believe this will reduce the chance of consumer misinterpretation and confusion.

4.9 (b) Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.
Not in itself but see our comments on 4.9(c).

4.9 (c) Do you have any other comments on the proposed full licence classes?
Restriction on Nominated Reps
We believe the restriction on nominated reps to Class C may have a negative effect on the sector's ability to encourage and sustain new financial advisers, and may restrict growth for small businesses. Given the commission-based nature of income in this sector, this proposed system forces either the

advice firm, or the adviser, to fund the cost of qualification of new advisers whilst not earning income.

This causes two issues in the market:

1. Cost of growth for businesses, particularly small firms
2. Barrier to entry for new advisers

Cost of growth - At present a small advice firm can employ an (unqualified) RFA to provide advice in certain areas. Currently, there is no barrier for an advice firm to grow.

Under the proposed licence class structure, a small advice firm that wants to grow has these options only:

- hire a fully qualified Financial Adviser, or
- hire a non-qualified adviser who cannot work with clients until they are qualified, or
- re-apply for a comprehensive Class C licence in order to hire a nominated representative. We do not feel Class C was not intended for small advice firms.

All of these option add significant new cost for a small business and will have the effect of stifling growth in an important sector of the industry.

Barrier to new advisers – Unlike many sectors, new entrants to this sector do not generally come from schools or other training institutions. Financial Advisers have often had other careers before choosing to work in this sector. This means they are older, and have the added costs that brings; family and mortgages. This proposal now means that unless they join a large firm with Class C status allowing nominated representatives, they are unlikely to gain employment in the sector unless they obtain the qualification first – without income. This restriction creates a barrier to transferring occupations and may reduce the inflow of people to the sector.

Recommendation - We propose an amendment whereby FAPs with Licence Classes A & B be permitted to apply to the regulator to be allowed a student adviser for a six-month period. This could be modelled on apprenticeship schemes seen in other sectors. The criteria could be:

- Proof of enrolment for the Level 5 course
- Be under active supervision of an experienced and qualified Financial Adviser
- Be limited in the scope of advice they can offer
- Requirement for full disclosure to the consumer
- Limited to a six-month period
- A FAP under Class A would need to apply for Class B once the Adviser was qualified

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6 August 2020

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To whom it may concern,

Feedback: Proposed standard conditions for financial advice provider full licenses and classes of financial adviser service

Thank you for the opportunity to provide submissions on the proposed full licensing conditions and classes of financial adviser service. Our submissions are informed by our experience investigating complaints across a broad spectrum of financial advice, services, and products. In the 2019/2020 year, FSCL formally investigated 298 complaints. Of the 298 complaints investigated 48 were about financial advice (encompassing complaints about insurance advisers, insurance brokers, mortgage brokers, and investment advisers).

1. Condition 1 – record keeping

1.1. In relation to the record keeping condition, we anticipate that many FAPs will be unsure about the extent to which the record keeping condition will apply. That is, they will be asking themselves to what extent financial advisers need to keep records of each step in the advice process.

1.2. It may be helpful to incorporate some guidance about the FMA's expectations, into the record keeping condition's explanatory note. Our understanding of the FMA's expectations are that, in practice, a licence holder needs to ensure that any financial adviser covered under their licence:

a) records all interactions between the adviser and the client, and

b) records enough information on the advice file to enable a third party to look at the file and determine how and why the financial adviser made the recommendations they did.

1.3. This means that records of all emails and letters between the adviser and the client need to be kept, as well as file notes of all telephone conversations.

1.4. Further, if the financial adviser is undertaking any critical thinking which goes to why they are recommending a particular product or service to a client, a file note documenting how and why the financial adviser came to that decision should also be kept. That information could just as easily be outlined in the statement of advice provided to the client (a copy of which would be retained on the adviser's file in any event).

1.5. We consider the explanatory note could also set out that it would be unworkable for a financial adviser to make a file record, at each step in the advice process, about how they consider they have complied with **all** the duties in the Financial Markets Conduct Act 2013 (the FMC Act), the Code of Professional Conduct for Financial Advice Services (the Code), and the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020 (the Regulations).

1.6. In saying this, the adviser would need to be familiar with all their obligations under the FMC Act, the Code, and the Regulations, so that if something arises during the course of the advice process which touches on one of the obligations, the adviser would need to make an appropriate record. For example, if the adviser identified there was an actual or perceived conflict of interest under the new FMC Act section 431K, they would need to make a file note about how they dealt with that conflict. However, if there were no conflict of interest issues, the adviser would not have to note on the advice file that there were 'no conflicts of interest'.

2. Condition 2 – internal complaints process

Maintaining the requirement on FAPs to record <u>all</u> complaints in their complaints registers

2.1. Firstly, we note that the Regulations state at regulation 229F that financial advice providers (FAPs) only need to provide consumers with an overview of the FAP's internal complaints process, and information about the FAP's dispute resolution scheme (DRS), if the complaint is **not** resolved to the consumer's satisfaction within 2 working days of the complaint being made. We are concerned about this regulation because, from our experience investigating financial advice complaints, we know that advisers regularly fail to recognise

complaints, and more relevantly, often think a complaint is resolved, but the client does not consider the complaint is resolved.

2.2. We consider that best practice is for advisers to provide information about their internal complaints process, and the DRS, both at the time the complaint is first made, and when the complainant is advised of the outcome of the investigation of the complaint through the adviser's internal complaints process. FSCL's terms of reference make this a requirement for our participants (see paragraph 5.2 of FSCL's terms of reference). We understand the other DRSs have similar requirements.

2.3. In any event, our secondary concern with regulation 229F is that it does not require FAPs to record **all** complaints (whether or not they are resolved within 2 working days of being received) in the FAP's complaints register. At first glance, it appears that FAPs would not be required to note many complaints in their complaints registers, and the ability of FAPs to identify systemic issues affecting consumers is significantly hindered. Even complaints that may be considered 'minor', and that resolve easily within 2 working days of being received, could indicate a service or product issue affecting a number of other clients. If those minor complaints are not captured in a complaints register, it is difficult for the FAP to make positive policy and procedure changes, or to pass feedback to product providers.

2.4. However, we are pleased that the proposed internal complaints condition for full licenses retains the requirement that **all** complaints are recorded. **We strongly submit** that this should remain a requirement.

Remove wording indicating that FAPs can ignore complaints

2.5. We are also concerned about the following paragraph of the internal complaints condition's explanatory note:

> "**Where no action is taken in respect of a complaint** received, the record should include the reasons for not taking any action. If a complaint cannot be resolved, the complainant must be informed about taking the matter to your dispute resolution scheme." (Our emphasis added.)

2.6. Our concern is that there should never be a case where 'no action' is taken by a FAP when a complaint is received. Even if the FAP ultimately decides that it is not upholding a complaint and/or it is not taking any steps after the complaint has been through its internal complaints process (for example, the FAP is not

paying the complainant any compensation, or it is not making any amendments to its policies and procedures as a result of a complaint), there has still been action taken by the FAP in response to the complaint. That is, the complaint has been investigated through the FAP's internal complaints process.

2.7. In addition, even if the complaint made is minor, is easily resolved, and no formal response is required, the FAP should still be 'taking action' by noting the complaint in its complaints register.

2.8. We think the current explanatory note wording is clumsy in that it could be interpreted as the FMA endorsing FAPs 'ignoring' complaints. We do not think this is the FMA's intention, and we suggest a wording amendment here.

3. Condition 5 – professional indemnity insurance

3.1. We are of the view that professional indemnity (PI) insurance should be required, and if PI insurance is unable to be obtained, this should be outlined in the FAP's disclosure documentation.

3.2. Our view is informed by the fact that we regularly investigate financial advice complaints where PI insurers are involved. The PI insurer typically appoints a lawyer to act for it (and the adviser), while the complaint moves through FSCL's investigation process.

3.3. Our experience is that PI insurers and their lawyers are valuable in assisting complaints reaching a resolution. We think that the PI insurance condition will encourage most FAPs to obtain PI insurance (if they do not have it already), and that this is ultimately a good outcome for consumers. The existence of PI cover goes a long way to ensuring that, if an adviser has erred in their advice process, and there is compensation to be paid to a consumer as a result, the consumer will actually receive the compensation.

4. Financial advice provider full licence classes

4.1. We support having three different licence classes. However, we suggest the naming of the classes as Class A, B, and C is problematic. Consumers may think that a Class A licence is superior to a Class C licence, and that by calling classes 'A', 'B', and 'C' this is a reflection on the quality of advice being provided.

4.2. This is similar to the issue that currently exists under the Financial Advisers Act. Some consumers consider a 'registered' financial adviser to be more qualified than an 'authorised' financial adviser, which is not the case.

If you want to discuss our submissions in more detail, please contact us directly.

Yours sincerely

[redacted]

[redacted]

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Financial Services Council.
Growing and protecting the wealth of New Zealanders

Friday 7 August 2020

Financial Markets Authority
Level 2
1 Grey Street
Wellington 6011
New Zealand

By email: consultation@fma.govt.nz

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

This feedback in response to the Financial Markets Authority (FMA) consultation on the proposed standard conditions for financial advice provider (FAPs) full licences and classes of financial advice service (the Consultation), is from the Financial Services Council of New Zealand Incorporated (FSC).

The FSC is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 70 members comprise 95% of the life insurance market in New Zealand and manage funds of more than $83bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

- strong and sustainable customer outcomes
- sustainability of the financial services sector
- increasing professionalism and trust of the industry.

We welcome the opportunity to provide feedback and continued dialogue with the FMA. Our responses to the Consultation questions are attached. We note that many of the questions are business specific and have therefore chosen not to comment on those questions. We have encouraged our members to submit individually to provide the insight you have sought.

I can be contacted on [redacted] to discuss any element of our submission.

Yours sincerely

[redacted]

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you.
Submissions close at 5pm on Friday, 7 August 2020.

Date: 7 August 2020
Name of submitter: [redacted]
Company or entity: Financial Services Council of New Zealand Incorporate (FSC)
Organisation type: Industry association
Contact name (if different):
Contact email and phone: [redacted]
Number of pages: 16 including covering letter

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. *You may insert additional lines or pages - please label each additional page with your name & organisation.*		
4.1 Condition 1 – Record keeping		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We do not agree that a summary must be created and kept in English if a full translation can be required for inspection. Subject to our comments in 4.1(f) below, we agree with the proposal that this standard condition should be carried across unchanged from the standard condition imposed on transitional licenses. Whilst individual FSC members have concerns with some detailed aspects of this condition, on balance we consider the proposed approach will minimise compliance costs.	We recommend that recognition be made to the three official languages in New Zealand and that records may be kept in any one of them. Therefore, we recommend amending condition (b) to "may be in any language providing you create and keep an accurate summary of the record and, if required by us, provide a full translation of the record into English by a translator approved by us." We recommend that consideration of any other changes to this standard condition (compared to the transitional condition) should be delayed by a minimum of two years so that the effectiveness of the current condition can be assessed.
(b) What written records do you currently keep for your financial advice business?		

Question number	Comment	Recommendation
(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		
(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		
(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(f) Do you have any other comments on the proposed condition or how it is drafted?	Ten working days to provide records when requested by the FMA is reasonable in most cases but there may be situations where more time is necessary, for example, to compile phone call recordings for a large volume of interactions in a call centre.	We recommend amending the Explanatory note to "Your records should be readily available to you, and in any event within ten (10) working days (or such longer timeframe that we agree) when requested by us." The condition at point (c) requires that records "must be available for inspection by us at all reasonable times". We suggest adding the additional wording "when lawfully required".
4.2 – Internal complaints process		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We support retaining this condition in its current form. Our comments in 4.1(a) above, in terms of a preference for carrying across the wording of the transitional condition unchanged and allowing time for its effectiveness of to be assessed, also apply here.	

Question number	Comment	Recommendation
(b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?		
(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		
(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		
(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(f) Do you have any other comments on the proposed condition or how it is drafted?		

4.3 – Regulatory returns		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons	We agree with the inclusion of this as a standard condition, given the importance of this data for the FMA and the industry as a whole. Further clarity is required on the application of this condition to MIS, DIMS and derivatives. We support that reporting should not be required prior to the end of the two year transitional licencing period.	We note that there will be further consultation on the regulatory reporting framework. We would reiterate the importance of having a robust consultation process with the industry on this point to ensure that the right balance is struck between the FMA's information requirements and the compliance costs of FAPs.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Given that we do not have the details on what we will be required to provide in the regulatory return we cannot comment on compliance costs. However, there will always be a more than negligible cost to reporting. Currently the QFE annual reporting process involves a significant amount of resource from across our member organisations to produce the updated ABS and Annual Report. Whilst smaller FAPs will not have the same complexity to deal with, they may not have dedicated resource to produce these reports which will mean they may be required to defer income earning activity. Page 12 of the Consultation states: "At this stage we do not believe that recurring regulatory returns will be required within the first two years of the new regime, as full licensing will progressively replace transitional licensing data before a measure of sector stability is likely to be achieved". We note that there may be possibly less reporting for a period and a gap as licencing information carries over for 12 months.	Our recommendations for Reporting requirements: a) Be as simple as possible, focusing on the provision of data that can be used by the FMA to monitor FAP and adviser conduct. b) Take into consideration the size and resources of a FAP and be proportionate so the cost of reporting does not outweigh the benefits; and c) Be constrained to information that will be used regularly by the FMA in their monitoring activities. Any other information, can be requested from FAPs as and when the need arises.
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	The reallocation of resources to produce reporting may have an adverse impact on smaller FAPs.	
(*d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.*	Any compliance cost or regulatory complexity will inevitably create a barrier to enter the market particularly for smaller organisations. In addition, external consultant advice and assistance will add additional cost to any start up.	

(e) Do you have any other comments on the proposed condition or how it is drafted?		
4.4 – Outsourcing		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	In many cases where material outsourcing of technology systems occurs, the counterparty is a multi-national company. For example, email software which is critical for FAPs. In these cases, a FAP will have essentially no bargaining power, meaning in some instances they will not be in a position to seek contractual arrangements that allow performance to be monitored or enabling the FAP to take action for non-performance. Whilst the explanatory note is clear that this is simply a matter that FAPs should consider, we suggest the wording should be amended to better reflect practicalities. Further clarity is required in the explanatory note between outsourcing FAP functions and outsourcing to suppliers who provide systems and tools to assist in the operation of an advice business (such as scanning advice documents). We also note that the materiality threshold depends on the type and size of individual businesses.	We recommend providing clearer guidance on which outsourcing arrangements will be considered material to the provision of financial advice services. The examples given do not appear to represent activities that are sufficiently material to which the standard should apply. The examples provided also lack clarity, for example, what is "supporting digital financial advice"? We consider the last example “the review of compliance processes to a professional services company” is one step removed (engaging a professional to check a process rather than actually performing the process itself) and should be deleted. Pursuant to the standard conditions for other FMCA licences, there are current existing outsourcing conditions. At these early stages it is difficult to gauge whether this proposed condition is in alignment with those requirements or goes beyond them. We seek further clarification on the rationale for wording this standard condition differently to that of the MIS and DIMS standard conditions and welcome the opportunity to provide further feedback.
(b) What core financial advice services do you currently outsource?		
(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		

(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		
(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(f) Do you have any other comments on the proposed condition or how it is drafted?		For the second bullet point under important matters that should be considered in respect of your outsource arrangements, we recommend including the ability to switch service providers quickly and with little disruption where possible.

4.5 – Professional Indemnity Insurance		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We note in the details there is room for further consideration if professional indemnity insurance cannot be obtained. There are circumstances where a business may struggle to obtain professional indemnity insurance. We query whether there are any alternatives in such instances so that they can continue to operate. In addition, it creates an unequal playing field. For example, if a FAP meets the requirement without professional indemnity insurance (such as self-insurance where they maintain adequate capital to do so), we do not consider it necessary to disclose the lack of such cover to retail clients as it is not contrary to the clients best interests. The condition, as drafted, does not account for the relationship between FAPs and their advisers. While some FAPs may provide professional indemnity cover on behalf of their financial advisers, others require their financial advisers to be responsible for their own professional indemnity insurance.	Rather than being a standard condition, we recommend considering these arrangements as part of the licensing process, including whether an applicant has sufficient resources (whether through professional indemnity insurance or otherwise) to meet any claims arising from its financial advice services. This would be also consistent with MIS and DIMS licensing where the requirement for professional indemnity insurance is included in the Licensing Application Guide rather than the in standard conditions. If this condition is to remain, we recommend the provision of further details or guidance as to the form of disclosure where a provider has been unable to obtain insurance, so that clients are appropriately informed but not caused unnecessary concern. This disclosure should not be required where a FAP has legitimately determined that it does not need insurance. In addition, if retaining this condition, we recommend further clarity on whether or not current arrangements of aggregated policies are considered suitable. Again, if retained, this standard condition is recommended to be amended to reflect that FAPs may either hold professional indemnity cover that provides cover to all nominated representatives and financial advisers or may require their advisers to hold appropriate professional indemnity insurance on their own behalf (or a combination of both).

(b) Do you currently hold professional indemnity insurance covering financial advice service activities?		
(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		
(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		
(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(f) Do you have any other comments on the proposed condition or how it is drafted?		
4.6 – Business continuity and technology systems		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.		
(b) Do you currently have a documented business continuity plan?		
(c) Do you currently rely on critical technology systems to deliver a financial advice service?		
(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		
(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(g) Do you have any other comments on the proposed condition or how it is drafted?	There is potential for this to require significant resources. As such, we support the requirements being appropriate for the scale and scope of the financial advice service. This is important to ensure that the costs do not become prohibitive for smaller FAPs. In addition, some businesses financial advice activities will be a small part of their operations, and clarity is required to ensure that they are not required to report outages unrelated to the provision of the financial advice service.	We recommend the third paragraph containing notification requirements be amended by inserting "by which you provide your financial advice service" so that the condition reads: "You must notify us within 5 working days of you discovering any event that materially impacts the cybersecurity of your critical technology systems by which you provide your financial advice service …".
4.7 – Ongoing capability		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	Many of our members have already been subject to licencing and standard conditions under the FAA and/or FMCA. The experience of our members is that the licencing guide will provide potential FAPs with the minimum standards that they will need to meet to be licenced and meet the ongoing eligibility standard condition.	We urge the FMA to issue the licencing guide as soon as practicable and encourage consultation as it is only at that point, meaningful feedback will be able to be provided on this condition. Regardless, we suggest that this standard condition and explanatory note is reworded to provide greater insight to what is meant by ongoing eligibility. Consideration should be given to the related QFE standard condition which provides greater guidance on what is meant by ongoing capacity.
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		
(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(e) Do you have any other comments on the proposed condition or how it is drafted?		There is an extra "will" in the first line of paragraph 3 of the explanatory note: "You will need to ensure that you ~~will~~ keep…"

4.8 – Notification of material changes		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We have concerns that requiring notification within 10 working days of "commencing to implement" a material change is too subjective a deadline. In many cases an adviser business may start considering a change and not consider it to be material until significant work has been commenced, at which point it could be argued that they have already "commenced to implement" the change (and therefore breached the condition). The second paragraph of the explanatory note regarding what is a material change in the nature of a financial advice service is not intuitive. We consider that the "nature" of a financial advice business goes more to when and how advice is given rather than how a provider meets their compliance obligations. This difference between the FMA's intention and general understanding has the potential to lead to confusion.	We recommend further guidance and clarification on what is considered material and whether or not this is in addition to what is in the legislation. We recommend that the timing of disclosure should be more clearly defined. We consider the right time for notification is within 10 working days of a material change being implemented. The explanatory notes are unclear at present and as such we recommend further clarification. We recommend consideration of having one condition which sets out all of the notification requirements rather than having them set out across a number of different conditions. This would be particularly helpful for smaller FAPs. If the FMA does not wish to be notified about changes to the types of advice provided or types of products advised on then we suggest references to "nature of or manner in" should be clarified or removed.
(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.		
(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.		

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.		
(e) Are there any other material matters other than those detailed in the explanatory note that should be notified to FMA?		
(f) Do you have any other comments on the proposed condition or how it is drafted?		
4.9 – Financial advice provider full licence classes		
(a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.	We agree with the approach of dividing a financial advice service into three distinct licence classes.	We recommend relabelling the classes as Class A, B or C has implications of priority or importance. We consider it would be more appropriate if the current order is reversed so that more complex structures are first, i.e., current Class C would be the first class, or a different naming convention entirely is employed. We consider Class A should accommodate a situation where a different financial adviser needs to be engaged to allow for business continuity planning (for example, where the "main" adviser is incapacitated and unable to work). We think an analogy can be drawn to the current exemption from DIMS licensing requirements for AFAs providing a contingency DIMS. We recommend that for Class A FAPs there should be a similar document to the 'Quick guide to licence applications for small businesses providing DIMS' provided by FMA to assist them with their licence application.
(b) Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.		

(c) Do you have any other comments on the proposed full licence classes?		

Feedback summary – *if you wish to highlight anything in particular.*

There are going to be a spectrum of FAPs from large corporates with their own legal and compliance teams to single adviser FAPs with little experience of licencing. The standard conditions need to be drafted with this is mind.

As noted under condition 4.7, we strongly recommend the issuing of the licencing guide as soon as practicable and encourage consultation, as it is only at that point that meaningful feedback, that is reflective of the industry's collective viewpoint will be able to be provided.

The professional excellence pathway

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

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Submissions close at 5pm on Friday, 7 August 2020.

Date: Number of pages: 5

Name of submitter: [redacted]

Company or entity: FINSIA

Organisation type: Professional Membership Organisation - Financial Services

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
4.1	FINSIA agrees that keeping good records for Retail Clients is an essential requirement for all Class License Holders. We understand most of the cost of keeping records would be minimal as most information is stored electronically on CRM systems. CRM systems are a challenge at this point, especially when it comes to the Privacy Act, where the information is stored (domiciled) and who owns the data. This could be a significant cost to the sole operator. FINSIA observes there is still a conflict between the FAA and the Privacy Act. The FAA expects Advisers to hold client information for an unspecified time to counter any possible complaints or as evidence that we have met our obligations under the Act. However, the Privacy Act dictates that we are	FINSIA would expect these CRM systems would be adequately resourced and is commented in the Outsourcing. Ownership of those records (and information) needs to be clarified, i.e. is it the adviser, the client, the producer group, the product provider (Bank, insurance company, etc.), or the government holding jurisdiction of the server?

	not to hold client information for any longer than necessary, and it must be deleted as soon as the relationship has ended.	
4.2	FINSIA believes that the Internal Complaints process shouldn't be over burdensome on the client and it be accepted that often clients are already in a disadvantaged position by having to take a complaint. FINSIA also believes there may be confusion as to where a complaint begins. A simple question from a client asking for clarification may be the start of a complaint, but if handled correctly will go no further.	FINSIA believes that larger licensee holders should still be able to offer a reasonable process that isn't a litigious process at the outset to clients. FINSIA asks though has there been any consideration of any nuisance litigations? These can be burdensome (timewise and financially) if left unchecked. Clarification is needed as to whether this should be recorded in a complaint register, especially for a small sole adviser who knows their clients well.
4,3	FINSIA believes that regulatory returns are essential to provide the regulator with an overview of the industry. FINSIA understands now it is not uncommon for advisers to spend over $1000 a month in compliance costs alone. This includes industry fees, levies, and regulatory compliance.	FINSIA believes that these returns pass a reasonableness test relative to the Licensee holder and not place a high regulation cost other than what is necessary to achieve the required information. FINSIA believes that most the returns should be able to be completed electronically.
4.4	FINSIA would expect a reasonable number of Class A and some Class B License Holders would outsource their CRM systems to a 3rd party provider. This would be to keep maintenance and development costs effectively managed.	FINSIA would expect that the licensee holder has done due diligence on all the external systems to a level that would be reasonable to do so. It is expected that this would pass a reasonable person test and not be over burdensome on the technical

		specifications of the system.
	FINSIA believes many Class A and some Class B licensee holders will outsource their compliance work to 3rd parties. FINSIA also understands the difficulty from the previous 4.1 that there are issues when Advisers are passing on information to another entity and to where their liability stops.	FINSIA believes a higher threshold test would be reasonable to accept on Class C License holders who maintain their own CRM systems and services. FINSIA believes Compliance providers should be able to pass a reasonableness test and not be substantially excluded to offer services to the market
4.5	FINSIA expects that a reasonableness test be applied to the amounts of cover needed, both in limits and aggregate, and any expectations for PI cover be reasonably applied to Class A Licensee Holders. FINSIA believes that PI cover expectations would also include a run-off cover when a Licensee holder has or is going to leave the industry - which includes selling their business to another Licensee Holder.	
4.6	FINSIA believes that any BCP should be fit for purpose and not be over burdensome on the licensee holder, other than they should be able to provide services to their clients to an accepted standard. FINSIA understands that when you have had a cyber event, payment of ransoms should not be a first line of defence.	FINSIA believes it would be expected for some of the smaller licensee holders in a major BCP event there may be a period where their services will be interrupted. This shouldn't be a substantial burden on the client. Payments to support this illegal activity should not be the policy of the regulatory authority.
4.7	FINSIA believes that On-Going licensee holder will at some point wish to retire or, will	This obligation shouldn't restrict their rights to do so subject to still keeping

	expect to reduce the services they are offering. FINSIA also understands capability does not mean eligibility. There should be some protection from continuous rule changing and rules continually changing for minimal benefit to the client. FINSIA knows Advisers face new regulatory requirements that they believe are increasingly cumbersome and costly, to the point that they are spending more time and money staying within the rules than attending to the needs and priorities of the clients.	their ongoing eligibility up to standard. Any changes should always be taken in the – is this good for the clients first mantra?
4.8	FINSIA expects this could be difficult as - what is defined as 'material?' Does this include changing other professionals they deal with or who they refer clients to? For example, if they stop referring investment clients to one adviser, and instead send them to another one. Or a different lawyer, or accountant? Is this a material change or, just a business change? If you were referring clients to an adviser accused or convicted of criminal misconduct, e.g. Barry Kloogh, is his actions a material change to the Advisers business or not or just good practice to stop referring to an adviser accused or convicted of criminal misconduct?	FINSIA believe there should be a reasonableness test to see if a change is material or not material and any changes made be in the context – is this good for the clients first mantra?
4.9	FINSIA believes the classes may possibly be just as confusing and ambiguous to clients and adds another layer of unclarity to the advice industry. As a background AFA, RFA and QFE designations were never understood by clients. Class A, B or C Advisers are more levels for clients to understand. Clients do not specifically care	FINSIA believes as a general rule most clients will know the Adviser is an Adviser. What they want to know is that they are qualified to give the advice they are giving and can show evidence of this. FINSIA believes their expectation is they want reliable advice and no

	whether the Adviser(s) are a Class A, B, C, Adviser.	amount of legislation will change the reliability of the advice that is given.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 7th August 2020 **Number of pages:** 4

Name of submitter: [redacted]

Company or entity: Finzo NZ Limited

Organisation type: Custodial wrap platform and financial adviser support

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. *You may insert additional lines or pages - please label each additional page with your name & organisation.*		
4.1 Record Keeping		
4.1 (a)	Agree	Every financial adviser needs to track a clients goals/planning objectives but also have a reliable data source in the event of litigation or a request for information by the client.
4.1 (b)	All interaction with clients and suppliers is maintained on our CRM	
4.1 (c)	No additional compliance costs	
4.1 (d)	No adverse impact	
4.1 (e)	Yes	Creating a barrier to entry is not a negative outcome. Financial advice is a professional business. The operations of the provider of financial advice should be equally professional.
4.1 (f)	File back up	Any file that is of a hardcopy in nature should be backed up in a electronic form or be duplicated at an alternative site
4.2 – Internal Complaints Process		
4.2 (a)	Agree	Having a robust documented internal complaints process ensures client dissatisfaction is documented and that there is a procedure to find a resolution and/or engage a dispute resolution provider
4.2 (b)	Yes currently have an internal complaints process embedded in our CRM	
4.2 (c)	No additional cost	
4.2 (d)	No adverse impact	

4.2 (e)	No it is just a process	
4.2 (f)	No comment	
4.3 – Regulatory Returns		
4.3 (a)	Agree	It is an essential part of monitoring and oversight to provide a functioning financial advice industry
4.3 (b)	Yes due to additional resource diverted to reporting	
4.3 (c)	No adverse impact	
4.3 (d)	No	
4.3 (e)	Will issues such as director ongoing capabilities be covered in the return?	Ongoing disclosure of issues, e.g. Director being sued etc – items all very well covered in the current AFA application
4.4 - Outsourcing		
4.4 (a)	Agree	There needs to be satisfactory due diligence before trust is placed in a 3rd party to hold valuable financial information
4.4 (b)	Custody of assets, CRM, compliance consultancy, risk profiling, investment and insurance research software	
4.4 (c)	Yes, additional due diligence	Many using outsourcing arrangements don't have direct access to the provider in contract form, they will have to enter into agreements with a resulting subscription cost
4.4 (d)	No adverse impact	
4.4 (e)	No barrier to entry	
4.4 (f)	The drafting of the condition is good	We would like to see more examples of arrangements that are captured by the condition
4.5 – Professional Indemnity Insurance		
4.5 (a)	Agree	The financial interests of retail clients need to be protected from instances of financial advice not meeting professional standards. Ultimately should an adviser or their business fail it protects the State/Taxpayer
4.5 (b)	Yes we have PI insurance covering advice, cyber, D&O, and trusteeships	
4.5 (c)	No additional compliance cost	PI cover is currently trending upwards in cost. With the additional complexity of PI cover on the FAP and individual adviser the expectation would be that costs will rise higher as evidenced by other countries who are further down the regulatory path
4.5 (d)	No adverse impact	
4.5 (e)	Yes, and it should. The retail client and the State needs to be protected	

4.5 (f)	Yes	Seeing a worked example would have merit so that advisers and FAPs can understand the minimum expected requirements
4.6 – Business Continuity and Technology Systems		
4.6 (a)	Agree	Many advice businesses are single adviser businesses. Without a written business continuity plan and processes for safe keeping of electronic data then illness, economic conditions and/or cyberattacks will leave retail clients in a very vulnerable position
4.6 (b)	Yes, have business continuity plan	
4.6 (c)	Yes, we have critical technology systems	
4.6 (d)	No additional compliance cost	
4.6 (e)	No adverse impact	
4.6 (f)	Yes creates a barrier to entry	This is not a negative barrier to entry. A FAP needs to have the resource to invest into adequate planning and technology infrastructure critical to meeting the needs of their clients
4.6 (g)	No comment	
4.7 – Ongoing Capability		
4.7 (a)	Agree	Continuous improvement and planning for change are vital strategic considerations to ensure the FAP at all times meets its licence conditions.
4.7 (b)	No additional compliance cost	
4.7 (c)	No adverse impact	
4.7 (d)	No barrier to entry impact	
4.7 (e)	No comment	
4.8 – Notification of Material Changes		
4.8 (a)	Agree	The nature and manner in which financial advice is provided are central to the awarding of a FAP licence. Should change occur that affects the licence then the FMA should be notified
4.8 (b)	No additional compliance costs	
4.8 (c)	No adverse impact	
4.8 (d)	No barrier to entry	
4.8 (e)	Condition 8 along with the other conditions are sufficient	
4.8 (f)	No additional comments	
4.9 – Financial Advice Provider Full Licence Classes		
4.9 (a)	disagree with dividing into licence classes	The naming convention should be reconsidered. A, B, C, 1,2,3 or Gold, Silver, Bronze implies a ranking. Specific licence conditions would work.

		E.g. Class 'S' Single Adviser, Class 'M' Multi Advisers or Authorised Bodies, Class 'R' Authorised Bodies & Nominated Representatives
4.9 (b)	No barrier to entry	
4.9 (c)	Getting the naming convention correct (if used) is vital. Mistakes were made in the past with RFA, AFA & QFE designations causing confusion in the market and an overall lack of trust by consumers	The selection of non-ranked names is key or the public will deem a ranking

Feedback summary – With regard to the comment on page 17 (ongoing eligibility) of the consultation paper referring to the 'Financial Advice Provider Licencing Application Guide'. Is the document expected following the feedback of this consultation document?

Thank you for your feedback – we appreciate your time and input.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 07 August 2020.**

Date: 07 August 2020 Number of pages: 3

Name of submitter: [redacted]

Company or entity: Fisher Funds Management Limited

Organisation type: MIS Manager, DIMS Manager

Contact name (if different):

Contact email and phone: [redacted]

Question number	Condition	Comment	Recommendation
	You don't need to quote from the consultation document if you use page numbers. *You may insert additional lines or pages - please label each additional page with your name & organisation.*		
1.	Record-keeping	We support the condition which is, in effect, the same condition as for a transitional licence. We note however, that the matter of 'adequacy' has the potential to cause some confusion as it allows for subjectivity and ambiguity. It also raises the issue of how to deal with clients who don't fully identify themselves i.e. clients who prefer shorter, more transactionally oriented interactions with advisers. We keep written financial advice records. Subject to the comments above, we don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
2.	Internal complaints process	We support the condition, which is in effect, the same condition as for a transitional licence. Whilst the reference to an explicit expectation of a response or resolution is easily understood, the reference to an implicit expectation may be more difficult to identify and satisfy e.g. is a negative comment on the FAP's Facebook page a 'complaint', as per the definition which then triggers the complaints process? If it is, then there should be a qualification to the proposed Standard Condition that the person making the comment (complaint) fully identifies themselves to the FAP and provides their contact details outside the open channel of Facebook (or other social media) to enable the FAP to respond accordingly.	Qualification adopted.

		We currently have an internal complaints process, which substantially meets the requirements of the proposed standard condition. Subject to the comments above, we don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
3.	Regulatory returns	We support the condition, which is substantially similar to the requirements for MIS licence holders. We welcome the opportunity to provide input to any Regulatory Return Framework. We don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
4.	Outsourcing	We support the condition. We currently outsource certain functions that are not our core competencies namely registry, custody, unit pricing and investment accounting. We don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
5.	Professional indemnity insurance	We support the condition. We currently hold professional indemnity insurance covering all our business activities, including financial advice service activities. We don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
6.	Business continuity and technology systems	We support the condition. The matter of 'materiality' has the potential to cause some confusion as it allows for subjectivity and ambiguity. Although the paper defines a 'material event' as one where 'the confidentiality, integrity or availability of your information and/or technology systems has been compromised' and a phishing event has been explicitly excluded, the inclusion of availability may need to be re-visited. For example, it is not uncommon for systems to experience intermittent outages, generally not connected with cybersecurity issues, but which disrupt their continuous availability. We currently have a documented business continuity plan in place.	Further clarification.

		We rely on critical technology systems to support the business generally, including financial advice services. Subject to the comments above, we don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
7.	On-going eligibility	We support the condition.	
8.	Notification of material changes	We support the condition, which is substantially similar to requirements for MIS licence holders. We don't believe that the proposed standard condition would: • create additional compliance costs • have any other adverse impact on the business • create a barrier to enter the market.	
9.	Financial advice provider full licence classes	We agree with the proposal to divide financial advice services into three distinct classes and we assume that this has been done for internal administrative purposes. We assume that licence holders would not be able to use their licence class designations for marketing purpose as this could create a misleading impression amongst consumers. Similarly, we expect that licence holders would not be able to imply that their licence class designations denote FMA's approval of their businesses or advice. We don't believe that the proposed standard condition would create a barrier to enter the market.	Limitation on use of licence class for marketing and endorsement purposes.
	Feedback summary – *if you wish to highlight anything in particular.*		
	Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
	Thank you for your feedback – we appreciate your time and input.		

consultation@fma.govt.nz

Feedback on consultation paper
Specifically licence classes

Class A Licence
is effectively a sole adviser provider. I consider myself to be a sole advice provider but my daughter who has worked with me for 8 years now (and passed her level 5 qualification) is responsible for running the office on a day to day basis, will provides quotes for domestic fire and general insurance to clients, deals with all life/health/disability and fire and general claims, organises renewals, and communicates with all our clients by phone or email. In reality i would have to hold a class B licence.

I don't know any adviser who actually fits into an "A" licence, as even those who have a part time admin person, rely on them to be able to provide a certain level of advice to clients.

I cant imaging a new entrant into this industry, starting out on day 1 as a sole practitioner advice provider. Meeting compliance requirements and prospecting for clients and business without an established client base, would prove too much for 99% of people, unless externally funded for the first 2-3 years. If they purchase a client base then typically the adviser selling it will work out a 1-2 year transition period, so this breaches the Class A single adviser provision.

In order to meet the client centric duty of care an adviser requires there to be somebody to answer phones, respond to emails in their absence, so i just cant see any class A licence's being issued and that business being compliant.

If the licence classes are to be based on the number of advisers then perhaps the following is better reflective of small, medium and large

A	2-3 advisers. This allows 2 small practices to merge with 2 advisers and an admin person, or a buyer and seller operating together with an admin person.
B	more than 3 but 6 or less (typical small fire and general insurance brokerage)/
C	More than 6 advisers

Or base the licence on annual revenue or turnover, for example

A	Less than $500,000
B	$500,001 to $1,500,000
C	Over $1,500,000

Revenue is a better measure of business activity than adviser numbers. The higher the revenue, the more likely the business is to be able to sustain compliance personnel and costs. A small practice cannot sustain or pass on the same costs as a large practice.

5 Seven Mile Drive, Belfast, Christchurch
PO Box 76205, Northwood 8548
[redacted]

I hope this offers some insight into a small practitioners perspective, because often their voices are unheard. Our business model is very much based on long term client relationships rather than an employee looking after a book of business for a corporate, and there is little continuity due to staff changes. There is a real need in this industry for advisers to love what they do, genuinely respect and enjoy their client relationships, where money is simply a by product of what they enjoy doing. People deal with us not on price, but on continuity of care and they know who is on the other end of the phone every time they call.

Small businesses should be encouraged. If you ask a good cross section of consumers, you will find they too enjoy working with small businesses rather than corporate advisers.

Regards,

[redacted]

5 Seven Mile Drive, Belfast, Christchurch
PO Box 76205, Northwood 8548
[redacted]

[redacted]

From: [redacted]
Sent: Monday, 27 July 2020 3:23 PM
To: consultation@fma.govt.nz
Subject: 'Feedback: Proposed standard conditions for financial advice provider full licences
Attachments: image001.gif

Hi

Just wanted to comment in regards to the interposed persons.

I am an Independent Financial Coach, one of only a few in the country. As part of this we provide a service that involves improving peoples financial capability.

In order for our services to be affordable, we need to keep our costs down.

As part of this we get funding from private organisations to provide financial capability services in the general sense to an group audience and also on a 1 on 1 Basis. The companies form that contract with my company, not me myself.

However this is going to be effected by the Interposed persons, as my company is contracted to another company to provide Financial Capability services. I in turn have my own advisors that contract to me.

It would be a terrible shame if I was to lose that contract because of the new legislation, meaning that thousands of NZders would not them be able to access affordable financial coaching. This would be a huge back ward step for building financial capability.

I am unsure of why the relevance of whether I contract to them in my names, versus contracting to them from my company name? Obviously the contract need to be under my Ltd company name to protect me?

Also my contractors are employed again via their business name, not them as individuals.

Surely you don't expect financial advisors to enter into contracts as a sole traders???

Join our supprt group **Financial Support COVID-19 NZ**

[redacted]

FULL Balance **Financial Coaching and Consulting**
"Your Independent Expert in Personal Finance"
0800 FULL Balance 0800 385 522

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 30.06.2020 Number of pages: 2

Name of submitter: [redacted]

Company or entity: G3 Financial Freedom Limited

Organisation type: Financial Planning practice with transitional licence

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.		
4.3 Regulatory Returns	*Okay with having returns but it would be helpful to know more about the detail of what you will require and when.*	*This really should not be a problem however, if you are going to request a great detail of information different to AFA requirements now, then whilst annual returns we can understand, maybe bi-annual to complement our other AML/CFT reporting and any other independent audits a business chooses to undertake*
4.4 Outsourcing	*Advise what detail you need from what type of outsourced services; how often you expect them to be reviewed in detail, or if a process just needs to be in place to contact those providers to check if anything in the original contracts have changed. Do services have to be reviewed and compared against alternatives in the market? Certain aspects in a process are outsourced because we do not have the expertise so if we then have to monitor them this largely defeats the gap outsourcing was designed to fill and could be unnecessarily onerous, so please identify what you see as the key services that a FAP outsources and what your ongoing expectations are once a contract is in place*	*Remove this entirely. We do not see any reason to legislate and have this as a condition.*
4.5 Professional Indemnity Insurance	*Whist it is good practice to have PI cover in place (and we have had it for past 11 years), we are wondering if it has to be forced on a practice to have this in place. We are concerned about the PI insurers*	*Remove this entirely. We do not see any reason this has to be legislated for and have as a condition.*

	having the opportunity to have a 'captive audience' if it is a legal requirement and where premiums will continually increase and cover be harder to obtain – consider the UK advice industry where premiums are in the tens of thousands. This could put small advisory practices out of business. *Whilst we agree it is of benefit to consumers and the practice, we are worried about how this will change the industry (for better or worse) and cause extra costs for small business owners, and those with specialist niche areas in obtaining special cover. It would be wise to consider what PI cover not only covers, but what it does not, and decide if this is of benefit to the end consumer*	*Question back to you: how many other professions/industries legislate that PI cover be a requirement of holding a licence to practice? Why is our industry being singled out.*
4.6 *Business Continuity and technology systems*	*We agree that it is good business practice to have a BCP in place and many businesses will hopefully have organised one in light of recent world events, if they did not have one before. However, what will be deemed 'material' as this word is subjective.* *Clarify further the meaning of 'material' and importantly, how an advisory practice is meant to understand and determine what the FMA deems to be a material change. Also as technology systems, as an example, are largely outsourced and so will be reviewed under that category how do these two areas complement or oppose each other.*	*Remove it entirely, for the same reasons mentioned above – does not need to be legislated for*
4.7 *Ongoing Eligibility*	*Whilst we can refer to s396 and 400 of the FMC Act and these are fine to adhere to. As the Financial Advice Provider Licensing Application Guide is yet to be published, how we can be expected to accept something that is not yet known?* *Whilst of course it makes sense that eligibility needs to be maintained, more clarity is needed now on the detail of the eligibility and requirements.*	*Revisit*
4.8 *Notification of Material change*	*Whilst we have no issue with this condition, again, it comes back to what is deemed 'material' and importantly, if 10 days is sufficient. If something with a business needs to be attended to as a result of material change, just wondering*	*Extend the reporting to 30 days, or specify what you mean by 'material' as you could have different time frames for different reporting issues, some more urgent and important than others. E.g. say renegotiating PI Cover, this would take longer than 10 days without any*

	if 10 days is sufficient time to provide such reporting to the FMA?? and what would be the risk if this was extended to 30 days?	*issues and the delay is just change in business needs and nothing that is deemed a risk?!*

Feedback summary – *if you wish to highlight anything in particular.*

We believe the Class A, B and C need rethinking. Class A could be easily determined as the highest eligibility so we believe these need to have words instead of letters, or at least named instead of, or as well as. Eg. Single Adviser Licence/Multi Financial Adviser Licence/Muti FA and NR Licence. We need to link the A , B and C to the actual type of licence holders.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 05 August 2020 Number of pages: 2

Name of submitter: [redacted]

Company or entity: Delray Group

Organisation type: Insurance Adviser business

Contact name (if different):

Contact email and phone: [redacted] [redacted]

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.		
Page 13	Strongly Disagree - We are concerned about how to meet this obligation when working with large organisations like Google & them not delivering emails. Independent researchers are only giving you an opinion and the adviser doesn't always agree with the findings. Security obligations of CRM's and client information we can only rely on the professional advice that we get from the providers and IT specialists. Hacking of information is done by very smart people outside of our control. Any company or organisation can be hacked regardless of what regulations are in place.	Reasonable care should be taken but can not be enforced with professional hackers.
Page 17	What is capable of effectively performing that service?	Until we know the licencing requirements how are we able to provide feedback to these recommendations?
Page 23 4.9a	Disagree with this approach as it is no different from being an AFA or an RFA to the general public. Too confusing and sending the wrong message.	You need to use names as the two examples listed when we asked various people what they thought, it would lead them to believe that 1 or A could be the best option to go with that advice provider either because they are the best or more highly educated. Where does that lead the class B licence holder?. Less attractive to use.
Page 23 4.9b	Can't use class A, B, C or 1,2,3.	As above
Page 21 4.5	**Strongly Disagree as this could be a barrier in the future if the numbers of providers are reduced in this**	**This is for the adviser's protection therefore has no being on the consumer. and under some of the contracts being issued by insurance**

	area. Insurance companies are getting pressure from you to audit us which can lead to a conflict of interest as they may not pay a claim and we could be conflicting parties in these disputes. When you are in a dispute the PI insurer will request you not to contact the opposing party which will lead to a breech in the contract with the insurer. Making our PI insurance null and void.	providers can make the PI insurance null and void.

Feedback summary – *if you wish to highlight anything in particular.*

Licence Fees: With our business there is only one adviser with a Director who is not an adviser but does actively work in the business and therefore is billed as a business with more than 1 adviser which is an added cost to our business. This is where we are disadvantaged but we feel there is more care as the job of an adviser is a very stressful and demanding position.

Our biggest concern has been that we are asked to give feedback when we still don't know what the full license process looks likes or what the requirements are to get the full licence. Costs for the licence holder have and will increase as the requirements to retain a licence are increasing because more systems and staff have to be implemented to keep up with requirements. This will then create a barrier for independents to enter the market place. The general public still does not want to pay for our services like they do when visiting an accountant or lawyer. If we are not careful, we run the risk of returning the industry to the way it operated over 25 years ago where independents were tied advisers. This is not what we want for the new world and need to keep this in mind as we want as many New Zealanders as possible insured.

Thank you for your feedback – we appreciate your time and input.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial advice services

4th August 2020

Company	Health Service Welfare Society trading as Accuro Health Insurance
Name of submitter:	[redacted]
Organisation Type:	Health Insurer and Financial Advice Provider
Contact details:	[redacted]

Executive Summary

Accuro Health Insurance welcomes the opportunity to provide feedback on the proposed standard conditions for financial advice provider full licences and classes of financial advice services.

Accuro supports the introduction of the new financial advice regime under the Financial Services Legislation Amendment Act 2019. It is timely to ensure conduct and client-care obligations remain fit for purpose in New Zealand and across the industry to ensure trust and confidence in the industry.

The three classes of full FAP licence proposed are sensible and easily understood by the industry, although we do see some potential for confusion in the use of the A, B, C labelling and the risk that these could be misinterpreted by consumers as referring to quality rather than scope.

The standard conditions make sense and for Accuro don't introduce unreasonable layers of cost or compliance. Further detail would be useful on the standard conditions for outsourcing and regulatory returns to add clarity to the requirement and logic.

Feedback

Question number	Comment	Recommendation
4.1	Condition 1 – Record keeping: Accuro agrees with the proposed standard condition as a matter of good business, conduct and culture. Minimal cost will be incurred to ensure advice records are adequately detailed and retrievable, and we are building these requirements into systems developments. The types of information that needs to be collected make sense, and we don't believe this condition should create any significant barriers to entry.	
4.2	Condition 2 – Internal complaints process: Accuro agrees with the proposed standard condition as a matter of good	

Question number	Comment	Recommendation
	business, conduct and culture and already has a process in place that meets the requirements of the proposed condition. We don't therefore believe that this will add additional compliance costs or have any adverse impact on the business.	
4.3	Condition 3 - Regulatory returns: Accuro agrees with the proposed standard condition. We are already planning changes to our key customer record systems to help facilitate this. Likely reporting requirements need to be shared as soon as possible to ensure these can be incorporated into system change plans to minimise rework. Subject to scope, we believe there will be minimal compliance cost for implementing requirements and ongoing completion.	Consultation with the industry occurs as soon as possible to ensure business can meet requirements avoiding cost of rework. Level of reporting required needs to be balanced so as not to be onerous for smaller operators.
4.4	Condition 4 – Outsourcing: Accuro understands and agrees with the condition and what is trying to be achieved by including this. However, the drafting could benefit from further clarity over the definition of materiality; the explanatory note and examples in the comments don't easily reconcile.	Provide further clarity on what the FMA considers material outsourcing.
4.5	Condition 5 - Professional indemnity insurance: Accuro agrees with the need to ensure clients can be compensated for financial loss as a result of breach of duty and that PI insurance is an appropriate way to address this. As a product provider Accuro already requires those holding agency agreements to have professional indemnity insurance cover of at least $1m aggregate. Accuro also holds PI insurance cover for the purposes of financial advice service activities we undertake. . We note that this cover is relatively expensive so could be a barrier for some smaller advisors/providers. The requirement that the cover is "adequate and appropriate for the nature, scale and complexity of the financial advice service" may also be open to interpretation.	
4.6	Condition 6 - Business continuity and technology systems: Accuro agrees with the proposed standard condition and has current business continuity and technology recovery plans and an incident management policy in place. . We don't believe this condition will create additional compliance costs.	
4.7	Condition 7 – Ongoing eligibility: Accuro agrees with the proposed standard condition, . We note that further detail on this standard condition will be included in the licensing guide which is yet to be shared.	
4.8	Condition 8 – Notification of material change: Accuro agrees with the proposed standard condition and the rationale for it. The requirement that this be for "any material changes that you make…whether or not they	

Question number	Comment	Recommendation
	may have a material adverse effect on your ability to provide your financial advice service" could lead to some confusion over what is and isn't material, so providing as much clarity as possible on examples would be useful.	
4.9	Financial advice provider full licence classes: Accuro supports a system that offers licences that fit the scale, size and nature of the services that businesses provide. The way the three classes have been defined are sensible, although we think there may be potential for consumers to be confused by the A, B, C labelling and the implication that these are aligned to quality rather than scope.	

About Accuro Health Insurance

Accuro Health Insurance was set up in 1971 as the Hospital Services Welfare Society which was owned, operated and funded as an entity of the Hospital Boards Association but with its own board appointed by the Department of Health, the Hospital Boards Association and the Combined Hospital Unions. In 1991 the board established HSWS as an independent society under the ownership of its members. Today it operates as a private health insurer trading under the name Accuro Health Insurance. As a health insurer grounded in the public health sector Accuro is strongly committed to supporting the effectiveness of publicly funded health services and better health outcomes for all New Zealanders.

Our purpose is to help our Members get well and stay well. We are a member based, co-operative model whose history is rooted in a philosophy of care. Our North Star will always be our commitment to deliver great outcomes for our Members. That's why we're here.

Accuro is a member of the Health Funds Association of New Zealand Inc. (HFANZ), the industry body representing New Zealand's health insurance sector.

IAG New Zealand submission

to the

Financial Markets Authority (FMA)

on the

Consultation: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

7 August 2020

1. Introduction

1.1 This submission is a response by IAG New Zealand Ltd (IAG, we) to the Financial Markets Authority (FMA) on the consultation paper titled 'Proposed standard conditions for financial advice provider full licences and classes of financial advice service'.

1.2 IAG is New Zealand's leading general insurer. We insure more than 1.8 million New Zealanders and protect over $650 billion of commercial and domestic assets across New Zealand. We receive more than 650,000 claims a year and pay $1.365 billion in settling them.

1.3 IAG's contacts for matters relating to this submission are:

[redacted]

[redacted]

2. General comments

2.1 To realise the policy objectives sought for the financial advice reforms, it is important that implementation is workable for entities while achieving consistent compliance across the sector. We are generally supportive of the proposed standard conditions for financial advice provider (FAP) full licences outlined in the consultation paper and consider that subject to some required refinements, these will contribute to this.

2.2 The proposed standard conditions would provide a generally straightforward set of rules for FAPs of varying natures and scales to abide by. They are primarily principle-based, with limited prescription and a generally appropriate level of detail provided in the explanatory notes. We have identified issues with aspects of the proposed conditions and provide specific comments on them in this submission.

2.3 In this submission we also provide comments on the approach to licence classes and the proposed way of describing them, which we consider needs to be amended.

3. Specific comments

Financial advice provider full licence classes

3.1 We support efforts to streamline licence applications for FAPs of different types and complexities and recognise the rationale for creating different classes that is outlined in section 2.2 of the consultation paper. It is not however apparent from the consultation paper how separating applicants into three classes will make the process more streamlined, or what other implications, if any, will result from being classified within one of the three classes. We are also mindful some of the applicants in what is called Class C could be relatively simple in nature (e.g. a small number of nominated representatives providing a limited amount/scope of advice) compared with some applicants in Class B in terms of the scope of advice and services they provide.

3.2 The scoping of the three proposed classes is nonetheless broadly logical and they are clear in the sense that it is obvious which class an entity should apply for. However, the planned approach to naming the three classes (Class A, B and C) needs to be changed.

3.3 Using the descriptors Class 'A', 'B' and 'C' gives an impression of varying quality that is unnecessary and potentially confusing. While the recently finalised disclosure regulations[1] do not appear to require the licence class to be referred to in disclosures, the instinctive reaction of any customers or other stakeholders that become aware of different classes will be to assume a 'Class A' licence is superior to a 'Class B' or 'Class C' licence. This risks creating unnecessary confusion amongst customers (as the respective classes do not denote quality) and could undermine the stated aim of increasing confidence of financial advice services in New Zealand.

3.4 Such potential confusion can be easily avoided by changing the descriptors used. We recommend the proposed use of Class 'A', 'B' and 'C' would best be replaced by simple descriptions of the three classes (i.e. 'single adviser licence', 'multi-adviser licence', and perhaps an 'unrestricted licence' or 'comprehensive licence' for the current Class C). Alternatively, using 'Class 1', 'Class 2' etc. would at least reduce the pejorative aspects associated with the proposed Classes A, B and C.

Condition 1 – Record keeping

3.5 We support Condition 1 in principle, however, one aspect of it is unnecessary and should be removed and further refinements or guidance is required to ensure the requirements will be workable for different forms of record keeping.

[1] Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020

3.6 The proposed requirement to create summaries of records that are kept in languages other than English is unnecessary given Condition 1 already enables the FMA to require a licensee to produce a full translation of such records. Creating such summaries solely to comply with this condition would therefore impose an unnecessary compliance cost on FAPs.

3.7 Should this summary requirement nonetheless be retained, the use of 'any language' in clause (b) creates potential uncertainty as to whether the requirement to provide a 'summary of the record in English' also applies to records kept in English. We assume this is not the intent and so suggest it is reworded as follows to avoid any uncertainty:

> '(b) may be kept in any language, providing that if it is not in English an accurate summary of the record is kept in English and…'

3.8 The requirement to keep records for at least 7 years from the date from which it is made is reasonable and consistent with many other regulatory record keeping requirements. However, extending this through clause (d)(iii) to at least 7 years after 'the date any later record is made that refers to or relies upon information in the record' goes beyond other common record keeping requirements and will pose practical implementation challenges for some approaches to records storage. The requirement to potentially hold documents longer than 7 years appears relatively straightforward for conventional paper or electronic based customer files.

3.9 However, unless it is possible to determine which if any earlier call recordings might be considered to be covered by a later record that 'refers to or relies upon' them, then to ensure compliance it may necessary for an entity to keep all its recordings indefinitely. This could impose material and disproportionate storage costs. To avoid this we recommend that either clause (d)(iii) is refined, or guidance is provided that makes it clear only where earlier advice is central to any later advice, rather than just referring to it, should it be necessary to keep call recordings beyond 7 years. We are also mindful general insurance is a contract that is entered/re-entered every year and so the context for this may therefore differ to other types of financial products.

3.10 We also note the 'within 10 working days' requirement in the explanatory note could be too short to be workable in some circumstances (e.g. where large compilation is required). Accordingly, providing some flexibility for the FMA to allow more time would be appropriate.

Condition 2 – Internal complaints process

3.11 We agree with the proposed internal complaints process condition in general terms. This is consistent with existing regulatory practice and as a member of ICNZ we also comply with similar obligations under its Fair Insurance Code.

3.12 It is however important to clarify in the explanatory note that a client service issue raised and resolved during the initial interaction with the client should not be treated as a complaint. Otherwise this would lead to false positives in complaint records in relation to financial advice services. It would also result in inconsistencies in reporting of complaint numbers as other regimes do not treat such client service issues as complaints.

Condition 3 – Regulatory returns

3.13 We support the appropriate provision of regulatory returns from licenced entities to enable the FMA to undertake its regulatory role effectively and efficiently. We note the detail of this is to be implemented through a Regulatory Return Framework and Methodology, which is to be the subject of subsequent consultation.

3.14 In developing the specific information requirements to be applied under the Regulatory Return Framework and Methodology, it will be important to ensure these are appropriately focussed on the financial advice aspects of an entity rather than its wider business. It should also recognise the different nature of the new regime vis-à-vis the current QFE regime in terms of both regulation and oversight. This would mean for instance that there is less need for the sort of wide-ranging annual report that has been provided under the current QFE regime.

3.15 We note entities are already building their systems and processes for operating under the new regulatory regime. Accordingly, the sooner any consultation is undertaken on the Regulatory Return Framework and Methodology the more straightforward it will be to ensure the required data is collected and arranged for reporting. Otherwise there may be additional costs and disruption if reworking of systems is required. If consultation in the near term is not possible then at least a signalling of the scope of the requirements would be useful.

Condition 4 – Outsourcing

3.16 It is necessary to more clearly define what types of arrangements are intended to be captured by Condition 4 because the term 'outsourcing' is not defined or expanded upon in the explanatory note. We agree with the treatment of examples in the commentary in the 'Our comments' section, however, this needs to be expanded to provide greater clarity on a range of common business arrangements, including intra-group arrangements. For the purposes of financial advice services, we consider it would be appropriate to confirm that intra-group arrangements are not considered outsourcing.

Condition 5 – Professional indemnity insurance

3.17 We support the underlying objective of this proposed condition, that FAPs have sufficient financial resources or arrangements in place (for example professional indemnity insurance) so that retail clients can be compensated for financial loss as a result of a breach of a duty by a FAP.

3.18 We are mindful this condition will apply to entities ranging from large financial institutions subject to prudential licensing and oversight to potentially single person adviser businesses. Given the number of likely FAPs and their varying circumstances, business models and arrangements, overseeing a provision of this kind effectively would require ongoing oversight and careful judgement.

3.19 For many FAPs a condition of this kind is likely to be straightforwardly met through existing professional indemnity cover. However, having regard to those situations where it may not be easily met, we suggest this condition may need to be reconsidered to ensure it is appropriately focussed on achieving the underlying objective.

3.20 The comments in the consultation paper under this proposed condition state that where a licence applicant has valid reasons for not having professional indemnity insurance cover, then the FMA would apply a specific licence condition waiving this condition but in turn requiring this to be explicitly disclosed to retail clients. It is possible the entities that seek a waiver to this condition are fundamentally different in nature in this respect (e.g. larger entities that may choose not to have professional indemnity insurance or very small entities that either can't afford such cover or are unable to secure it). Whether retail clients will be able to recognise and properly consider the different implications of this for them in such varying circumstances appears questionable.

3.21 The issue of a FAP's ability to meet potential claims for a breach of duty also begs the question of whether the FMA would approve a licence application from a FAP applicant with neither sufficient financial resources of its own, or arrangements such as professional indemnity insurance in place?

3.22 Given these issues we suggest this proposed condition, and its connection to the licensing process, is carefully reconsidered to ensure it meets the underlying objectives. In doing this it is also important to consider in what situations professional indemnity insurance would respond, the way in which the market for this type of cover has evolved in recent years and how it may evolve in the future?

Condition 6 – Business continuity and technology systems

3.23 It is critical that entities have appropriate business continuity and technology systems in place and so we support the intent behind Condition 6. It however needs to be split into two separate conditions to be effective and clear. The application to business continuity also needs to be clarified.

3.24 It would be clearer to have two separate conditions in this area, one specifically related to business continuity and a separate condition to technology systems and cybersecurity. We raise this as the technology systems and cybersecurity related requirements, while reasonable, go beyond what would necessarily be provided in a business continuity plan (BCP), and the BCP requirements in turn go well beyond technical systems.

3.25 Whether the relevant issues for the financial advice services provided by an entity are included within whole of organisation plans, or whether they are provided for financial services specifically, should be left to individual entities to determine. The 'our comments' section in the consultation paper states 'the condition does not prescribe the scope of such a plan and allows for flexibility'. We support this commentary, however, the wording of the condition and explanatory note should be amended to make it clearer that how the business continuity (and technology systems) requirements relating to a financial advice service are met through an entity's plans, is up to the entity.

Condition 7 – Ongoing eligibility

3.26 We note Condition 7 simply refers to the requirements in sections 396 and 400 of the FMCA. The explanatory note provides some more information on this and refers to the yet to be released 'Financial Advice Provider Licensing Application Guide'. It does not however discuss how the 'fit and proper' person related requirements for financial advice services relate to the 'fit and proper' requirements for insurers that are already licensed under the *Insurance (Prudential Supervision) Act 2010* (IPSA).

3.27 To avoid inefficiency and duplication it is important to outline how these two licencing regimes work together in regard to fit and proper requirements. We also note that for some IPSA licensed entities, a FAP licence will be their first licence under the FMCA and so for these the issue of overlap is arising for the first time. We would expect that meeting the requirements in IPSA would be deemed to be sufficient to comply with this condition.

Condition 8 – Notification of material changes

3.28 We support the intent of Condition 8 but consider the drafting needs to be revised to make more certain the required timeframe for notifying the FMA of material changes.

3.29 The proposed condition states that an entity must notify the FMA 'within 10 working days of commencing to implement any material change…'. We consider the phraseology 'commencing to implement' is too uncertain as there are many possible steps that might be considered to represent commencing to implement. Amending the condition to more simply state 'within 10 working days of implementing any material change' would provide a much clearer requirement as to when an entity should notify the FMA.

3.30 It will also be important to clarify in the licensing application guide what would be required from a licence holder when they are making material changes to their financial advice service.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 6 August 2020 Number of pages:

Name of submitter: [redacted]

Company or entity: Insurance & Financial Services Ombudsman Scheme

Organisation type: not for profit, approved dispute resolution scheme

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.		
4.5	We have made decisions about complaints against financial advisers where the financial adviser is required to pay an amount and they cannot afford to pay it. There can be differences in the cover provided under professional indemnity insurance not just in the amount available but the conditions required for a claim to be paid. Given that, it will be difficult for the FMA to assess whether or not adequate cover is in place and this Standard has been met. Disclosing that an FSP has indemnity cover in place may mislead the consumer by appearing to give them reassurance that valid claims they may make about the FSP will be covered and compensation will be available. Depending on the specifics of the cover in place, that may or may not be the case.	

Feedback summary: We generally agree with the proposed standard conditions.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

IBANZ
INSURANCE BROKERS ASSOCIATION OF NEW ZEALAND INC

5th August 2020

consultation@fma.govt.nz

Submission on consultation paper: *Proposed standard conditions for financial advice provider full licences and classes of financial advice service*

Your name and organisation

Name	[redacted]
Organisation	Insurance Brokers Association of New Zealand Inc. (*IBANZ*)

Introduction

IBANZ, its members and financial advice in the general insurance sector

IBANZ has over 150 member firms operating in the general (non-life) insurance market. IBANZ members employ approximately 5,000 staff of which approximately 2,500 staff are currently RFAs.

IBANZ's member firms are currently preparing for compliance with the new financial advice regime from 15 March 2021[1], which will result in these firms becoming licensed financial advice providers[2] (*FAPs*), and their employees who are RFAs or AFAs becoming financial advisers (or, in some cases, nominated representatives).

IBANZ members place general insurance cover equating to approximately 50% of all general insurance premium ($3.4 billion) for approximately 1 million New Zealand customers and for approximately 14 of the 30 general insurers operating in New Zealand. The total New Zealand gross written general insurance premium in the 12 months to 30 September 2019 was more than $6.8 billion.[3]

Our members provide financial advice services to clients who will predominantly be "retail clients" for the purposes of the new financial advice regime (estimated to be approximately 85% of clients served by IBANZ members).

Our members have high volume transactional businesses, with multiple advice conversations taking place on a daily basis, commonly consider a number of different insurance contracts underwritten by a range of insurers and have frequent cover placement. As general insurance policies are ordinarily renewed annually, our members will provide "regulated financial advice" under the new regime to their clients at least once a year. For IBANZ members on average, 90% of advice is given to existing clients, and 10% of advice is given to new clients.

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1 Subject to the two year transition period for full licensing, during which the competency "safe harbour" applies in respect of the competency requirements of the Code.

2 Either through obtaining their own licence, or becoming an authorised body named in another FAP's licence.

3 Insurance Council of New Zealand Market Data. An additional approximately $400 million of cover was placed through Lloyds.

In the general insurance broking sector, up to 20% of clients may change insurers (i.e. replace their financial product) each year. This is a standard general insurance practice, and is undertaken to ensure the client receives the benefit of improved policy terms, coverage, conditions or pricing.

In addition, within the general insurance sector, there are different processes depending on whether financial advice is given to new clients or to existing clients and whether the advice relates to placement of new insurance cover, renewal of insurance cover or changes to existing insurance cover.

Our detailed submissions are below.

Responses to discussion document questions

4.1	**Condition 1 – Record Keeping**
4.1(a)	Do you agree or disagree with the proposed standard condition? Please provide your reason
	IBANZ agrees that generally the maintenance of adequate records is a suitable condition. However, its members have identified a number of specific issues which need to be addressed in the proposed standard. The proposed requirements to keep a record of <u>all</u> regulated financial advice given, and additionally of evidence of compliance with the financial advice duties, goes well-beyond "adequate". The breadth of the explanatory note is unnecessarily burdensome and excessive. Record and evidence gathering and retention can be time-consuming and costly, particularly for face-to-face meetings or unrecorded calls (which will be a majority of our members' customer interactions). If done manually (which will often be required in the circumstances), recording the advice and compliance evidence can be distracting and time-consuming; detracting from the customer experience. The time-cost of creating the records would often also be out-of-proportion to the financial adviser's reward for the financial advice given. So record-keeping should not be required in unnecessary circumstances, and should be required only when needed in the future for an actual sale. If no sale is made, then there seems little purpose in keeping a record, and incurring the associated costs. IBANZ also submits that records should need to be kept solely of all <u>material</u> financial advice given (so trivial, incidental or immaterial financial advice can be excluded). On a cost-benefit analysis, keeping immaterial advice cannot be justified. Examples of immaterial advice might include telephone price- inquiries or estimates (which can often be brief and limited in scope) and may not lead to an actual quote or subsequent product sale. While keeping records of the financial advice given would ordinarily be regarded as good record-keeping practice, the same could not be said of keeping records evidencing compliance with the financial advisers' duties. That is a compliance function which may be addressed more efficiently in ways other than recording compliance statements which can often become self-serving and repetitive. Alternatives such as training, certifications, monitoring, and supervision may be more effective and cost-efficient. IBANZ submits that, in the interests of cost-effectiveness, the explanatory note should expressly permit records relating to

financial advisers' compliance steps to be the form of general policies, procedures and controls, rather than specifically and repetitively recording compliance steps in each case, or that instead this requirement not be mandatory, so that the financial advice providers can decide the best (and most cost-efficient) way for them to demonstrate compliance of their financial advisers.

IBANZ also disagrees that a summary of advice in a foreign language should have to be created and kept in English, if a full translation can be provided in the future if one is ever required. Translation costs (even for a summary) should not be imposed solely for record keeping purposes, which in most cases would be superfluous.

Ten working days may in some cases be too short to provide records when requested by FMA. IBANZ recommends amending the Explanatory note to "Your records should be readily available to you, and in any event within ten (10) working days (or such longer timeframe that we agree) when lawfully requested by us."

IBANZ also disagrees that financial advisers should have to ensure that the retail clients consent to the FMA reviewing or obtaining records. It seems inappropriate that this be mandatory. Clients should be able to decide if they wish their financial advice shared with a regulator. It offends against the client's right to confidentiality and privacy. If these fundamental rights are to be overridden, IBANZ submits that this should be a matter for Parliament. Clients should be able to refuse that a third party regulator is entitled to review all their records.

The record keeping requirements should apply solely to 'regulated financial advice'. Wholesale clients should be able to negotiate themselves the extent that records are kept of the advice they receive. Licensing is required solely for giving 'regulated financial advice' so the record-keeping obligations should not be extended to all forms of 'financial advice'. If retained, imposing additional record-keeping compliance costs for wholesale clients on financial advice providers who deal with both wholesale and retail clients, places them at a commercial disadvantage to their competitors who specialise in providing financial advice solely to wholesale clients.

4.1(b)	What written records do you currently keep for your financial advice business?
	N/A
4.1(c)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	Yes, see IBANZ submissions in paragraph 4.1(a). Many IBANZ members are likely to have to enhance their record-keeping capability to meet the additional requirements of this condition. The record-keeping condition imposes more than mere retention obligations. The record generation costs are likely to be significant (in terms of time and cost), particularly where the condition requires additional records to be generated and kept, as explained above.
4.1(d)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	N/A

4.1(e)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
	Yes, the additional costs (in terms of time and actual record-keeping costs) could make providing some low-level financial advice cost prohibited.
4.1(f)	Do you have any other comments on the proposed condition or how it is drafted?
	The condition requires the records must be available for inspection by us at all reasonable times. IBANZ submits that "when lawfully required" should be added.
4.2	**Condition 2 – Internal complaints process**
4.2(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ generally agrees with the proposed internal complaints process standard. However, its members have identified the specific issues below which need to be addressed in the proposed standard. It does not seem suitable to specifically identify a complaint about a failure to provide a service or give advice in the Explanatory note, given there is no obligation on financial service providers to be full service providers. In fact, section 431J specifically anticipates that financial advice providers may limit the nature and scope of their advice. IBANZ also submits that only reasonable and material complaints should need to be dealt with under an internal complaints process, so unreasonable, trivial, vexatious, incidental or immaterial complaints can be excluded. Examples of an unreasonable or vexatious complaint would be were the complainant is complaining irrationally and repetitively. In such cases, recording the date of each complaint and the action taken may become burdensome.
4.2(b)	Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?
	N/A
4.2(c)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	N/A
4.2(d)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	N/A
4.2(e)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
	N/A
4.2(f)	Do you have any other comments on the proposed condition or how it is drafted?

	N/A
4.3	**Condition 3 – Regulatory returns**
4.3(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ agrees that having a requirement for the provision of regulatory returns is a suitable condition. IBANZ welcomes the FMA's commitment to consult on the Regulatory Return Framework and Methodology, and agrees that it would be suitable not to impose regular reporting obligations until full licensing is imposed.
3(b)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	Given that IBANZ does not have the scale and details on what its members will required to provide in the annual report, IBANZ cannot sensibly comment on compliance costs.
4.3(c)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	It depends on the scale and detail of the required reporting.
4.3(d)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
	It depends on the scale and detail of the required reporting.
4.3(e)	Do you have any other comments on the proposed condition or how it is drafted?
	IBANZ welcomes the commitment for further industry consultation prior to the publication of the Regulatory Return Framework and Methodology to be issued under subpart 4, part 9 of FSLAA, as this condition may have additional compliance costs for IBANZ members. Specifically, IBANZ submits that the return information should be easily compiled and only for material matters, as many financial advice providers will be relatively small enterprises who will be unable to bear a significant regulatory burden.
4.4	**Condition 4 – Outsourcing**
4.4(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ agrees that having outsourcing obligations as a condition is suitable. However, its members have identified the specific issue below which needs to be addressed in the proposed standard. For smaller FAPs, there may be instances where they would not be able to negotiate terms consistent with this particular condition. For example, data storage may need to be shrink-wrapped contracts with large cloud storage facilities which are unalterable, thus creating additional compliance costs and barriers to entry, which in turn have an adverse impact on the smaller FAPs' businesses. Accordingly, IBANZ suggests the obligation to impose contractual conditions and the availability of records, are subject to "to the extent reasonably practical".

4.4(b)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	N/A
4.4(c)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	As mentioned above, for smaller FAPs, there may be instances where they would not be able to negotiate terms consistent with this particular condition. For example, data storage may need to be shrink-wrapped contracts with large cloud storage facilities which are unalterable, thus creating additional compliance costs and barriers to entry, which in turn have an adverse impact on the smaller FAPs' businesses.
4.4(d)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
4.4(e)	Do you have any other comments on the proposed condition or how it is drafted?
	IBANZ welcomes the guidance on which outsourcing arrangements would be considered material in FMA's comments.
4.5	**Condition 5 – Professional indemnity insurance**
4.5(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ agrees that having a condition requiring professional indemnity insurance is suitable, and supports the proposal in the last paragraph of the 'Our Comments' section, that a waiver from the standard condition could be sought if the applicant is unable to obtain appropriate cover, or has other valid reasons for not having cover. IBANZ considers that this approach allows the right balance to be struck for those who may be able to self-insure (and can apply for a waiver) against the general need for uniformity.
4.5(b)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
4.5(c)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	IBANZ submits that the ability to apply for waivers allows for adverse impacts to be mitigated.
4.5(d)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

	IBANZ submits that the ability to apply for waivers allows for barriers to entry to be addressed.
4.5(e)	Do you have any other comments on the proposed condition or how it is drafted?
4.6	**Condition 6 – Business continuity and technology systems**
4.6(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ agrees that having a condition dealing with business continuity and technology systems is suitable. However, its members have identified the specific issue below which need to be addressed in the proposed standard. IBANZ submits that the timeframe for notifying the FMA of any event that materially impacts the cybersecurity of the FAP's critical technology systems, should be 10 working days instead of 5 working days, to allow the financial service provider to focus on dealing with the issue, and adequate time to identify its scope and develop a remediation strategy.
4.6(b)	Do you currently have a documented business continuity plan?
	N/A
4.6(c)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	N/A
4.6(d)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	N/A
4.6(e)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
	N/A
4.6(f)	Do you have any other comments on the proposed condition or how it is drafted?
4.7	**Condition 7 – Ongoing eligibility**
4.7(a)	Do you agree or disagree with the proposed standard condition?

	IBANZ agrees that having a condition requiring ongoing eligibility is suitable, provided adequate time is allowed to rectify any change in circumstances before a condition breach occurs. Accordingly, IBANZ submits that "at all times" in the condition and paragraph 2 of the Explanatory note should be replaced by "at all reasonable times (which allow a reasonable time to rectify any non-compliance before a condition breach occurs)". Further, this condition should not be breached by immaterial non-compliances. Accordingly, "in all material respects" should be added after the word "meet" in the condition.
4.7(b)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.
	N/A
4.7(c)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	Potentially. Time to rectify any non-compliance should be allowed before it is escalated to the status of being a breach. For example, a breach should not arise if a director resigns causing Governance requirements to be breached or a director ceases to be 'fit and proper', if the matter is promptly rectified.
4.7(d)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
4.7(e)	Do you have any other comments on the proposed condition or how it is drafted?
	IBANZ recommends further industry consultation be undertaken prior to the publication of the Financial Advice Provider Licensing Application Guide.
4.8	**Condition 8 – Notification of material change**
4.8(a)	Do you agree or disagree with the proposed standard condition?
	IBANZ agrees with the inclusion of this as a standard condition, and acknowledges the appropriateness that the condition applies solely to "material" changes. IBANZ submits that a "materiality" threshold would be suitable in other conditions for consistency, as IBANZ has identified in its submissions.
4.8(b)	Do you currently have a documented business continuity plan?
	N/A
4.8(c)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail these costs.

4.8(d)	Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.
	N/A
4.8(e)	Are there any other material matters other than those detailed in the explanatory note that should be notified to the FMA?
4.8(f)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.
4.9	**Condition 9 – Financial advice provider full licence classes**
4.9(a)	Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.
	If the licence conditions and all other requirements apply equally to each financial advice provider, and the type of financial advice which can be provided is the same, it seems unnecessary to have different classes, particularly if material changes to the nature of, or manner in which the financial advice provider provides, its services need to be disclosed to the FMA. It creates unnecessary restrictions to have three classes of financial advice providers, and the need to apply for a change in licence in the event that there is a change in the manner financial advice is delivered, if the requirements remain the same.
4.9(b)	Does it create a barrier to enter the market? If so, please explain why this is the case.
4.9(c)	Do you have any other comments on the proposed full licence classes?

[redacted]

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 6 August 2020 Number of pages: 9

Name of submitter: [redacted]

Company or entity: Insurance Council of New Zealand (ICNZ)

Organisation type: Industry Association

Contact name (if different): N/A

Contact email and phone: [redacted]

Question number	Comment	Recommendation
You don't need to quote from the consultation document if you use page numbers. *You may insert additional lines or pages - please label each additional page with your name & organisation.*		
4.1 Condition 1 – Record keeping		
(a)	While we are generally supportive of the record keeping condition and the associated guidance, there are aspects that, in our view, are unduly duplicative, onerous or need clarifying. Please see the additional pages for full comments and recommendations.	
(b)	While ICNZ is not a financial advice provider business, our members keep different kinds of records including written records (often electronic or digitised) and recordings of telephone conversations with customers etc. By way of background, ICNZ's members are general insurers that insure about 95 percent of the New Zealand general insurance market, including about a trillion dollars' worth of New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).	
(c)	Provided the concerns raised in the additional pages are addressed, we do not expect that this condition would impose significant additional compliance costs.	
(d)	We refer to our response to (a) above.	
(e)	We refer to our response to (a) above.	
(f)	No comments.	
4.2 Condition 2 – Internal complaints process		
(a)	While we agree with the proposed internal complaints process condition in general terms, there are aspects that, in our view, need clarifying. Please see the additional pages for full comments and recommendations.	

(b)	All ICNZ members, irrespective of whether they will be licensed financial advice providers under the new regime, are required to have an internal complaints process, amongst other things, by virtue of the application of the Fair Insurance Code. The Code applies to all ICNZ members.
(c)	Provided the concerns raised in the additional pages are addressed, we do not expect that this condition would impose significant additional compliance costs.
(d)	We refer to our response to (a) above.
(e)	No comments.
(f)	No comments.
4.3 Condition 3 – Regulatory returns	
(a)	We are supportive of the regulatory returns condition in principle provided they are proportionate and not unduly onerous or costly. We note that further details about it are to be provided in a Regulatory Return Framework and Methodology document, which we look forward to providing feedback on in due course. There are also several matters that we consider you ought to consider in this regard. Please see the additional pages for full comments.
(b)	We note that further details are to be provided in a Regulatory Return Framework and Methodology document, which we look forward to providing feedback on in due course. Until that detail is available we cannot comment on compliance cost.
(c)	We refer to our response to (a) above.
(d)	No comments.
(e)	No comments.
4.4 Condition 4 – Outsourcing	
(a)	While we can appreciate the intention of the outsourcing condition, we consider that there is a need for greater clarity in this respect (noting this has the potential to be very broad). Please see the additional pages for full comments and recommendations.
(b)	No comments.
(c)	We refer to our response to (a) above.
(d)	We refer to our response to (a) above.
(e)	No comments.
(f)	No comments.
4.5 Condition 5 – Professional indemnity insurance	
(a)	We consider that there are a number of issues with the professional indemnity insurance condition that need to be worked through (including the necessity of this requirement for all licensees, the efficacy of professional indemnity insurance to meet claims for compensation from retail clients and the utility of the proposed disclosure in the event professional indemnity insurance is not held). Please see the additional pages for full comments and recommendations.
(b)	No comments.
(c)	We refer to our response to (a) above.
(d)	We refer to our response to (a) above.

(e)	No comments.
(f)	No comments.
4.6 Condition 6 – Business continuity and technology systems	
(a)	While we can see merit in the business continuity and technology systems condition and the associated guidance, we consider that these matters should be separated into two separate conditions. There are also areas, in our view, that should be clarified and expanded upon in this respect. Please see the additional pages for full comments and recommendations.
(b)	Both ICNZ and its members have documented business continuity plans.
(c)	No comments.
(d)	We refer to our response to (a) above.
(e)	We refer to our response to (a) above.
(f)	No comments.
(g)	No comments.
4.7 Condition 7 – Ongoing capability	
(a)	While we are generally supportive of the ongoing capability condition, it is considered that allowance should be made for our members who are already subject to robust fit and proper persons requirements as licensed insurers under the Insurance (Prudential Supervision) Act 2010 to avoid unnecessary regulatory burden. Please see the additional pages for full comments and recommendations.
(b)	We refer to our response to (a) above.
(c)	We refer to our response to (a) above.
(d)	No comments.
(e)	No comments.
4.8 Condition 8 – Notification of material changes	
(a)	We consider that the notification of material changes condition and associated explanatory note should be amended to provide more clarity. Please see the additional pages for full comments and recommendations.
(b)	We refer to our response to (a) above.
(c)	We refer to our response to (a) above.
(d)	No comment.
(e)	No comments.
(f)	No comments.
4.9 Financial advice provider full license classes	
(a)	While the proposed three-classes for financial advice service are generally welcomed, we consider that it would be helpful to highlight in the finalised guidance that the level of inquiry of an applicant/licensee within a class may be different. We also consider that 'A', 'B', 'C' classes should be relabelled.

	Please see the additional pages for full comments and recommendations.
(b)	No comments.
(c)	No comments.

Feedback summary.

While overall ICNZ and its members are supportive of the three classes, standard conditions and guidance proposed in principle, as outlined in the additional pages, there are a number of areas (i.e., in respect conditions 1, 2, 4 , 6 and 8) where we consider refinements should be made and/or clarification provided. There are also some areas where the proposed conditions and guidelines in their current form create an unnecessary regulatory burden and ought to be amended in our view (i.e., conditions 1 and 7). The most significant area of concern from our perspective is condition 5 (professional indemnity insurance), which we consider should either be removed or reframed. We also consider that the three classes should be relabelled to avoid any negative connotations attached to the 'B' and 'C' labels and we would appreciate it if it could be confirmed in guidance that, in making inquiries of applicants/licensees, regard be had to the scope and degree of complexity of the financial advice services provided.

Please also see our further comments in additional pages ('Other comments' heading) and let us know if you would like to discuss any of our feedback and recommendations in more detail.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Condition 1 – Record keeping

While we are supportive of the record keeping condition generally, the requirement to produce a summary of non-english records in English on an on-going basis is unduly onerous in our view and disproportionate to the intended usage (i.e., being available for inspection/review should you request it). We consider a preferable approach would be for summaries of non-english records to be produced only when you request them. We also consider that the reference in (b) of the condition to "*may be in any language provided you keep an accurate summary of the record in English…*" could be interpreted as requiring summaries of records that are already in English to be produced.

Additionally, while the reference in the explanatory note to records being provided within 10 working days of being requested is workable in most cases, there are circumstances when this will not be the case. For example, when the compilation of a large number of call recordings or electronic notes is required. It is considered that providing flexibility here would still be consistent with the references in the condition to creating records in a 'timely manner' and making records available for inspection at 'all reasonable times'.

We recommend:

- Replacing paragraph (b) of the condition with the following:
  "(b) may be in any language provided, for any non-english record, you must provide us with either an accurate summary in English, or a full translation by a translator approved by us into English, if we request it;".
- Amending the third full paragraph of the explanatory note as follows: "*Your records should be readily available to you, and in any event within 10 working days when requested by us, or such longer timeframe we agree to.* " (amendments underlined).

Condition 2 – Internal complaints process

While we agree with the proposed internal complaints process condition in general terms, and note that our members already have similar obligations under the Fair Insurance Code (available here), as previously indicated, we consider that it is important to clarify that a client service issue raised and resolved during the initial interaction with the client should not be treated as a complaint. Otherwise this will lead to false positives in complaint records and potentially unnecessary record keeping and regulatory burden. In our view such matters are best characterised as a client service issues in respect of which no further action is required.

We are also concerned that the reference in the explanatory note to *"*[a] *complaint includes a complaint about a failure to provide a service or give advice*" in the condition. This may be interpreted as including a client complaint about a licensee failing to provide certain services or advice which fall outside the scope of its operations, which we understand is not the intention.

We would also appreciate if it could be confirmed how long records of complaints and any actions taken must be held. We assume the intention is for licensees to hold these for 7 years consistent with condition 1 (record keeping).

We recommend that the explanatory note be amended to:

- Include a new sentence at the end of the first paragraph: "*A complaint does not include client service issue raised and resolved during the initial interaction with the client on the matter*."
- Amend the first sentence of the second paragraph as follows: "*A complaint includes a complaint about a failure to provide a service or give advice, where you have represented that you provide such service or give such advice.*" (amendments underlined).
- Clarify how long records of complaints and actions taken must be kept.

Condition 3 – Regulatory returns

We are supportive of this condition in principle, noting that further details about it are to be provided in a Regulatory Return Framework and Methodology document. We look forward to having an opportunity to provide feedback on this document in due course. We encourage drafters to ensure that this document is tailored to the new regulatory framework for financial advice and consider whether there is an intention to make any information provided in regulatory returns publicly available. We also encourage a proportional approach, so the amount of information required and frequency with which it is required reflects the need and perceived risk without being unduly onerous or costly to comply with.

Condition 4 – Outsourcing

While we can appreciate the intention of this condition, we consider that greater clarity needs to be provided about the particular outsource arrangements that fall within its scope, as this condition has the potential to be very broad. In particular, it is unclear what constitutes 'material', and the position regarding systems or processes carried out by a related entity within the same group as a licensee ought to be explained (either within the condition itself, or the explanatory note).

Given these uncertainties, we believe a better way of characterising this condition, would be to refer to outsource arrangements that are essential or fundamental to the provision of financial advice services. This implies a threshold of being necessary for the financial advice provider's operation, which we believe is the intended scope of this condition. We agree with the FMA's final comment but also suggest that this condition not extend to outsource arrangements that simply support the running of a business (such as those supporting back-office or other administrative functions).

We recommend:

- Amending the condition as follows: "*If you outsource a system or process that is ~~material~~ essential to the provision of your financial advice service you must ensure your arrangements enable you to meet your market service licensee obligations.*" (amendments underlined).
- In the explanatory note:
  - Providing further guidance and examples about what specific outsource arrangements would fall within this condition.
  - Clarifying the position and expectation regarding related parties within the same group.

Condition 5 – Professional indemnity insurance

While the initial impression is that this condition looks straightforward, on closer examination it is considered that there are number of issues with it that need to be worked through.

First, we query whether it is necessary to require all licensees to have professional indemnity insurance to ensure that retail clients can be compensated. For example, certain large licensees, some of whom may self-insure, are already well placed financially to meet any claims for compensation by clients without recourse to professional indemnity insurance. There may also be relevant regulatory requirements in place in this regard. For example, in addition to satisfying obligations as a licensed financial advice provider (if applicable), ICNZ's members, as licensed insurers under the Insurance (Prudential Supervision) Act 2010 (IPSA) must satisfy comprehensive prudential and solvency requirements. We envisage that the position of our members may contrast with the position of other licensees who may have limited financial resources to meet a substantial claim against them without recourse elsewhere. Additionally, while it may be relatively straightforward for smaller licensees to put in place a conventional professional indemnity insurance policy, the complexities and scale of a larger licensees' operations may make it unnecessarily burdensome to do so.

Secondly, we have concerns about the efficacy of professional indemnity insurance to meet a claim for compensation even if the ability of it to do so was not in issue. The primary purpose of professional indemnity insurance is to provide protection for those providing professional advice, rather than acting as a surety for compensation to their clients or customers. Additionally, while there are variations in professional indemnity insurance offerings available in the market, we note the following potential limitations in this regard:

- Over recent years there has been a hardening of the market for this line of insurance and there is no guarantee that the appropriate cover would be available and/or at a price point a licensee could afford. This may be a particular challenge for smaller licensees.
- Professional indemnity policies generally exclude liability assumed by agreement unless the insured would otherwise have been liable. In other words, these policies will not respond to a claim the licensee is liable for under contract unless they would have been liable for this anyway (e.g. by virtue of breaching some professional duty in common law).
- Professional indemnity policies generally place limits on the types of activities undertaken and the extent to which cover is extended to agents and past activities, with these matters being subject to policy conditions and underwriting criteria.
- Professional indemnity policies generally require the underwriting insurer of the policy to be involved in the conduct of the dispute. This may be problematic if the client's claim for compensation originated from the licensee's internal and/or external complaints process and they have made concessions without that insurer's involvement.
- Professional Indemnity policies will not respond when the licensee has been dishonest, reckless or malicious.
- Assessing whether indemnity limits in the aggregate or for any one claim are 'adequate and appropriate' may not be straightforward to determine until a loss has occurred.

Also, in respect of that last point, while it makes sense to avoid being unduly prescriptive in our view, it is important to emphasise that satisfying this condition would ultimately involve a judgment call being made by the licensee and their insurer or insurance adviser about what constitutes 'adequate and appropriate' cover, noting that this is inherently uncertain and maybe something scrutinised with the benefit of hindsight after the fact. It is also unclear from the condition and commentary in our view:

- How far the requirement to hold professional indemnity insurance is intended to extend to aspects of the licensee's business beyond the provision of licensed financial advice service directly, noting that some licensees may have a number of business lines unrelated to this.
- When a license will be declined because professional indemnity insurance is not held.

Lastly, in the event that a licensee is required to disclose to its retail clients that it does not have professional indemnity cover as proposed, it is questionable how useful this disclosure would be particularly because, as proposed, no reasons for this are to be provided which would provide relevant context. For example, whether professional indemnity insurance has not been taken because it was not considered necessary or because it was unable to be obtained this would be perceived differently. On this basis:

- The disclosure may result in a client deciding that they should not engage the licensee on the false assumption that it could not meet any claim for compensation against it.
- Conversely, a client may incorrectly assume that, because a licensee holds professional indemnity insurance, it would be able to meet any claim made against which for the reasons outlined above may not be the case.

We recommend either removing this condition or reframing it, adopting a first principles approach that squarely focusses on the problem to be solved and most appropriate solution to address it. Presumably, the focus here would be on licensees with limited financial resources. Again, a targeted and proportional approach is recommended. In so far as any Professional Indemnity insurance requirement is to remain, we recommend that the disclosure requirements be amended to reflect the feedback above and, for consistency with other FMA licenses (such as licenses for discretionary investment management services (DIMS) or managed investment scheme (MIS) manager), this be set out in applicable licensing guides rather than the standard conditions.

Condition 6 – Business continuity and technology systems

While we can see merit in the requirements set out in this condition, and note that these generally reflect best practice in any event, for clarity we consider that the business continuity and technology systems should be split out into two separate conditions as they relate to different matters and as some of the proposed cyber security requirements go beyond what is typically included in a business continuity plan. Separating these matters out will also reduce the risk that important areas are missed.

We also consider that licensees should be provided with flexibility as to whether the requisite business continuity plan is a separate plan specifically prepared for licensing purposes or an existing plan in place.

We recommend:

- Separating out business continuity and technology systems into two separate conditions.
- Making it clear in the applicable explanatory note that licensees can decide whether they produce a separate business continuity plan for licensing purposes or rely upon an existing plan to meet this requirement.

Condition 7 – Ongoing capability

While we are generally supportive of this condition, it is important to acknowledge that our members, as licensed insurers under the IPSA, are already subject to robust ongoing fit and proper persons requirements under that regulatory regime. In our view, this ought to be reflected in this condition and an adjustment made to avoid unnecessary regulatory duplication.

We recommend amending this condition and explanatory note to either:

- exempt insurers licensed under the IPSA from the fit and proper persons requirement, or
- deem insurers licensed under that regime as compliant with this requirement.

Condition 8 – Notification of material changes

We consider that this condition and explanatory note requires change to make it clearer. In particular:

- The reference to 'commencing to implement' in the condition is unclear as it allows for too many individual interpretations as to its meaning.
- The definition of the 'nature of your financial advice service' in the explanatory note appears to be inconsistent with the narrower characterisation in the comments section.

We recommend:

- Amending the condition as follows: "*You must notify us in writing within 10 working days of ~~commencing to implement any~~ implementing any material change to…*"
- Clarifying the guidance to address inconsistences regarding the characterisation of the 'nature of your financial advice service'.

Proposed new three classes

While the proposed three-classes for financial advice service are generally welcomed, in our view it is important not to treat all applicants and licensees that fall within a particular class (i.e. class A, class B or class C) the same way. This is because within each license class there will be a range of financial advice providers offering different types of financial advice services with different scopes and varying degrees of complexity. For example, it is possible (and even likely) that a single adviser provider in class A or multi-adviser provider in class B provides advice with a broader scope and more complexity than a provider in class C, whose advice may be limited to their own products. In our view regard should also be had to the scale of the licensee's operations, noting that for small operators for example inquiries and additional requirements have the potential to involve significant resources to comply with which may be unduly disproportionate or onerous.

Additionally, we understand that license classes are primarily designed to serve an administrative function and the new disclosure regulations do not appear to require these to be referred to. Nonetheless we consider there is a risk of a negative view being formed about licensees with 'B' or 'C' class licenses by current or prospective clients or stakeholders due to the inherent attributes of these 'B' and 'C' labels.

We recommend:

- That in your commentary with the finalised conditions you outline that, in making inquiries and requests of applicants or licensees, consideration will be given to the type and scope of the financial advice services provided, its complexity and the scale of their operations.
- Using numbers rather than letters to label the different classes (i.e., 1 for A, 2, for B, 3 for C). Alternatively, descriptors could be to identify classes i.e., 'single adviser' for A, 'multi-adviser' for B and '' for 'comprehensive' for C.

Other comments

Another matter that should be clarified in our view is the applicability of these standard conditions where the licensee provides regulated financial advice to wholesale clients as well as retail ones. While the intention appears to be for these standards to only apply to financial advice to retail clients based upon the commentary, standard conditions 1, 2 and 4 are framed in such a way as they could be interpreted to apply to both retail and wholesale clients.

We recommend that your guidance be amended to clearly indicate that these general conditions only apply to regulated financial advice to retail clients, noting specifically that conditions 2 and 4 and their guidance may be interpreted as applying more broadly to financial advice to wholesale clients as well.

We also recommend that a document equivalent to the 'Quick guide to licence applications for small businesses providing DIMS' (available here) be produced for Class A applicants to assist them with their licence application.