

7 March 2022

Simplicity NZ Limited
Level 16
5-7 Byron Avenue
Takapuna
Auckland

[REDACTED]

DIRECTION

(Given pursuant to sections 414, 415, 416 and 420 of the Financial Markets Conduct Act 2013 (**FMC Act**))

Defined Terms

1. For the purposes of this Direction:

Simplicity means Simplicity NZ Limited (NZBN 9429041767092)

All Greys Campaign means Simplicity's All Greys advertising campaign in 2021

Advertising Claim means the prominent statement "get out of the game when you want to, retire with up to 20% more than the average KiwiSaver plan" in All Greys Campaign materials

Direction

2. The FMA hereby directs Simplicity to:

- a. cease and desist from publishing or otherwise using, directly or indirectly, the Advertising Claim, and to take all practicable steps to remove the Advertising Claim from all medium, including all websites, physical locations, and social media accounts owned or controlled by Simplicity; and
- b. ensure all current and future promotional material (in whatever form) relating to a Simplicity managed investment scheme is not likely to mislead or deceive investors or potential investors as to the benefits of a Simplicity financial product compared with other similar financial products, and in particular:
 - i. clearly distinguish any representation about fees saved from any representation about a KiwiSaver balance projection:

- ii. ensure that all material assumptions supporting representations relating to fees charged by Simplicity or projected retirement balances are disclosed in a sufficiently prominent way.
- c. ensure that any representation relating to the benefits of a Simplicity financial product compared with other similar financial products is based on reasonable grounds and those grounds are documented and approved by a senior executive prior to the representation being made: and
- d. either:
 - i. cease and desist from publishing or otherwise using, directly or indirectly, the ‘Simplicity Difference Calculator’ as published on the Simplicity website (**Difference Calculator**); or
 - ii. conduct a compliance review of the Difference Calculator and report in writing to the FMA, within 20 working days of receiving this Direction, confirming compliance with the applicable fair dealing provisions of the FMC Act, including an assessment of:
 - A. the assumptions relied on and whether those assumptions are reasonable and adequately disclosed to users;
 - B. all other grounds relied on and whether those grounds are reasonable;
 - C. any recent or proposed changes to the Difference Calculator or related content;
 - D. the detail surrounding the Difference Calculator including explanatory statements contributing to the overall impression and whether such detail should be modified,together with an independent expert opinion confirming such compliance.
- e. Ensure that in the 24 months from the date of this Direction:
 - i. the formal sign-off process outlined in Simplicity’s Advertising and Communication Policy is fully and effectively implemented for all advertising of financial products:
 - ii. Simplicity’s Chief Operating Officer and Head of Compliance (or equivalent roles that directly report to the Managing Director) confirm to the Managing Director (or equivalent) by email at least once every six months, that all current and proposed advertising of financial products by Simplicity (including disclosure documents) comply with the fair dealing provisions of the FMC Act: and
 - iii. the Board of Directors of Simplicity receive and consider a report on FMC Act compliance practices at least once every six months.
- f. Within one month of the date of this Direction, write to all members that joined the Simplicity KiwiSaver Scheme between 20 August 2021 and 30 November 2021 (**Specified Members**), advising that:
 - i. the FMA considers claims in the All Greys Campaign were misleading, deceptive and unsubstantiated, contravening sections 19 and 23 of the FMC Act:
 - ii. the FMA was most concerned with the statement “*get out of the game when you want to, retire with up to 20% more than the average KiwiSaver plan*”:

- iii. Simplicity cannot predict or guarantee with any confidence that an investor will retire with 20% more than the average KiwiSaver plan if they switch their KiwiSaver to Simplicity:
- iv. the FMA has directed Simplicity to take certain actions to ensure that it's advertising will not be misleading or deceptive, or include unsubstantiated representations in the future.
- g. Within three months of the date of this Direction, summarise any complaints it receives about the Advertising Claim, in particular but not limited to complaints from Specified Members, along with Simplicity's response; and send that summary to the FMA at [REDACTED], copying in compliance@fma.govt.nz

Reasons for the Direction

- 3. The reasons for the Direction above are that –
 - a. We consider the Advertising Claim is likely to mislead or deceive consumers, in contravention of section 19 of the FMC Act.
 - b. We consider the Advertising Claim is an unsubstantiated representation, in contravention of section 23 of the FMC Act.
 - c. We consider the contraventions of section 19 and 23 of the FMC Act are material.
 - d. Section 414(1)(a) of the FMC Act provides that the FMA may exercise a power to give direction under section 414(2)(c) of the FMC Act if it is satisfied a licensee has materially contravened a market services licensee obligation. Simplicity was granted its license on 9 May 2016 and given the FSP number FSP465606. Accordingly, Simplicity is a licensee.
 - e. As Simplicity has materially contravened sections 19 and 23 of the FMC Act, it has materially contravened a market services licensee obligation.
- 4. We consider the Direction to be appropriate because:
 - a. It requires Simplicity to take reasonable steps to comply with sections 19 and 23 of the FMC Act:
 - b. It requires Simplicity to take reasonable steps to correct or mitigate the adverse consequences of its contravention of sections 19 and 23 of the FMC Act:
 - c. Prior formal and informal engagement on related matters does not appear to have had the desired effect from the FMA's perspective:
 - d. The seriousness of the contraventions and the extent of coverage of the All Greys Campaign across multiple channels, including television, digital and social media sites.

Why we consider the Advertising Claim is likely to mislead or deceive

5. We consider the overall impression created by the Advertising Claim in the context of the All Greys Campaign is that, by joining the Simplicity KiwiSaver scheme, a member will likely have a projected balance upon retirement 20% greater than the average KiwiSaver scheme.
6. The All Greys Campaign omits material information that the Advertising Claim relies on, in particular, the assumptions of equal gross returns (i.e., returns before fees are deducted), and better net of fee returns for Simplicity¹. We do not consider these assumptions are reasonable nor are they apparent from the marketing collateral that includes the Advertising Campaign.
7. In our view, an ordinary and reasonable viewer of the Advertising Claim would not be aware (and would not be expected to know) the Advertising Claim is based solely on fee differential and the assumption of “everything else being equal”.
8. For the reasons above, we consider the ordinary and reasonable viewer is likely to be misled or deceived by the Advertising Claim as to the likely benefit of switching from an existing KiwiSaver provider to Simplicity.
9. The words “...As a non-profit, Simplicity keeps its fees low, so that you can...” did not appear on all (if any) social media or website or digital banners. While we accept that these words provide some link between projected fee savings and the Advertising Claim, we do not consider that it cures the misleading and deceptive effect of the Advertising Claim.
10. Social media and website advertisements linked to the Simplicity website where a user was prompted to “*find out more*” on another page. That other page included information about Simplicity’s KiwiSaver plan and an invitation to “*See your Simplicity difference below*”. However, no further information was provided to explain the underlying assumptions of the Advertising Claim.
11. Even if the information linked to from social media and website advertisements was sufficient to understand the basis and limitations of the Advertising Claim, it would require a viewer to find, read and give sufficient prominence to that information. Viewed as a whole, we consider the All Greys Campaign would likely entice consumers to switch KiwiSaver providers by an erroneous belief of a projected retirement fund 20% greater than average.
12. Even if we did accept that Simplicity’s “all things being equal” assumption might be reasonable, the Advertising Claim relies on a number of other assumptions including a 45-year working life and no change in the relevant fees over that 45-year period, and that a comparison of growth funds or a blend of fund types (as opposed to a comparison of conservative funds for example) are reasonable grounds for the Advertising Claim. These further assumptions are not disclosed as context to the Advertising Claim.
13. While the use of the words “up to” qualify the Advertising Claim to suggest something less than 20% better than average will sometimes be the case, we consider it is insufficient to avoid the overall

¹ Calculated both in relation to growth funds only (gross return assumptions 6.56%; net return assumptions for Simplicity 6.09%, average 5.13%; based on 0.47% fees for Simplicity, 1.43% for average), or as a blend of different fund category return assumptions including growth, conservative and balanced funds.

impression that a 20% better than average KiwiSaver balance is a likely consequence of switching to Simplicity without further explanation.

Why the Advertising Claim is an unsubstantiated representation

14. We consider the Advertising Claim is an unsubstantiated representation. In particular, we consider that Simplicity did not, when the Advertising Claim was made, have reasonable grounds for the Advertising Claim.
15. Simplicity has relied upon some key assumptions, inputs and parameters when calculating the “Simplicity Difference” underpinning the Advertising Claim. These include:
 - a. equal gross returns (i.e., returns before fees are deducted), and better net of fee returns for Simplicity, with all other things remaining equal;
 - b. calculating the Simplicity Difference both based on a comparison of growth funds, and on a blend of different fund types (for example a blend of growth, balanced and conservative funds).
16. We consider that the grounds Simplicity has relied upon to make the Advertising Claim are not reasonable, because the level of fees is only one factor of many that will influence the balance a KiwiSaver member will have upon retirement. The assumption that all other factors are equal aside from the fee differential does not reflect the reality that, when the Advertising Claim is applied outside of those strict parameters, the comparative result will likely differ. Other factors will significantly influence the balance a KiwiSaver member will have upon retirement, most relevantly the returns gross of fees earned. In assuming returns gross of fees are equal between providers, Simplicity is ignoring what is likely to be a key difference in outcomes between KiwiSaver providers.
17. Even if we accepted that Simplicity’s “all things being equal” assumption was reasonable, we consider that the fee difference claim itself is not reasonable, as:
 - a. Fees can and do change over time. Providers representing a significant portion of KiwiSaver members and funds under management have materially reduced and removed fees in the past 12 months. It is not reasonable to measure the difference in fees between Simplicity and the industry average for one year, and then assume that fee difference will remain the same for the following 45 years.
 - b. The fee data used in calculating the “Simplicity Difference” is based off data on the Disclose Register. This data is historic in nature. It looks backwards to the fees charged in the most recent year ended 31 March for which data has been submitted. Therefore, fees have changed since 31 March but may not be captured in the data used, and these fee changes may be significant enough to change the industry average fee.
 - c. The fee data or fee difference calculation itself includes assumptions, notably an assumed average member balance to convert fixed dollar fees into a comparable percentage fee. Different KiwiSaver providers can have materially different average member balances.
 - d. The models that Simplicity has used have compared growth funds, and separately compared a blend of growth, balanced and conservative funds. They have not compared balanced funds or conservative funds in isolation. However, the Advertising Claim does not specify a particular fund category and so could be read to apply to all Simplicity funds.

Why we consider the contraventions material

18. The term ‘materially contravened’ is not defined in the FMC Act. However, we have considered materiality in light of the circumstances relevant to Simplicity’s Advertising Claim, and considered the extent, seriousness, and significance of the contraventions. We consider the contraventions of section 19 and 23 of the FMC Act to be material because:

- a. **Extent of Campaign:** The All Greys Campaign had widespread reach through social media, news website banner advertisements, TV and two prominent billboards in Auckland. It likely resulted in more than 250 new KiwiSaver members for Simplicity.
- b. **Unfair Advantage:** The Advertising Claim provided an unfair competitive advantage to Simplicity with the likely consequence of new investors joining Simplicity as a result.
- c. **Significance:** Due to prior engagement with the FMA, Simplicity was aware of the FMA’s view that:
 - i. any fee saving projections should be clearly delineated from KiwiSaver balance projections; and
 - ii. any balance projection should be surrounded with sufficient contextual disclosure to reduce the risk that a viewer is misled; and
 - iii. Simplicity’s standard of conduct should reflect its status as a default KiwiSaver provider.

Other Information

19. The FMA considers it is relevant to address certain submissions made by Simplicity against the issue of this Direction.

20. It was submitted that Simplicity has already complied with some of the directions and indicated that it will do so going forward – and because of this there is no need to issue a direction at this time. We do not accept this submission. By issuing the direction the FMA will have greater enforcement options should Simplicity breach the direction. Additionally, private formal and informal engagements on directly related matters have not had the desired effect.

21. It was submitted that the breaches were unintentional. We note that even if the breaches were unintentional, that is not relevant to the question of breach of sections 19 or 23 of the FMC Act. Simplicity largely accepts that FMA’s concerns are valid and that investors ‘may have been misled’ by the Advertising Claim.

22. It was submitted that the All Greys campaign only resulted in a non-material increase in new members for Simplicity. We note that even if this is true, the impact of the campaign on the general perception of Simplicity’s brand is likely to give it an unfair competitive advantage and so it is important to send the message to Simplicity and others that the FMA will take meaningful action in these types of circumstances.

Why we consider it appropriate to make a public statement about the Direction

23. The main purposes of the FMC Act are to:

- a. promote the confident and informed participation of businesses, investors, and consumers in the financial markets: and
- b. promote and facilitate the development of fair, efficient, and transparent financial markets.

24. Being open and transparent about the regulatory outcomes we achieve supports those main purposes. As set out in the FMA's Regulatory Response Guidelines, we publish details of the regulatory outcomes we achieve (including relevant facts and the reasons for choosing that response) on our website unless exceptional circumstances apply, or if the effect of the publication would be disproportionate to the misconduct.

25. In light of the reasons why we view the contraventions to be material and serious, we consider a media statement about the Direction is proportionate. We are not aware of any exceptional circumstances not to publish the details of the Direction if issued. We consider that publishing the media statement would support the main purposes of the FMC Act and further the FMA's function to promote the confident and informed participation of businesses, investors, and consumers in the financial markets.

26. We acknowledge that Simplicity has reacted promptly by ceasing the All Greys Campaign once it was made aware of the FMA's concerns. Simplicity have accepted responsibility and acknowledge that their advertising campaign was capable of being misleading. However, while we appreciate the manner in which Simplicity has conducted itself, this does not diminish the seriousness of the contraventions such that a less formal and/or private response would not be appropriate. It is relevant to note that other formal and informal private engagements with Simplicity on directly related matters have not had the desired effect.

Dated this 7th day of March 2022



Paul Gregory
Director of Capital Markets
Financial Markets Authority