IFA Submission on Ministry of Consumer Affairs Discussion Document on Guidelines to become an Approved Dispute Resolution Scheme

Introduction

1. The Institute of Financial Advisers (IFA) welcomes the opportunity to formally comment on these guidelines. Overall, we consider this is a useful document for anyone considering developing a proposal for an approved dispute resolution scheme. Our comments are largely restricted to pointing out particular aspects that would need consideration for financial advisers.

2. We have separately commented on the discussion document on the Reserve scheme and included comments in that submission on dispute resolution in general. While not wishing to repeat them here, it might be useful to list the key aspects already covered in that submission.

   a. IFA wishes to record its strong support for a single "clearing house" for consumer complaints.
   b. There are significant variations in the size and complexity of financial service providers and the services/products they provide. Financial advisers generally work in small businesses with limited resources, yet deal with some of the most complex products. There are concerns amongst advisers about the administrative burden and cost of dispute resolution.
   c. While IFA supports the ideal of a single industry dispute resolution scheme, its design will need to take account of the features of the adviser sector especially in relation to setting a cap on compensation and in the judgements required for the complex advice given by advisers that arises from the complexity of the advice process and the products themselves, as well as high consumer expectations of financial products where the outcomes may depend upon global financial markets that are beyond the ability of anyone to predict.
   d. IFA considers that the new dispute resolution schemes should only apply to activity that occurs after the date of implementation of the legislation. This is to avoid a flood of historical complaints and the risk of judging past events by today's (higher) standards, especially since there were no agreed standards in the past.

Comments on the detailed guidelines

3. What follows is comments on some of the points in the draft guidelines document, using the discussion paper headings.

Classification of Consumer Complaints

4. Paragraph 40 states that "industry codes" are one of the aspects that might form the basis for a complaint. Under regulation, there will be a "Code of Conduct" for Authorised

Financial Advisers, but not for advisers who deal only with Category 2 products under the Financial Advisers Act. This two-tier structure will make it more difficult for dispute resolution in relation to advisers dealing with only Category 2 products since there will not be a code to judge behaviours against.

5. IFA as a professional association does have professional practice standards that have been derived from globally accepted standards. However, it would seem unfair if IFA members were to be judged against higher standards than non-members when a dispute occurs.

When Complaints can be taken to the Disputes Scheme

6. As mentioned previously and in our submission on the Reserve Scheme, while accepting the concept of the suggested rules for when a complaint can be made to a scheme, IFA considers that the start date for the new scheme should be the date that regulation is implemented.

Dual Access

7. While agreeing that a financial service provider should be allowed to refer a dispute with a client to a scheme, we recommend that this exclude complaints between providers, e.g. between financial advisers.

Amount Claims may be About

8. IFA supports the concept of a cap on the maximum value of a claim – and as we commented in relation to the Reserve Scheme, suggests that this should be based upon a maximum claim rather than a cap on compensation. We consider that the cap for an individual adviser should be considerably lower than the cap for a corporate entity. The reasoning for this is set out in the other submission.

Consumer Accessibility Requirements on Members

9. As the majority of financial adviser practices are small, the obligations that are able to be imposed on them for promotion of the scheme needs to be commensurate to their ability to fund this.

Governance Board

10. If there was a dispute resolution scheme for financial advisers, the governance arrangements would need to take account of the large number of small firms in terms of the way governance was structured.

Legal Representation and Support Persons

11. While the discussion centres around legal representation for complainants, this is also an issue in relation to financial advisers who have professional indemnity (PI) insurance. Where a complaint is made against an adviser who holds PI insurance, they are obliged to notify their insurer. The insurer may in turn become closely involved in the complaint, such as wishing to review all correspondence and perhaps involving their own legal advisers. This will tend to work against the ideal of an informal problem-solving approach.

12. On the other hand, there needs to be recognition that as the majority of financial adviser practices are small, there is not the same difference in capability as may exist between a consumer and a large corporate.

Funding Requirements

13. Financial advisers are very concerned about the potential cost of membership of a dispute resolution scheme and the cost of any complaint. This concern is exacerbated by the

requirement that complainants not be charged a fee which may encourage complaints.

14. Information from Australia suggests that advisers faced with a minimum fee of around $3,500 for having a complaint considered, were inclined to offer a financial settlement, even if they didn't consider they had done anything wrong, since this was likely to be cheaper. Such a situation would hardly be fair and could be taken advantage of by complainants, especially since this cost would not be considered trivial by a small adviser practice.

Conclusion

15. IFA hopes these comments are useful. We are of course available to discuss our suggestions and to explain any aspects that are unclear.

16. Contact details and background information on IFA follows.

Background information on the Institute of Financial Advisers

The Institute of Financial Advisers is the professional body for some 1,300 members, representing financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to some 200,000 New Zealanders each year, many of whom would be couples rather than individuals, with an overall client base of around 600,000.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, work-based savings and insurance, retirement planning, estate planning and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with a code of ethics and practice standards, runs a Professional Conduct Committee and Disciplinary Tribunal that are independently chaired, offers education pathways that can lead to professional designations and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members.

Contact information:

David Hutton
Chief Executive
Institute of Financial Advisers
Level 6, Technology One House, 86 Victoria Street
P O Box 5513
WELLINGTON 6145
Ph: (04) 499 8062
Fax: (04) 499 8064
Mob: (027) 446 2656
Email: david@ifa.org.nz
Website www.ifa.org.nz