

23 OCTOBER 2013

FUTURE OF FINANCIAL ADVICE SERIES

BAN ON CONFLICTED REMUNERATION

INTRODUCTION

This update is intended as a general overview, targeted specifically at claims officers and underwriters of insurers or professionals required to comply with the Future of Financial Advice (FOFA) reforms.

WHAT IS IT?

Conflicted remuneration has a broad definition. It includes commissions and volume based payments, in relation to the distribution of and advice to retail clients. It also includes non-monetary benefits.

The ban applies to both general advice and personal advice, however there are specific carve outs for remuneration provided in relation to general insurance, basic banking products and life risk insurance products.

COMPLIANCE - WHAT TO LOOK FOR

Financial advisers cannot receive any benefits (monetary or otherwise) that could reasonably be

expected to influence the financial advice they provide to clients.

Advisers need to:

1. Review agreements or contracts entered into with product providers since 1 July 2013 and ensure no benefit (such as a commission from a product issuer) is being given.
2. Review every agreement or contract before entering into it to ensure no benefit will be given.
3. Ensure that when they recommend a product to a client the recommendation is not influenced by a benefit received.
4. Ensure that the product they recommend to a client is the one that is best suited to that particular client's needs.

Further, from 1 July 2014:

1. Advisers will need to ensure they do not receive any benefits paid by platform operators in relation to new clients.

2. For non-platform providers, advisers cannot receive any benefits in respect of new clients and/or investments by existing clients from 1 July 2014 in new products .
3. If advisers are receiving or their employee is receiving benefits as an employee under an enterprise agreement in force immediately prior to 1 July 2013, the benefits are no longer able to be received from six months after the nominal expiry date (NED) of the agreement, or from 1 July 2014 if the agreement passed its NED before 1 July 2013.
4. If they are receiving or their employee is receiving a benefit as an employee under a non enterprise agreement, the ban will apply from 1 July 2014.

EXCLUSIONS

The ban does not apply to payments made under arrangements entered into before 1 July 2013. This includes:

- Benefits made in relation to the purchase or sale of a financial advice business and the payment of these benefits to third parties, that results from an arrangement entered into before 1 July 2013.
- Grandfathered benefits passed on to other parties that were not subject to the agreement which gave rise to the grandfathered benefit, but where the passed on benefit is given under a pre-application day arrangement. This includes an authorised representative or a financial adviser who is an employee of a licensee or authorised representative.
- Payments in relation to execution only services. These are payments made in relation to the sale or issue of financial products where no advice has been provided. If their firm has previously provided advice to a client the exemption will apply as long as:
 - if the advice was previously provided on the same products or class of products, it was provided 12 months before the sale of the product; or
 - the advice was provided on a different class of products.

The following benefits are permitted:

- a benefit for a genuine education and training purpose that is relevant to the provision of financial advice to retail clients;
- a benefit below \$300 (per individual adviser) which is not given on a frequent or regular basis; or
- information technology support or software that relates to the provision of financial product advice.

Financial advisers can continue to pay their employees' performance based pay, as it is unlikely that bonus arrangements calculated using a genuine "balanced scorecard" (including a number of factors not based on revenue) could reasonably be expected to influence the advice provided.

CHECKLIST FOR INSURERS

We recommend claims officers consider the checklist below when reviewing any claim brought against a financial adviser post-FOFA. We also recommend that insurers review current claim form and proposal form templates and consider updating them to include reference to the matters set out below.

- ✓ Has the adviser reviewed agreements and contracts entered into since 1 July 2013 in respect of benefit and commission payments?
- ✓ Does the adviser have systems in place to ensure that they:
 - Review every agreement or contract before entering into it to ensure no benefit will be given?
 - Do not receive any benefits from either platform or non-platform operators in respect of new clients?
 - Will review any benefits from either platform or non platform operators for investments by existing clients in new products before 1 July 2014?

LOOK OUT FOR

Look out for our next FOFA update "Opt-in and fee disclosure."

[Click here](#) for our related update "Best interests duty."

MORE INFORMATION

For more information on the FOFA reforms and what it means for you, please do not hesitate to contact:



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