

Insurance Brokers Code Compliance Committee

Additional submission to the National Insurance Brokers Association (NIBA)

Review of the Insurance Brokers Code of Practice (the Code)

Response to NIBA's discussion paper dated 12 February 2021

26 May 2021

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1. Introduction

- 1.1. This additional submission provides further background to our previous submissions¹ to the proposed Code.
- 1.2. We have included this submission to highlight recent regulatory developments in other jurisdictions. These demonstrate the principles we outlined in our submissions and show that the future of financial services will likely involve a shift in culture and behaviour to focus more on consumer outcomes.

2. The UK Financial Conduct Authority is proposing a new Consumer Duty

- 2.1. The Financial Conduct Authority (FCA) has released a consultation paper, CP21/13 *A New Consumer Duty*.² The FCA wants to see greater consumer protection in retail financial markets – in particular they envision a market “where firms are competing vigorously in the interests of consumers.”
- 2.2. To do this they are proposing the introduction of a new Consumer Duty. This would require firms to:
 - 2.2.1. ask themselves what outcomes consumers should be able to expect from their products and services,
 - 2.2.2. act to enable rather than hinder these outcomes, and
 - 2.2.3. assess the effectiveness of their actions.
- 2.3. Essentially, the FCA wants firms to think of issues more from the perspective of consumers. Firms would need to focus on actual outcomes experienced by consumers and would need to behave in a way that “reflects how consumers actually behave and transact in the real world.” They note that this will require substantial changes in firm culture and firm behaviour.
- 2.4. The rationale behind the new Consumer Duty captures many of the concepts described in our supplementary submission – it represents a higher standard of behaviour than the current regulatory regime and is what the Code should be aspiring towards. It also asks firms to think not just of processes, but also on consumer outcomes.
- 2.5. A key aim of the proposed Consumer Duty is for firms to not only meet the narrow statutory obligations, but to also think about the intent of regulatory rules and their overarching objectives, and to act to meet those objectives.
- 2.6. For example, whilst there are regulatory requirements for the provision and disclosure of information (in Australia, through general advice warnings, financial services guides, and product disclosure statements), the aim of these is to ensure consumers understand the services they are buying.
- 2.7. Hence, the FCA’s expectation is that firms will take extra steps to ensure that consumers not only receive disclosure documents, but that they understand the key parts of these documents as they relate to them.

¹ The original IBCCC submission dated 9 April 2021 and supplementary submission dated 14 May 2021 are available here <https://insurancebrokerscode.com.au/resource/submissions/>

² <https://www.fca.org.uk/publication/consultation/cp21-13.pdf>

- 2.8. That might mean that firms need to take extra steps with some consumers who need greater assistance to understand terms. Or it might require firms to make inquiries about the needs and requirements of consumers, so that they can highlight aspects of a service or product that may disproportionately affect specific consumers.
- 2.9. Importantly, firms would be expected to have some processes in place to actually test and measure whether their efforts were effective – and if they were not, they would be expected to make changes to their processes and practices. Essentially, they would need to be able to demonstrate that they are considering consumer outcomes and are actively taking steps to improve these outcomes.

3. How this could be applied to the Code

- 3.1. As we have previously noted, the Code should serve to encourage the industry to move to a higher standard of behaviour.
- 3.2. Whilst a specific duty in the Code may not be appropriate at this time, the broader principles that underpin the Consumer Duty are very relevant and tie in with the concepts outlined in our previous submission.
- 3.3. In particular, asking brokers to go beyond the legal minimum processes and focus on consumer outcomes will help to drive a change in culture and behaviour.
- 3.4. Incorporating concepts from the Consumer Duty will help to strengthen the provisions of the Code and will help the insurance broking industry to be a leader in financial services.

Appendix 1: About the Code

The 2014 Insurance Brokers Code of Practice ([the Code](#)) sets standards of good industry practice for the insurance brokers that have agreed to follow its standards when dealing with current and prospective individual and small business clients. The Code is owned and published by the National Insurance Brokers Association ([NIBA](#)) and forms an important part of the broader national consumer protection framework and financial services regulatory system.

The 2014 Code contains 12 key service standards that apply to all insurance broking services delivered to individuals and small businesses by Code subscribers across Australia.

By subscribing to the Code³, insurance brokers have committed to continuously improving their standards of practice and service in their sector; promoting informed decision-making about their services; and acting fairly and reasonably in delivering those services.

In September 2018, NIBA appointed Marigold Magnaye to undertake a review of the Code. This [review](#) is still in process.

Appendix 2: About the Committee

The Insurance Brokers Code Compliance Committee ([the Committee](#)) is an independent compliance monitoring body established under the Code and the Code Compliance Committee Charter ([the Charter](#)). It comprises an independent chair, a person representing the interests of the insurance broking sector and a person representing the interests of consumers (including small businesses).

Committee members as at April 2021 include:

- Michael Gill – Independent Chair
- David Duffield – Industry Representative
- Julia Davis – Consumer Representative

The Committee supports insurance brokers to implement best practice and culture in service and advice provided to their clients which meet consumer expectations

The Code and Charter entrusts the Committee with several functions and responsibilities, including to:

- independently monitor compliance of Code subscribers with obligations under the Code
- enable and encourage robust self-reporting
- identify current and emerging industry wide problem
- provide guidance to stakeholders about implementing best practice and culture in service and advice to clients
- promote professionalism and change in company culture to achieve compliance, and

³ As at 31 May 2021, there are 457 Code subscribers. A full list of Code subscribers can be found here <https://insurancebrokerscode.com.au/about/about-the-code/code-subscriber-register/>

- consult and keep stakeholders informed about the Committee’s activities.

Information about the work undertaken by the Committee and its publications can be found at its website www.insurancebrokerscode.com.au.

Appendix 3: About the Compliance Manager

The Australian Financial Complaints Authority ([AFCA](http://www.afca.gov.au)) provides Code monitoring and administration services⁴ to the Committee and NIBA by agreement. AFCA has appointed a dedicated team of staff (Compliance Manager⁵) within its office to undertake that task.

In addition to shared administrative and support staff, as at April 2021 dedicated staff to the Insurance Brokers Code Compliance Committee include:

- Rene Van de Rijdt – acting General Manager, Code Compliance and Monitoring
- Daniela Kirchlinde – Code Compliance and Operations Manager

⁴ As per the *Insurance Brokers Code Compliance Committee Administration Deed and Charter (Charter)* section 1.1 (a) (iv) the Code Administrator means AFCA or such other person appointed by NIBA from time to time to act on NIBA’s behalf in administering the Code.

⁵ As per *Charter* section 1.1 (a) (vii) means the person appointed by the Code Administrator to act on its behalf for the purpose of the Code Procedures.