



FINANCIAL PLANNING
ASSOCIATION *of* AUSTRALIA

9 June 2017

Manager
Financial Services Unit
Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: FOFA.PIR@Treasury.gov.au

Dear Sir / Madam

FoFA Post Implementation Review

The Financial Planning Association of Australia (FPA) welcomes the opportunity to provide feedback to the Future of Financial Advice (FoFA) Post Implementation Review.

The FPA would welcome the opportunity to discuss with you the issues raised in our submission.

If you have any questions, please contact me directly on heather.mcevoy@fpa.com.au or 02 9220 4500.

Yours sincerely

Heather McEvoy

Policy Manager

Financial Planning Association of Australia¹

¹ The Financial Planning Association (FPA) has more than 12,000 members and affiliates of whom 10,000 are practising financial planners and 5,600 CFP professionals. The FPA has taken a leadership role in the financial planning profession in Australia and globally:

- Our first “policy pillar” is to act in the public interest at all times.
- In 2009 we announced a remuneration policy banning all commissions and conflicted remuneration on investments and super for our members – years ahead of FOFA.
- An independent conduct review panel, Chaired by Mark Vincent, deals with investigations and complaints against our members for breaches of our professional rules.
- The first financial planning professional body in the world to have a full suite of professional regulations incorporating a set of ethical principles, practice standards and professional conduct rules required of professional financial planning practices. This is being exported to 24 member countries and 150,000 CFP practitioners of the FPSB.
- We have built a curriculum with 17 Australian Universities for degrees in financial planning. Since 1st July 2013 all new members of the FPA have been required to hold, as a minimum, an approved undergraduate degree.
- CFP certification is the pre-eminent certification in financial planning globally. The educational requirements and standards to attain CFP standing are equal to other professional designations, eg CPA Australia.
- We are recognised as a professional body by the Tax Practitioners Board



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Future of Financial Advice Post Implementation Review

**FPA submission to
Treasury**

9 June 2017



Introduction

The Future of Financial Advice (FoFA) reforms have been implemented with significant expense, time, effort and stress by the financial planning profession. Due to a lack of available research, it is unclear at this time if the FoFA reforms have been successful in their stated objective of raising the quality of advice. However some of the measures have resulted in enhanced systems and business processes that have increased transparency which has helped to demonstrate the value of the financial advice provided and improved services to clients.

The feedback provided on the impact (both implementation and ongoing) on businesses and clients of each of the five measures subject of this post-implementation review, is derived from information made available to the FPA via a survey of our members. The majority of respondents (88%) operate small businesses.

In some cases it is challenging to identify the costs associated with a specific measure. Hence our feedback relates more to the practical impacts experienced by businesses and clients.

Our submission also includes any practical issues related to the effective operation of the regulations pertaining to each measure.

Measuring the FoFA objectives

The objectives of the FoFA reforms were to “improve the trust and confidence of Australian retail investors in the financial services sector and ensure the availability, accessibility and affordability of high quality financial advice”.²

However, the costs associated with the implementation and ongoing compliance with many of the FoFA measures have impacted the costs involved in providing advice and barriers to business growth resulting in higher advice fees for clients and restricted service offerings.

Recommendation

Government conduct research to measure and qualify if the FoFA reforms met its objective of improving the quality of advice. This must include an analysis of pre-FoFA research against the post-FoFA research findings, and should examine:

- Quality of advice
- Cost of advice for consumers
- Changes in types of advice available to consumers
- Incidences of compliance failures and regulator action.

² <https://futureofadvice.treasury.gov.au/Content/Content.aspx?doc=home.htm>



The ban on up-front and trailing commissions¹ and like payments for both individual and group risk insurance within superannuation

Business impacts

Those businesses that were affected by this measure experienced the following impacts:

- Significant reduction in income – some small businesses lost between 15-30% of revenue
- Significant increase in compliance costs
- Ceased service offering as the cost to implement insurance advice is too high and clients are not prepared to pay a flat fee for this advice.
- Required changes to advice documentation, standards and policies, new training requirements for advisers and support staff, new IT systems and remuneration systems
- Some large businesses hired additional staff to address specific issues related to the implementation of this measure
- Businesses had to decide whether to keep clients or archive them as no revenue was coming in to support the ongoing service needed to provide life insurance advice such as annual review of policy to ensure it meets clients' needs

Client impacts

The impacts of this measure that have an impact on clients include:

- An increase in the price of insurance (concerns that providers have kept the margin that was previously paid in commissions to advisers rather than using it to reduce premiums)
- Anecdotal evidence suggestions there has been a reduction in the number of consumers seeking and accessing advice on life insurance needs.
- Reduced availability of life risk advice.
- Existing group clients have been cancelled leaving them with no life risk advice service and having to deal directly with product providers.
- Have found paying a flat fee too expensive for life risk advice

Compliance costs

Compliance costs included:

- Training – on average approximately \$5,000
- New remuneration systems – on average for small businesses \$5,000 - \$10,000. Some small businesses experience costs in excess of \$10,000



- IT changes – approximately \$5,000
- Total – from \$5,000 to in excess of \$10,000

Mis-selling

In order to meet the best interest obligations, financial planners must ensure they align product recommendations with their client's needs, goals, circumstances and recommended strategy, and how any existing products do/do not meet their client's ability to achieve the strategy recommended to achieve their needs and goals. In relation to life insurance, this includes detailed investigation and consideration of product features such as exclusions, costs (and tax implications), conditions attached to the payment of benefits (which vary significantly for policies in versus outside of super), and claims management. Life insurance recommendations must meet the best interest obligations.

The FPA is not aware of any cases involving financial planners mis-selling insurance policies outside of superannuation to access commissions, where the policy offered by the client's superannuation fund offered a better product for that client's circumstances and needs.

Operation of regulations

There are no practical issues related to the operations of the Regulations for this measure.

The requirement for advisers to renew client agreement to ongoing advice fees every two years (opt-in)

As the opt-in obligations require the provision of a Fee Disclosure Statement (FDS) with the biannual renewal notice, it is not always possible to ascertain the cost associated solely with the requirements related to the renewal notice and opt-in process.

While the implementation of the FDS has been a significant burden on business, after much effort and costs to business, most are managing this process and support the increased disclosure and reporting of costs and services for clients.

However, feedback from members reveals that the opt-in provisions have proven to be more onerous than what was first thought. The reality of implementation on some small business and large impact of time and efficiency has cost a lot of money on all levels.

There have been varying levels of impacts because of this measure. Some businesses existing systems, processes and advice services have been easier to adapt to the opt-in requirements than others, and believe opt-in and FDS have resulted in client service improvements as the adviser must prove their worth for the client to continue with opt-in. For others the additional regulatory burden is seen as too significant compared to the consumer benefit.

Business Impact

Business impacts related to the opt-in requirement include:

- Significant increase in administration, particularly in relation to record and data management and following up with clients



- Training of support staff, particularly in relation to systems and data entry for each client
- New computer software
- Change of advice services and business practices
- Compliance issues to meet required deadlines
- Absorbing the cost of compliance without passing it on to clients (as clients do not see any value in it)
- Impact on bottom line
- Challenges with systems tracking dates, particularly with clients signing documents at varying times requiring dates to be reset
- Brings the focus of the engagement on the fees rather than on the advice provided
- Ongoing compliance costs are quite substantial
- Time spent explaining the opt-in requirement to clients and the implications if they do not opt-in within the required timeframe has increased the inefficiency of the advice process
- Most survey respondents indicated that it takes more than 6 hours per client over a cycle to comply with the opt-in requirement
- Impacts on large businesses include:
 - Integrating the opt-in requirements into systems and processes
 - Monitoring the process to ensure advisers deliver the requirements
 - Time and cost of implementing this process
 - Review of ongoing services offering
 - Changes to advice documents

The most consistent and substantial feedback from members highlights concerns that clients do not understand the significance of not responding to opt-in to the advice engagement, and routinely fail to respond on time.

As per the Regulations, advisers respond by switching off the advice and investment management and other services agreed to under the ongoing fee arrangement. Clients come back at a later stage wanting to continue the advice relationship, and never had any intention for the engagement to cease.

To re-instate the engagement:

- clients must complete necessary paper work to assist the adviser in re-establishing the engagement so advice, investment management and other services can again be provided
- advisers must liaise with clients to ensure their recorded circumstances are current and accurate; and this process repeated with relevant financial institutions



- advisers must bear the administrative issues and costs of notifying all the financial institutions, getting recorded as the adviser again and re-establish any fee arrangement
- advisers must also check all information recorded by financial institutions about their client is accurate.

Most of the feedback received included comments that clients do not see why all this necessary, and has led to tensions between advice firms and clients who feel hassled by the many reminders with clients becoming disengaged with the actual advice provided.

Client impact

Impacts clients have experienced due to the opt-in requirement include:

- Unable to receive timely advice when they needed it as they failed to opt-in within the required timeframe
- Unhappy and frustrated with additional paperwork and follow-ups
- Confusion and questioning about why they must opt-in to an arrangement they have previously agreed to and know they can cancel at anytime
- Defensive about the latent threat of cessation of advice services (that they value) if they do not opt-in
- Do not perceive any value in the requirement as they have a contract already in place and therefore do not give it due attention
- Inconvenience for clients needing to delay an advice review, but this does not align with the opt-in dates
- Something urgent happens in their or family situation and they need urgent assistance this process of re engagement is a barrier to getting this timely advice
- Higher costs reflected in higher advice fees.

Compliance costs

Our survey sample included 88% small businesses, 9% medium businesses; and 3% large businesses.

Compliance costs for survey respondents included:

- Training
- New remuneration systems
- IT changes



- Set up costs – 23% of respondents incurred total costs above \$10,000; 17% incurred costs between \$6,000 - \$10,000
- Ongoing costs – as the opt-in requirement is determined by the date of the client engagement, complying with the requirement is an ongoing and even daily occurrence. 27% of respondents incur ongoing opt-in costs above \$6,000; 30% incur costs between \$3,000 and \$6,000.
- 59% of respondents spend more than 6 hours per cycle per client to comply with the opt-in requirements.

Practical issues with the Regulations

There are two significant issues with the operation of this measure that create a substantial regulatory burden for advisers

30 day client response requirement

The inflexibility of the 30 day turn around for clients to respond to the opt-in renewal notice is problematic and has exacerbated the impacts of this measure for both businesses and clients. 62% of survey respondents have experienced difficulties with clients responding within the 30 requirement.

The following case studies have been provided by our members and demonstrate the impact of the 30 day client response rule:

1. An elderly client had suffered a stroke and was unable to sign the opt-in response, even though she was in critical need of advice to help her with medical expenses and future care needs. The financial planner had to track down the Power of Attorney to sign the opt-in request. Not only did this take time, work and effort for the planner, it was also an unwanted administrative matter at a time when sensitivity to the client's situation and their family should have been paramount.
2. Planners have experienced retirees travelling for five to six weeks at a time, and not notifying the planner of their travel plans. This has resulted in the opt-in renewal notice going unattended by the client and the 30 day response requirement not being met.
3. Clients who are unwell and fall behind in paper work.
4. Dependents and parents have fallen ill requiring the client to focus on the needs of their sick relative.
5. In an ideal world all clients meet for a review meeting and sign the renewal in the meeting. However, clients are not always able to attend an advice review meeting in the timeframe required to meet the opt-in requirements, or cancel at the last minute due to competing commitments outside of the planners control.
6. Tropical cyclone Debbie created a force majeure event for some Queensland based advice practices impacting on the ability of clients to meet the deadline. It also made it difficult/uncomfortable for planners to 'chase up' clients for a response to the renewal notice



as the focus of the planner/client relationship needed to be on assisting clients to manage the impact of TC Debbie, not on administrative matters.

7. Clients are busy and do not always have the time to read and address the process in the 30 day timeframe.
8. Clients has passed away and adviser is not notified of the death straight away. The adviser usually then deals with the executor, however the focus of the client/planner relationship in such circumstances must be the respect and care of the original client's family.

The FPA Professional Ongoing Fees Code which has been approved by ASIC to obviate compliance with S962K³ allows clients to opt-in to the ongoing fee arrangement using a variety of communication methods. ASIC has approved this Code indicating that the Regulator considers this best practice. The opt-in requirement in the Corporations Act requires the client response to be in writing. Allowing flexibility in the communication method clients may use to opt-in to the ongoing fee arrangement would improve the compliance issues for both planners and clients.

Determining the dates for the renewal period

As the dates for the renewal period change depending on when a client response is received, they do not always align with the due dates for the FDS. This creates a time consuming and extra level of administrative complexity that must be carefully managed across the client base of each business.

Recommendations

To overcome the impacts experienced with the opt-in requirement, we recommend:

- The time provided for clients to respond to an opt-in request should be extended to 60 days.
- Exemptions from the opt-in requirement for clients facing special circumstances.
- Change the opt-in requirement to annual opt-out requirement.
- Flexibility around the communication mechanism clients may use to opt-in to the ongoing fee arrangement.

The ban on soft dollar benefits over \$300

Business impact

- The regulatory burden of the ongoing requirement to maintain a register for compliance purposes

³ <https://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-404mr-asic-approves-the-fpa-professional-ongoing-fees-code/>



- Additional costs to attend dealer conference
- Some advisers have stopped providing client information seminars and public seminars due to costs incurred, which were previously sponsored by financial institutions.

Compliance costs

- The bulk of compliance costs related to training and remuneration/IT system changes for ongoing record keeping requirements
- The large majority of survey respondents were not impacted by this measure however some reported costs of above \$10,000 to comply with these changes.

Practical issues with Regulations

Questions have been raised about the necessity for ongoing record keeping requirements.

The limited carve-out for basic banking products from the ban on certain conflicted remuneration structures and the best interests duty

Consumer impacts and practical issues with the Regulations

This measure is only meant to apply with regard to the provision of factual information and not 'advice'. Sometimes this can be a very fine line and there are probably many cases when the factual information given is definitely trying to influence the client the take action to invest in a product.

The FPA is concerned by reports from financial planners who are increasingly seeing instances where annuities have been 'sold' to consumers for effectively 90-100% of a client's portfolio that was otherwise to be held in term deposit style investments, with minimal advice provided.

Case studies we have been informed of show the selling of annuities for well over \$1M, and clients were quite elderly. The commissions on these were just under 1%. Clients were not ever met – this was constructed via a phone meeting. Advice was given that the basis for the advice was that funds were capital guaranteed - which is not the case with these products as capital values fluctuate based on movement in long term bond rates (i.e rates rise, capital value falls). It was also not clearly disclosed to clients that cash paid could effect the capital value. In this case, cash paid out was around 3% per annum and this was also going to cause capital value to fall as earning rate was well under 3%. The clients involved were advised that 3% was a very good return and better than the term deposit. The clients did not understand the product at all.

Short-term (for example 3 year) guaranteed annuities have been used as a substitute in some instances for term deposits given the low rates of return on term deposits, where the strategy and the rate differential is justified.

There have also been instances of annuities being used as a portion of the fixed interest/secure portion of a portfolio, as opposed to bond or credit exposures in retirement portfolios given the question on credit quality or impact to bond prices in a potentially rising interest rate environment.



It appears that these products are being sold as a 'basic product with commissions still being paid. However annuities are not simple financial products and should only be recommended if they are in the best interest of the client via personal financial advice. They should not be 'sold' to consumers.

We question whether the carve out for basic banking products from the best interests obligations and conflicted remuneration provisions is exacerbating the risk of mis-selling for consumers.

Recommendation

Annuities should not be permitted to be sold under the basic banking product carve out.

Government should consider compliance with this carve out.

The clarification of the operation of the best interests duty in relation to scaled advice.

While the Note to s961B is relatively clear, the industry would benefit from clearer messages from ASIC on the ability to scale advice. More certainty would be provided if ASIC would clearly state that a financial planner can scale advice including the client fact find and research requirements, to the subject matter of the advice sought by the client. The feedback we have received is that RG 244 in particular could be re-written to increase comfort and understanding around the ability to scale advice.

We also seek clarity on how the ability to scale advice applies to "robo-advice" offerings where the advice is restricted due to the programming of the digital tool rather than in agreement with the client after considering their entire needs, goals and financial position.

Other matters

We seek clarity on the timeframe of the next review of FoFA measures and encourage the Government to continue to assess the practical workings of the Regulations to ensure unnecessary provisions that create an additional regulatory burden are reassessed, particularly as the regime becomes more and more embedded in business operations.