APN 904

Classification

This is an Advisory Practice Note (APN) that provides guidance to members related to market conduct and treating customers fairly.

Abstract

There is a growing body of legislation addressing market conduct issues and enshrining the principles of treating customers fairly in the regulatory framework. Related to this is the rise of consumerism including awareness of consumer rights.

ASSA members who are involved in any part of the development of financial products are responsible for managing a number of risks, including, but not limited to, regulatory non-compliance and reputational risk, and which can be collectively labelled “market conduct risk”.

Balancing the interests of employers, as well as one’s own ethical obligations to the profession and the broader public, may present a challenge to ASSA members if these interests are not aligned.

Purpose

The purpose of this APN is to provide guidance to affected ASSA members in discharging their duties with regard to market conduct.

Legislation or Authority

The Society’s Code of Professional Conduct, and all applicable legislation from time to time.

Application

This APN applies to all members of the Society (“ASSA members”). It is of particular relevance to ASSA members who are involved in any stage of the “product lifecycle” including but not limited to retirement funding, insurance, investment, banking and healthcare solutions: that is, product design, development, pricing (including remuneration in respect of sales and ongoing servicing), marketing and distribution strategy, review and sign-off, and post-sale servicing. This includes ASSA members involved in the management of legacy products.

Authors

Market Conduct Committee of the Actuarial Society of South Africa.

Status

Version 1: Effective from 1 January 2022

1. Introduction

1.1. Regulators are placing an increasing emphasis on the need for and importance of financial institutions treating their customers fairly and for the market conduct of financial institutions to promote positive outcomes for their customers. For the purpose of this APN, customer includes individuals, funds and schemes, as well as members of such funds and schemes. Actuaries perform key roles in financial institutions and may therefore be able to enhance the market conduct of their employer or client and to contribute to ensuring customers are treated fairly.

1.2. Paragraph 9 of the Society's Code of Conduct (the Code) states that: A member must act honestly, with integrity, competence and due care, and in a manner that fulfils the profession's **responsibility to the public** and upholds the reputation of the actuarial profession.

1.3. Paragraph 24 of the Code states that: Members are encouraged to **consider the public interest** when rendering actuarial services, but provided that members meet the requirements of the applicable Law, the Constitution of the Society, any applicable Guidance and the Code, they will be deemed by the Actuarial Society to have met the expectations of the profession with respect to the public interest.

1.4. The draft Conduct of Financial Institutions Bill includes the following paraphrased principles:

(1) Financial products must be designed with due regard to the interest of financial customers and, in the case of retail financial customers, must be designed to meet the needs of identified groups of financial customers and must be targeted accordingly.

(2) A financial product provider must ensure that their financial customers are provided with products that perform as that provider has led its customers to expect, through the information, representations and advertising provided by or on behalf of the financial product provider.

(3) A financial product provider must ensure that relevant personnel involved in designing a financial product possess the necessary skills, knowledge and expertise to properly understand the financial product's main features and characteristics, as well as the interests, objectives and characteristics of the target market.

(4) A financial product provider must establish and implement product oversight arrangements relating to the design of financial products, to —

(a) monitor and review the design process and procedures on an on-going basis; and

(b) ensure that remedial action is taken in respect of financial products that are reasonably expected to lead, or are leading, to poor or unfair outcomes for financial customers.

(5) The financial product oversight arrangements must include senior management confirmation that a product adequately meets required outcomes for the fair treatment of financial customers, including the requirement that it will perform as financial customers are led to expect.

(6) In addition to the requirements in subsection (5), a financial product provider that is not a small enterprise must include in its product oversight arrangements —

(a) a product design policy, and ensure that the policy is not compromised as a result of commercial, time or funding pressures; and

(b) a product approval process;

(7) A new financial product must be signed off by the governing body before a financial institution that provides a financial product starts to market, offer or enter into contracts in respect of the product.

It is expected that these principles will be included in the legislation when it is promulgated.

2. Factors relating to market conduct and treating customers fairly that ASSA members should consider when developing, reviewing or approving new or existing products open to new business, or when giving advice to clients:

2.1. The interests, objectives, characteristics and needs, including financial inclusion of the target market.

2.2. The value for money that the product is expected to provide to customers, including (but not limited to) those who terminate the product early and those who retain the product for an extended period.

2.3. The proportion of the premium/ contributions together with the investment returns expected to be earned on funds that are expected to be paid in the form of benefits to customers.

2.4. The proportion of the premium/ contributions plus the investment returns expected to be earned on customer funds that other stakeholders are expected to receive. Other stakeholders include shareholders (expected profit), advisors / distributors (expected fees), administrators, regulatory fees and product provider expenses (expected expenses).

2.5. Feedback regarding the performance of similar products that have previously been provided to customers, as well as the nature of complaints that have been received, and the root causes of these complaints.

2.6. The way that the product is expected to be marketed and the advice that is expected to be provided to customers. This would also include promotional activities such as special offers or rewards programmes.

2.7. The advice risk associated with robo-advice products and interacting with product marketing / information bots.

2.8. The clarity and completeness of communication of the product features to customers.

2.9. Whether the product might have been compromised in any way as a result of any pressure that the member may have been placed under which may result in compromised market conduct outcomes.

2.10. The adequacy of the product approval process and required sign-offs.

2.11. Whether the product approval process has been fully adhered to and all required sign-offs have been provided, including regulatory approval where applicable.

2.12. Any other factors that in the opinion of the member would influence the fair treatment of customers or the expected value for money for customers.

2.13. Where products with discretionary features are developed, the manner in which the discretion will be exercised and governed should be documented as part of the development process.

2.14. Actuaries of funds/schemes should bear in mind that when giving advice to the fund/scheme, they must also consider whether the advice is reasonable and fair considering all the members of the fund/scheme, e.g. when advising a pension fund client on pension increases or fund interest allocations

2.15. The extent to which the member has been able to balance their duties to all stakeholders including the public interest, the customer, the profession, their employer, their client (if not the employer), the regulator and themselves.

3. Factors relating to market conduct and treating customers fairly that members should consider regarding legacy products:

3.1. Legacy products are products that no longer form part of the main new business product offering of the financial institution. The member should consider whether or not a product should be treated as "legacy" for this purpose, taking into account factors such as the extent to which regulatory, governance and sales practices have changed since the product was first launched, and whether the product continues to be an integral part of the financial institution's brand identity.

3.2. Legacy products, including closed schemes/funds, may be more difficult to review and amend than new products, because such products represent a contract that was previously agreed between the product provider and the customer. The terms and conditions previously specified in the contract need to be honoured. Although, the contract may have been issued in an environment that differs from the present environment, current norms may need to be considered if the customer would be advantaged by doing so, when determining any proposed changes to the products.

3.3. ASSA members working with such financial products or schemes should ensure that they are familiar with the terms and conditions in the applicable contracts, the marketing material used when such products were sold, previous communication to customers and the prevailing environment when such products were developed.

3.4. Where a legacy product has discretionary features, such as bonuses, fees, charges or termination values that are determined by the product provider, the product provider should have documents or governance processes in the form of Principles and Practices of Financial Management that govern how such discretion is to be exercised. Members working with such legacy products should familiarise themselves with the content of such documents; and should exercise due care to ensure compliance with the documents and with customers' reasonable benefit expectations.

3.5. ASSA members should consider the needs of all legacy product customers and should provide advice which is balanced and takes into consideration the needs of such customers.

3.6. If the profit earned from a legacy product is significantly more than was anticipated at the time the product was developed and priced; or is significantly more than is now considered to be reasonable, then the reason for this should be carefully considered, and the possibility of reducing the premium/contributions and/or increasing the benefits may need to be considered.

3.7. If clients of legacy products could obtain significantly improved value for money by terminating their legacy product and buying or participating in an equivalent new product, then the reason for this should be carefully considered, and the possibility of reducing the premium/contributions and/or increasing the benefits may need to be considered. Alternatively, steps may need to be taken to ensure that customers are advised of the option that they have to terminate their product and buy an equivalent new product.

3.8. Where there are significant complaints regarding a legacy product, ASSA members working with such products should carefully examine the reason for the complaints; and should seek to develop solutions to address these complaints.

4. Actions that ASSA members should take if they have any concerns or reservations regarding the fair treatment of customers:

4.1. If an ASSA member has any concerns or reservations regarding the fair treatment of customers, they should bring this to the attention of a senior actuary or, if applicable, to the relevant governing body within the business. This could include for example the Head of Actuarial Function in an insurer.

4.2. The senior actuary should carefully consider these concerns. If they agree with these concerns, they should explore the possibility of addressing such concerns, and if applicable could submit recommendations to the appropriate governing body in the organisation to address these concerns.

4.3. If the senior actuary has any unresolved concerns or reservations, these should be reported in writing to the appropriate governing body within the organisation.

4.4. Where the concerns are related to the launch or approval of a new product, the senior actuary should carefully consider the concerns before approving or signing off the product and should seek to positively influence the product design or pricing to address any concerns that they may have. If the governing body decides to proceed with the product launch, despite the senior actuary's concern or reservations, then the senior actuary should request and ensure that his or her concerns or reservations are recorded in the relevant minutes for the meeting where this decision was made.