



Can financial advisers be engaged by multiple financial advice providers?

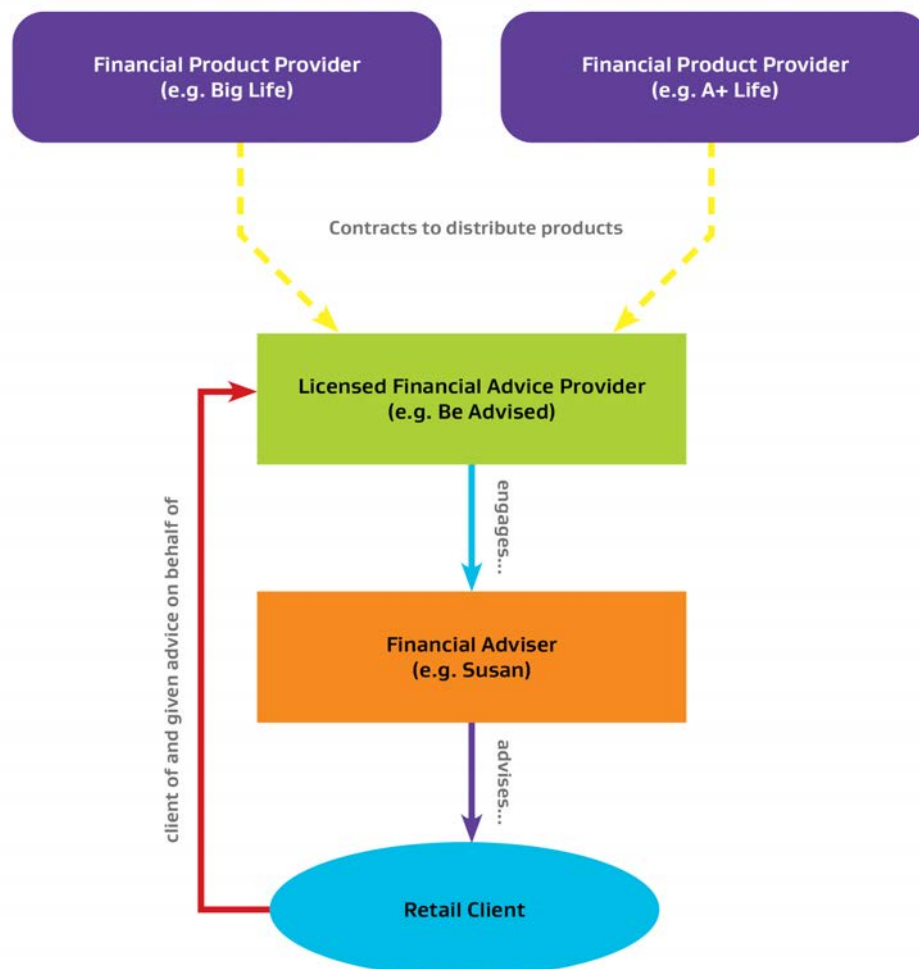
Background

The [Financial Services Legislation Amendment Act 2019](#) (the Amendment Act) introduces a new regulatory regime for financial advice that will come into force on 29 June 2020.

In the new regime a licensed financial advice provider can give advice on its own account (e.g. through a digital advice platform) and/or can engage individual financial advisers or nominated representatives to give advice on its behalf¹.

While it is possible for a financial adviser to be engaged by more than one financial advice provider, there is a risk that these 'multiple provider arrangements' could lead to consumer confusion or harm.

Importantly, an individual does not need to be engaged by different financial advice providers in order to give advice about different types of products or different product providers' products. This is illustrated below using a fictional example.



¹ refer new section 431D of the Financial Markets Conduct Act 2013 (FMC Act), as set out in section 29 of the Amendment Act.



In the above example, Susan is a financial adviser who gives life insurance advice. The new regime² requires Susan to be engaged by a licensed financial advice provider (which in this example is Be Advised) to give advice on that licensed provider's behalf to its retail clients. In her role giving advice on life insurance for Be Advised, Susan considers Big Life's policy and A+ Life's policy to determine which (if any) of these policies would be appropriate for each client. The new regime does not require Susan to be engaged as a financial adviser by Big Life or A+ Life in order to give advice about their products, and Big Life and A+ Life do not need to be licensed financial advice providers merely because Susan gives advice about their products.

Licensing conditions may prohibit certain arrangements

The Amendment Act³ provides for licensing conditions to prohibit financial advice providers from engaging a financial adviser that is also engaged by another financial advice provider.

Licensing conditions may be imposed either by the Financial Markets Authority, or through regulations developed by the Ministry of Business, Innovation and Employment (MBIE)⁴, to prohibit particular types of arrangements if concerns arise with regards to how these arrangements are impacting on consumers. For example, if particular arrangements lead to consumer confusion or a lack of clarity as to which provider would be liable for misconduct by the individual adviser.

MBIE is not currently considering imposing licensing conditions through regulations to prohibit particular types of arrangements. However, licensing conditions may be imposed if it becomes apparent that there is potential for consumer confusion or harm.

People considering multiple provider arrangements will need to consider a number of factors

We recommend that providers considering engaging financial advisers that will be engaged by multiple financial advice providers consider the questions on pages 3 and 4 of this fact sheet. These should be considered in addition to the information provided by the Financial Markets Authority regarding [the new regime](#) and information provided by MBIE regarding [enforcement and liability](#) in the new regime.

² refer new section 431F of the FMC Act, as set out in section 29 of the Amendment Act.

³ refer new section 403(4) of the FMC Act, as set out in section 24 of the Amendment Act.

⁴ refer new section 546(1)(d)(iii), as set out in section 48 of the Amendment Act.



Questions to Consider

Note: this list is non-exhaustive and there will be other factors that should also be considered.

1. How will clients understand who is responsible for the advice, and what to do in the event of a complaint?

If an adviser is engaged by more than one financial advice provider, it may be unclear to the client on whose behalf the adviser is providing advice in any given interaction, or who to contact if they have questions, concerns or complaints about the advice they have received.

2. Which financial advice provider will be responsible for each stage of the advice process?

The financial advice process can comprise many steps over an extended period of time – from the initial scoping engagement with the client through to the recommendation. It will be necessary to consider who the financial adviser is acting on behalf of during each stage of the advice process.

3. How will the duties in the FMC Act, related regulations and the requirements in the Code of Conduct be satisfied?

Financial advice providers will need to consider how they can meet their duties, including the requirement to take all reasonable steps to ensure the individuals they engage to give advice comply with the duties in the Act.

For example, it may be difficult for a financial adviser that is engaged by more than one financial advice provider to clearly articulate the nature and scope of the advice they can give on behalf of each provider. This risks putting the financial advice providers, responsible for that financial adviser, in breach of their duty to take all reasonable steps to ensure that the individuals they engage comply with the duties in the Act.

4. Will the firm be exposed to any potential liability or reputational damage arising from the actions of a financial adviser also engaged by another financial advice provider?

Financial advice providers are ultimately liable for any advice given on their behalf. If a financial adviser who is engaged by more than one financial advice provider breaches a duty while giving advice, it may be unclear who that financial adviser was acting on behalf of when the breach was committed.

Therefore, any of the financial advice providers that engage that financial adviser risk being liable for that breach, and may also suffer reputational damage by association. Financial advice providers contemplating engaging financial advisers that are also engaged by other financial advice providers will need to be aware of, and comfortable with, the increased risks (from a liability and reputational perspective) that these types of arrangements carry.



5. How will your disclosure information make it clear for clients about the roles and responsibilities of the different financial advice providers associated with a financial adviser?

Disclosure information will need to make it clear to a client on whose behalf they are being provided financial advice and where they should go in the event of a complaint or dispute including which dispute resolution scheme/s are available to them.

6. Will the firm or individual be able to obtain professional indemnity cover?

Financial advisers and financial advice providers will need to consider whether they can obtain professional indemnity insurance to cover multiple provider arrangements, due to the potential risk of an insurer being unwilling to provide cover on the basis that liability cannot be easily determined.

7. How will the firm comply with the Privacy Act 1993?

Financial advice providers will need to consider how they will comply with the requirements of the Privacy Act, including the 12 information privacy principles, and standard 5 of the new [Code of Professional Conduct for Financial Advice Services](#). For example, if a financial adviser obtains personal information regarding a client of one financial advice provider, they may be unable to use that information while giving advice on behalf of another provider.

Contacts for more information:

- To enquire about the new legislation contact MBIE at: faareview@mbie.govt.nz
- To enquire about your proposed structure or arrangements for the new regime contact the Financial Markets Authority at: questions@fma.govt.nz