

18 December 2019

[REDACTED]

By email: [REDACTED]

Dear [REDACTED]

YOUR REQUEST FOR INFORMATION UNDER THE OFFICIAL INFORMATION ACT 1982 (OIA)

1. We refer to your email to the Financial Markets Authority (**FMA**) dated 2 December 2019. You requested the following information, which we have considered under the OIA (**Request**):

In the November 2018 report Bank Conduct and Culture: Findings from an FMA and RBNZ review of conduct and culture in New Zealand retail banks on page 10 the following directive is made about the 11 banks reviewed: "Each bank will provide us with their plan to address our feedback by the end of March 2019, and then report to us on their progress implementing the plan."

Could you please provide the plans referenced above submitted each by the 11 banks reviewed in the report and what information has been provided as evidence of the progress of implementing these plans respectively?

Could you also provide information on what types of action the Authority will take if it is unsatisfied with the outcome or level of urgency of the banks' behaviour in establishing or implementing these plans?

2. Thank you for your ongoing interest in this matter, which follows our meeting with [REDACTED] on 18 October. At this time there is limited further information we can release about this matter. We address your particular requests below.

Bank plans and evidence the banks have provided of progress on implementation

3. The 11 banks included within the FMA and Reserve Bank of New Zealand (**RBNZ**) Bank Conduct and Culture review provided us with their individual work plans by the end of March 2019. These work plans set out how each bank planned to improve their systems and controls and increase their focus on the governance of conduct risks.

4. In terms of the implementation of the plans, we have publically commented that all banks have committed to remove sales incentives for salespeople and their managers, as per the expectations we stated in the Bank Conduct and Culture report.¹
5. Beyond the provision of this publicly available information at paragraphs 3 and 4, we have considered and decided not to release the banks' plans and evidence they have provided us of progress on implementation. This is because the information you have requested is information that has been supplied or disclosed to the FMA under financial markets legislation. Pursuant to section 59 of the Financial Markets Authority Act 2011 this information is confidential and the FMA is prohibited from publishing or disclosing this information unless one of the exceptions that permit publication or disclosure apply. Section 59(3)(a) provides a relevant exception namely, information may be disclosed if it may be made available to the public under any enactment. The OIA is a relevant enactment.
6. We have therefore considered your request pursuant to the OIA and have decided there is good reason to withhold the information.
7. The key reason is under section 9(2)(ba)(i), namely to protect information which is subject to an obligation of confidence, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied. We consider it is important that the FMA can engage with the banks in confidence in relation to their plans to encourage them to be frank with us.
8. There is also good reason to withhold some of the information you have requested under section 9(2)(b)(ii) on the basis that it is commercially sensitive to the banks that provided it. We consider disclosure of this information would likely unreasonably prejudice the commercial position of the relevant banks.
9. We have not identified any considerations that outweigh these grounds and so render it desirable, in the public interest, to make the information available.

What types of action FMA will take if it is unsatisfied with the outcome or urgency of the banks' behaviour in establishing or implementing these plans?

10. We are working together with the RBNZ to monitor how the banks' plans are executed to embed new processes and governance systems that will address the concerns identified. We have received a generally cooperative response by the Banks during the Bank Conduct and Culture review and have advised that we will name those banks who are "dragging their feet." We have not had to do this yet.
11. Nonetheless we have acknowledged throughout the Bank Conduct and Culture review that the current regulatory settings do not provide sufficient scope for regulators to hold banks to account for their conduct. In our Bank Conduct and Culture Report we recommended the government consider law reform to address the gaps.

¹ <https://www.fma.govt.nz/news-and-resources/media-releases/banks-commit-to-removing-sales-incentives-for-frontline-staff/>

12. We note that our powers in relation to conduct regulation of banks are likely to expand as a result of a bill that the Government introduced to Parliament on 11 December 2019. The Financial Markets (Conduct of Institutions) Amendment Bill² creates a new regulatory regime for the general conduct of financial institutions and their intermediaries. It requires banks, insurers, and non-bank deposit takers (NBDTs) to obtain a licence from the FMA under Part 6 of the FMC Act. The Bill requires banks, insurers and NBDTs, and their intermediaries, to comply with a fair conduct principle to treat customers fairly. It also requires those institutions to establish, implement and maintain an effective fair conduct programme. This is a way for financial institutions to operationalise the fair conduct principle through policies, processes, systems and controls throughout every relevant part of their business. The Bill provides that banks, insurers and NBDTs, and intermediaries, will be subject to the Financial Markets Conduct Act's compliance and enforcement tools such as civil pecuniary penalties for contraventions of various obligations, and licensed financial institutions will be subject to licensing actions by the FMA such as censure and imposition of action plans.

Concluding matters

13. We note that you have a right, by way of complaint under section 28 of the OIA to the Ombudsman, to seek an investigation and review of FMA's decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

14. If you wish to discuss this letter with us, please feel free to contact [redacted] (phone [redacted]), [redacted] in the first instance.

Yours sincerely

[redacted]
Manager, Policy and Governance

² <http://legislation.govt.nz/bill/government/2019/0203/latest/LMS262880.html?src=qs>