

# Market Bulletin

Ref: Y5407

<b>Title</b>	New Zealand: Financial Markets (Conduct of Financial Institutions) Amendment Act and Regulations (CoFI)
<b>Purpose</b>	To inform the market of the new conduct requirements implemented in New Zealand under the Conduct of Financial Institutions regime
<b>Type</b>	Incoming legislation guidance
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<b>Date</b>	25 September 2023
<b>Deadline</b>	Effective 31 March 2025
<b>Related links</b>	<a href="#">Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023</a> <a href="#">Conduct of Financial Institutions legislation</a>

## New regime

The Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) introduces a principles-based regime intended to drive positive industry behaviour change to ensure the fair treatment of consumers.

The regime will come into force on **31 March 2025**.

It amends the Financial Markets Conduct Act 2013 (FMC Act) to introduce:

- a licensing requirement for financial institutions; and
- a new conduct regime aimed at ensuring financial institutions treat consumers fairly including by requiring those institutions to establish, implement, maintain, and comply with effective fair conduct programmes.

It applies to the provision of consumer insurance contracts to consumers in New Zealand.

Lloyd's underwriters are exempted from the licensing requirement, however that exemption is subject to prescribed terms and conditions which must be complied with by Lloyd's, a Lloyd's underwriter, or a Lloyd's managing agent as the case may be.

Several of the provisions have been specifically drafted so as to apply to managing agents. Coverholders do not come within the definition of 'financial institution' so are not eligible to apply for a license. The obligation will be on the managing agent to take all reasonable steps ensure business written through coverholders and claims managed by delegated claims administrators, complies with the fair conduct principle.

This bulletin is to provide managing agents with sufficient information to take the initial steps in ensuring compliance with the new regime.

### **Fair conduct principle**

CoFI requires financial institutions to comply with a fair conduct principle to treat consumers fairly. This includes:

- paying due regard to consumers' interests;
- acting ethically, transparently, and in good faith;
- assisting consumers to make informed decisions;
- ensuring that the products and services that the financial institution provides are likely to meet; the requirements and objectives of likely consumers (when viewed as a group);
- not subjecting consumers to unfair pressure or tactics or undue influence.

The fair conduct principle applies when:

- designing an insurance product; or
- offering to provide an insurance product to a consumer; or
- providing an insurance product to a consumer;
- dealings or interactions with a consumer in connection with an insurance product (for example, responding to a complaint or handling a claim under an insurance contract).

A consumer is a policyholder under a **consumer insurance contract** or a contract of insurance that provides for life insurance or health insurance.

A **consumer insurance contract** is one which is entered into by a New Zealand policyholder wholly or predominantly for personal, domestic or household use.

The fair conduct principle also applies when an intermediary such as a broker or a coverholder is involved.

Insurers must meet the fair conduct principle by establishing, implementing, and maintaining an effective fair conduct programme (“FCP”).

A fair conduct programme:

- means policies, processes, systems, and controls that are designed to ensure the insurer’s compliance with the fair conduct principle;
- can be contained in more than one document;
- can be contained in documents that already exist if they comply with the requirements.

The specific requirements for fair conduct programmes of Lloyd’s managing agents are set out in the [Financial Markets Conduct \(Conduct of Institutions\) Amendment Regulations 2023](#). They are also contained in appendix 1 to this market bulletin.

Managing agents will be required to provide training on their fair conduct programmes to any entities that issue insurance policies and/or manage claims on their behalf. This will apply to coverholders and/or delegated claims administrators based in and outside New Zealand. Policies issued on an open market basis will also need to be captured under the fair conduct programme.

## Publication

Information about a managing agent’s fair conduct programme must be made publicly available:

- on an internet site maintained by the managing agent or Lloyd’s; and
- on an internet site maintained by any coverholder if one is involved; and
- by providing it to any person requests it.

The information that must be made publicly available is a summary of key matters about the fair conduct programme that is in sufficient detail to assist consumers to:

- be reasonably aware of how the managing agent will comply with the fair conduct principle; and
- make informed decisions about dealings and interactions with the managing agent in relation to Lloyd’s products; and
- understand how to make a complaint about the Lloyd’s products.

## FMA guidance

The Financial Markets Authority (“FMA”) is engaging with the industry to provide information and guidance, including through a dedicated [‘Conduct of Financial Institutions legislation’](#) page on its web-site. More details will be provided at a later date, but the following points have been emphasised by the FMA in relation to the establishing and implementing of a fair conduct programme:

- Some financial institutions may already have a conduct programme or similar in place, or may form their FCP from a combination of new and existing policies, processes, systems and controls. Where existing programmes, or components of programmes, form part of the FCP, these should be reviewed when the FCP is established, to ensure they will be relevant and effective in supporting the financial institution's compliance with the fair conduct principle.
- To be effective, an FCP needs to be relevant and proportionate to the financial institution's business. This means it should reflect the unique factors that characterise the business.
- Financial institutions should be able to demonstrate how they have considered all of these factors, which may be achieved by including commentary about this in their FCPs.
- Financial institutions should be able to describe conduct risks, and demonstrate how the policies, processes, systems and controls that form their FCP relate to those risks.
- The FCP should include the key roles or types of roles within the financial institution, and provide detail about the responsibilities of each role or type of role in relation to fair conduct.
- Where there are existing processes or frameworks to articulate responsibilities, financial institutions may choose to incorporate conduct responsibilities into these, rather than creating new tools specifically for conduct responsibilities.
- To be effective, an FCP must have the support of the financial institution's governing body, which would generally be the Board of Directors. The governing body should have oversight and take accountability for the financial institution's compliance with the CoFI requirements.
- The governing body should review the FCP to consider its adequacy and effectiveness and recommend changes where appropriate. The final approval of the FCP should be provided by the governing body. The approval of the FCP by the relevant governing body should be documented in the FCP.

Lloyd's will continue to monitor the FMA's communications and will issue further guidance if and when necessary.

### **What next?**

Fair conduct programmes do not need to be implemented until 31 March 2025, but they will need to be created before then.<sup>1</sup>

It is anticipated that most managing agents carrying out consumer business will already have existing policies, processes, systems and controls which comply with and constitute most, if not all of the minimum requirements for a fair conduct programme.

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<sup>1</sup> Lloyd's is considering the information that will be put onto the New Zealand page of the Lloyd's website.

It is recommended that as a first step managing agents start the process of identifying which of their existing policies, processes, systems and controls are relevant to the minimum requirements of a fair conduct programme and documenting that.

This process should be used to identify where there are gaps between the existing policies and processes and the minimum requirements so that it can be determined which areas require further development.

**Who should I contact?**

If you have any queries regarding this communication, please contact:

**Lloyd's International Trading Advice (LITA)**

t: +44 (0)20 7327 6677

e: [LITA@lloyds.com](mailto:LITA@lloyds.com)

## Appendix 1

### MINIMUM REQUIREMENTS FOR FAIR CONDUCT PROGRAMMES OF LLOYD'S MANAGING AGENTS

(1) A Lloyd's managing agent must ensure that its fair conduct programme complies with all requirements prescribed in this clause.

(2) The fair conduct programme must include effective policies, processes, systems, and controls for—

(a) enabling the Lloyd's underwriters and the Lloyd's managing agent to meet all of their legal obligations to consumers, including under the Act, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, and the Consumer Guarantees Act 1993; and

(b) designing, and managing the provision of, the Lloyd's products to consumers, including by—

(i) providing for the methods by which the Lloyd's products are provided to consumers (distribution methods) to operate in a manner that is consistent with the fair conduct principle; and

(ii) regularly reviewing whether the distribution methods are operating in a manner that is consistent with the fair conduct principle; and

(iii) ensuring that any deficiencies identified under subparagraph (ii) are remedied within a reasonable time; and

(iv) regularly reviewing the Lloyd's products that are provided to consumers on an ongoing basis to determine whether they are likely to continue to meet the requirements and objectives of those consumers (when viewed as a group); and

(v) regularly reviewing whether enhancements or improvements in the Lloyd's products should be made available to those consumers (when viewed as a group); and

(vi) ensuring that any enhancements or improvements identified under subparagraph (v) are made available within a reasonable time; and

(c) identifying, monitoring, and managing risks associated with conduct that fails to comply with the fair conduct principle, including—

(i) having clearly defined roles, responsibilities, and accountability arrangements in relation to identifying, monitoring, and managing those risks; and

(ii) requiring records to be maintained that are sufficient to allow an assessment to be made of the Lloyd's managing agent's compliance with the fair conduct principle; and

(iii) requiring regular and comprehensive reporting about those risks, and about failures to comply with the fair conduct principle, to the board or other governing body of the Lloyd's managing agent; and

(d) identifying conduct that fails to comply with the fair conduct principle and taking reasonable steps to mitigate any actual or potential adverse effects of the failure; and

(e) requiring the Lloyd's managing agent's employees and agents to follow the procedures or processes that are necessary or desirable to support the Lloyd's managing agent's compliance with the fair conduct principle; and

(f) requiring initial and regular ongoing training for each of those employees on the following matters to the extent that the training is relevant to their work in providing the Lloyd's products to consumers:

(i) the Lloyd's products in respect of which the employee carries out work; and

(ii) the fair conduct programme and the procedures or processes referred to in paragraph (e) that the employee must follow; and

(g) checking that each of those employees has completed that training and has a reasonable understanding of the matters that have been covered by that training; and

(h) managing or supervising each of those employees to ensure that they are supporting the Lloyd's managing agent's compliance with the fair conduct principle, and monitoring whether those persons are giving that support, including by—

(i) obtaining reasonable assurance that each employee is competent to carry out the range of work for which they will be, or are, employed (in relation to the Lloyd's products); and

(ii) setting conduct expectations for those persons; and

(iii) establishing robust and transparent procedures or processes for dealing with misconduct by those persons; and

(iv) monitoring whether consumers have been treated by those persons in a manner that is consistent with the fair conduct principle; and

(i) designing and managing incentives to mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers, so far as is reasonably practicable; and

(j) communicating with consumers about the Lloyd's products in a timely, clear, concise, and effective manner; and

(k) ensuring that there are in place methods for regularly reviewing, and systematically identifying deficiencies in, the effectiveness of the programme; and

(l) ensuring that any deficiencies identified are promptly remedied.

(3) In considering what policies, processes, systems, and controls are effective for the purposes of this clause, regard must be had to the following:

(a) the nature, size, and complexity of the New Zealand businesses of the Lloyd's underwriters; and

(b) the Lloyd's products; and

(c) the methods by which the Lloyd's products are provided to consumers; and

(d) the types of consumers the Lloyd's managing agent deals with, including consumers in vulnerable circumstances; and

(e) the types of intermediaries that are involved in the provision of the Lloyd's products, including the nature and extent of the following:

(i) their involvement; and

(ii) their legal obligations in connection with that involvement (for example, under subpart 5A of Part 6 of the Act in the case of financial advice providers); and

(f) the types of agents that are engaged to carry out work in relation to the Lloyd's products, including the nature and extent of that work and of the authority of those agents.