

From: Campbell Gibson
Sent: Wednesday, 23 March 2022 11:50 AM
To: [REDACTED]
Cc: Andrew Park <Andrew.Park@fma.govt.nz>
Subject: RE: conflict of interest

H [REDACTED]

Regarding your first 3 questions, here is our response:

"The FMA generally does not comment on whether or not it is investigating a firm, and complaints to the FMA are confidential, so we are not in a position to answer these questions."

We acknowledge all of the review's findings of potential shortcomings in our processes and welcome the opportunity to strengthen them. We are in the process of implementing the recommendations."

For your final question, I have attached a 2013 letter from MBIE that informed the scope of our advice to the Minister for the 2013/2014 default provider review. We agreed with this approach and followed it again in the 2020-2021 review. For completeness, however, I have also attached a 2021 letter from MBIE requesting our advice for the most recent review (you will be aware our response is included in the QC report, page 33). There was no separate discussion on the FMA's role in the most recent review and we followed the previous approach.

Further context on this:

"We understand that s 132(4) (originally s177(5) of the KiwiSaver Act) was inserted in the FMA Act 2011 in a Schedule of miscellaneous amendments to legislation, and described in the explanatory note to the Bill simply as amendments "that flow from the replacement of the Government Actuary by the FMA". The KiwiSaver Act did not previously contain a provision requiring the Minister to seek the advice of the Government Actuary on the appointment of default providers, but we understand that as the Actuary was an official of MBIE, such advice would routinely be sought as to whether there were any regulatory matters that the Minister needed to be alerted to in making his or her decision."

We release this information to you under the OIA. You'll see we have redacted some extracts of information within in the documents. These are the identity/personal contact details of MBIE staff members pursuant to s 9(2)(a) of the OIA to protect the privacy of these individuals; and a table of the fees proposed by managers pursuant to s 9(2)(b)(ii) of the OIA to avoid prejudice to the commercial position of those managers. If you have any questions about this OIA release please contact me in the first instance. As you know, you also have a right, by way of complaint under section 28 of the OIA to the Ombudsman, to seek a review of the FMA's decision.

Regards,
Campbell

From: [REDACTED]
Sent: Wednesday, 23 March 2022 11:46 AM
To: Campbell Gibson <Campbell.Gibson@fma.govt.nz>
Cc: Andrew Park <Andrew.Park@fma.govt.nz>
Subject: FW: conflict of interest

Hi Campbell,

Thanks for your text on this. Can you tell me when I can expect a response?

Cheers,

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From █

Sent: Monday, 21 March 2022 11:06 am

To: Andrew Park <Andrew.Park@fma.govt.nz>

Cc: Campbell Gibson <Campbell.Gibson@fma.govt.nz>

Subject: conflict of interest

Hi Andrew,

I have some follow-up questions relating to the conflict of interest discussed in Kristy McDonald's report.

The report indicates that Liam Mason raised the matter of Rob Everett's conflict of interest with chair Mark Todd sometime between March 9 and March 18, 2021, and that Todd had been previously advised of the conflict on April 17, 2020.

However, the board was not told about it on either occasion and did not know of the conflict.

Can you tell me:

- How the CEO's conflict of interest was handled in relation to the FMA's investigation of several complaints about Booster in 2020;
- Why the board was not made aware of the CEO's conflict in 2020, given the FMA was investigating complaints about Booster;
- Whether the board was aware of the FMA's investigation of complaints about Booster in 2020.

Also, I note the report commented on the FMA decision to offer limited advice to the Minister under Section 132(4) of the KiwiSaver Act.

Can you please supply:

- Copies of internal documents and correspondence discussing the level of advice to be provided under the Act in relation to the 2014 KiwiSaver review and the 2021 KiwiSaver review – by level of advice I mean whether the FMA would limit its advice to “issues that would affect the ability of ... managers to manage KiwiSaver default schemes” or cover other issues as well.

Thanks for your help.

Cheers,

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9 March 2021

Liam Mason
Director, Regulation
Financial Markets Authority
liam.mason@fma.govt.nz

Dear Liam

Under section 132(4) of the KiwiSaver Act 2006, the Minister is required to seek the advice of the FMA in determining whether to appoint a manager as a default KiwiSaver provider. I am therefore, on behalf of the Minister, requesting that the FMA provide this advice.

A view has not yet been formed as to the number of providers that will be recommended to Ministers for appointment. However, I seek FMA's advice in respect of the six managers named in the table attached. The table also sets out the fees they propose to charge.

I respectfully request that you provide this advice by close of play Friday 19 March 2021.

Please note that the information provided in this letter is confidential and should not be shared wider than necessary.

Yours sincerely

James Hartley
General Manager, Commerce, Communications and Consumers
Ministry of Business, Innovation and Employment

CC Anna Paterson, Senior Solicitor, Policy
Gavin Quigan, Senior Adviser, Supervision



From: [REDACTED]
Sent: Tuesday, 10 December 2013 12:32 p.m.
To: Scott McMurray
Cc: [REDACTED]
Subject: FMA advice re KS default providers

Hi Scott

As we discussed last week, here is our expected timetable for the appointment of default providers.

- 13 December: RFP closes.
- December/January: The evaluation panel will undertake the initial evaluation of proposals, followed by due diligence.
- 4 February: The evaluation panel will finalise their recommendations as to which default providers should be appointed.

- 12 February: The steering group will meet to consider the evaluation report.
- 17 February: A final evolution report, endorsed by the steering group, will go to approving Ministers.
- 3 March: Approving Ministers will appoint default providers, subject to signing final instruments of appointment.

Our currently thinking on the FMA advice, as required by s177(5) of the KiwiSaver Act, is that the Minister would write to FMA in December/January, formally setting out the scope of the advice that he is seeking, and that FMA would be provided with the names of the proposed providers on 4 February, with the intention that the advice would be feed up to approving Ministers at the same to as the evaluation report on 17 February. Please let us know if this timing will work for FMA.

On the scope of the advice, the intention behind the requirement was to ensure that Ministers did not inadvertently appoint a default provider if the FMA was aware of serious regulatory breaches which would call into question the appropriateness of their appointment. The Minister is required to seek FMA advice when deciding to appoint a particular provider, so this will not include any advice about the number of providers to be appointed. This advice would also not include any consideration of the merits of the provider's proposal. My current thinking is that the letter from the Minister would set out a scope of advice would similar to the following:

I am required, under section 177(5) of the KiwiSaver Act 2006, to seek the advice of the Financial Markets Authority in determining whether to appoint a manager as a default KiwiSaver provider. I am therefore requesting that FMA provide advice on whether, in its role of monitoring compliance with financial markets legislation, it has become aware of any reasons why Ministers should not approve any of the managers that will be recommended by the evaluation panel. I have asked officials to provide FMA with the names of these managers in advance of making recommendations to Ministers, so that FMA can provide this advice at the same time as these recommendations are made.

I would appreciate any feedback on whether this is too broad from your perspective, and any changes you would suggest.

I am happy to discuss.

Kind regards

[REDACTED]

[REDACTED]

Corporate Law | Labour and Commercial Environment Group
Ministry of Business, Innovation and Employment

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