

October 22, 2020

Financial Services Regulatory Authority of Ontario  
5160 Yonge Street, 16th Floor  
Toronto, Ontario M2N 6L9

Dear Sir/Madame.

Consultation ID: 2020-011 / GR0008APP  
A Common Approach to Treating Insurance Customers Fairly

Thank you for the opportunity to provide comment on your consultation as referenced under ID# 2020-011, "A Common Approach to Treating Insurance Customers Fairly".

As the Ontario Mutual Insurance Association, we are providing feedback on behalf of our member companies, all of whom are property-casualty insurers organized as mutual insurers and incorporated under Ontario statute.

We represent 38 mutual companies in Ontario; our members write farm, home, automobile and commercial business. All of our mutuals are over 100 years old, with the oldest being about 160 years old. Most of our companies are located in small towns and cities across rural Ontario.

As mutuals each of our policyholders is a fully participating mutual member. The boards of directors of our mutuals are composed of policyholders and all policyholders are eligible to vote at annual general meetings and participate in any refunds granted from surplus.

By way of background, OMIA reviewed this at length with our member companies and through our own member company Regulatory Review Committee when guidelines for Treating Consumers Fairly were first put forward by FSCO and CCIR a few years ago. On May 7, 2018, our written submission was provided to Ms. Laura McLellan of FSCO's Licensing and Market Conduct Division. That original feedback is attached to this correspondence as an Appendix as we believe our thoughts on those fundamental principles remain valid given the short period of time which has transpired since that consultation.

The correspondence in the Appendix refers to FSCO and clearly that reference should now be deemed to be FSRA.

While much remains unchanged since our original input was provided we do recognize that the last eight months of operating in a radically altered environment due to COVID-19 and the constraints placed on the economy has provided new perspective to everyone doing business in Ontario.

We believe that it will still take some time to identify and distill the most important consumer related insights on buying insurance during the pandemic. These can be considered over the months and years and no doubt can be incorporated into future reviews of existing guidelines.

In addition to our comments in the appendix, we will re-emphasize key themes on our perspective on the guideline.

First of all, we are generally in agreement that a common national guideline is the best long-term solution. Based on our previous review we believe that the FSCO guideline and the CCIR guideline were parallel and largely similar guidelines.

In addition, we continue to advocate the close coordination of RIBO and FSRA to ensure alignment as related to distribution of insurance products. We look forward to hearing from both regulators as to how they will address matters relating to fair treatment of consumers on distribution of insurance, particularly when both the insurer and the broker may be deemed to be held responsible for the guideline.

As we've pointed out in previous input, insurers are being asked to ensure compliance by brokers in areas which insurers don't always have the sufficient commercial or regulatory leverage to ensure compliance.

We also wish to reiterate the importance of proportionality on FSRA's part in assessing an insurers approach to the fair treatment of consumers. We believe the guidelines do address this at a philosophical level, however we believe that it also needs to be demonstrated in practical oversight and supervision with an understanding that as small enterprises the degree of documentation of policies, practices, and processes can justifiably exist in simple and concise formats.

In our experience, examination and reviews of processes by regulators often fail to consider the commonsense practicalities of operating a small business and the regulators expectation on extensive documentation does not match the principle of proportionality.

Finally, we believe that while a written guideline on Treating Consumers Fairly is foundational to the regulators approach on market conduct, we also believe that FSRA should look at how to most effectively provide education and other forms of feedback to insurers on how the guideline will be reviewed and applied and expectations around the real-life elements of how FSRA will oversee the market conduct of property-casualty insurers.

Our Association has provided these knowledge and information sharing opportunities to FSCO in the past. These forums for mutual insurers allowed FSCO to share their perspective on market conduct and to receive direct feedback from mutuals on concerns or questions they have on both consumer and regulatory expectations.

As FSRA gains more experience as a regulator and as market conduct gaps are identified these need to be shared back with the P&C insurance community in a meaningful interactive forum.

In closing, we appreciate the opportunity to provide input on this consultation and would ask that you also carefully consider our correspondence of May 7, 2018 which follows.

Regards,

A handwritten signature in blue ink, appearing to read "J L Taylor". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John L. Taylor BBA, FCIP, FCLA, CHRL  
President

## APPENDIX

May 7, 2018

Ms. Laura McLellan  
Financial Services Commission of Ontario  
Licensing & Market Conduct Division  
5160 Yonge Street, 17<sup>th</sup> Floor, Box 85  
Toronto, ON M2N 6L9  
[marketconduct@fsco.gov.on.ca](mailto:marketconduct@fsco.gov.on.ca)

Dear Ms. McLellan,

Re: OMIA's Response to Draft Treating Consumers Fairly Guideline

Thank you for the opportunity to provide comment on the consultation draft of the Superintendent's Guideline No. 01/18: Treating Financial Services Consumers Fairly.

As the Ontario Mutual Insurance Association, we are providing feedback on behalf of our member companies, all of whom are property casualty insurers incorporated under Ontario statute.

We represent 40-member companies in Ontario; our members write farm, home, automobile and commercial business. All our mutuals are over 100 years old, with the oldest being about 160 years old. Most of our companies are located in small towns and cities across rural Ontario.

Our companies are organized on a mutual basis and each policyholder is a fully participating mutual member. The boards of directors of our mutuals are composed of policyholders and all policyholders are eligible to vote at annual general meetings and to participate in any refunds granted from surplus.

We commend the effort that FSCO has put forward in drafting a guideline that attempts to bring some uniformity of understanding across all the FSCO-regulated financial service providers. We recognize this has posed challenges in the drafting of the guideline, as clearly many parts of the guideline are based on some operational and business model considerations that are unique to specific forms of financial services. While all the principles apply to each financial services entity, some elements of each principle are clearly geared more towards a specific subset.

Our paramount concern under the Guideline is the uncertainty to the reader as to how this guideline will apply on a regulatory level to the property casualty insurance broker sector. Brokers are regulated under the Registered Insurance Brokers of Ontario Act and as such are unsure as to whether they would qualify as “licensees” under this guideline. We recognize that property casualty insurance brokers in Ontario are well regulated and RIBO is generally well aligned with the same guiding principles that FSCO supports. Nonetheless, many of the requirements in this draft guideline will require an alignment in effort between all parties to property casualty transactions and this must include brokers. While we recognize that insurers have commercial arrangements with brokers that provide some scope to address consumer fairness guidelines, these commercial arrangements do not necessarily have the same effect as a regulatory guideline and we would appreciate clarification as to how FSCO and/or RIBO will work in bridging any gap that exists in the regulatory structure.

In support of this point, we note that the guideline clearly states that treating consumers fairly is a shared responsibility among all of those involved and as a result we believe that addressing the “broker question” is important in moving forward.

We also note that the guideline explicitly addresses the principle of proportionality. We believe this is a wise approach. Size, structure, risk profile and complexity must be considered by any regulator or outside entity looking to create expectations in a world increasingly dominated by large, less transparent corporate entities. Failure to do so creates unnecessary and expensive administrative and bureaucratic activity that provides no value, comfort, or safety to the mutual policyholder. Fortunately, the guideline states the proportionality will be considered and we believe it will be important in future years to ensure proportionality relates to expectations, monitoring, and measurement of some of the best practices noted in the guideline. We also believe that for those eventually entrusted with market conduct regulation the principle of proportionality must always remember that the mutual model incorporates the opportunity for full participation by policyholders in many governance activities and that this

creates an increased level of consumer access and awareness in regard to mutual business practices.

We will now provide input to the specific principles as outlined in the guideline:

**1. *FSCO expects that a core component of a Licensee's business governance and culture is fair treatment of consumers.***

We agree that fair treatment of consumers needs to be a core component of an insurer's culture. In fact, this is clearly underlined in the principles of good faith which are uniquely embedded in the insurance contract.

As it relates to developing codes of conduct, we think it is important that companies have sufficient latitude to develop and communicate codes of conduct in a way that is meaningful for their organization and their policyholders. We agree that these should be publicly available, but we also believe that they need to be understandable and accessible to our consumers.

We also note that policies and procedures promoting fair treatment of consumers need to be embedded in outsourcing contracts or arrangements with intermediaries. We agree with this principle, however would caution against expectations regarding the degree of depth and adaptability required to embed concepts in an outsourcing contract, where there is also an expectation that terms must be legally enforceable.

The Guideline indicates a need for appropriate mechanisms to measure the effectiveness of consumer fairness policies and practices. The example provided is soliciting customer feedback. We believe there may also be other means of measuring this effectiveness, particularly through small locally operating companies. We would caution against any move in the future to begin suggesting best practices on collecting consumer feedback that becomes burdensome and largely an administrative exercise.

**2. *FSCO expects Licensees to act with due skill, care and diligence at all times, but especially when dealing with consumers or designing financial services or products for consumers.***

We believe this is already a core principle in the property casualty industry and we also believe that the property casualty industry has well defined target markets and more than

sufficient oversight of how these markets are chosen and serviced. We do believe however, with the ability for digital platform insurers and intermediaries to micro-target markets this will become an increasingly complex regulatory area.

- 3. *FSCO expects Licensees to promote financial services and products in a manner that is clear, fair and not misleading or false.***

*And*

- 4. *FSCO expects Licensees to recommend products that are suitable, taking into account the consumer's disclosed personal circumstances and financial condition.***

We believe the products in the property casualty insurance market as it exists today are traditional and well-established. Unfortunately, they are by their very nature complex and the ability to make these products less complex is almost always defeated by increasing regulatory and legal requirements around contract language. The legal environment and judicial decisions in Canada have done nothing to simplify insurance contracts and complexity of insurance products is directly related to uncertainty created by the legal system. In many cases this is exacerbated by regulatory requirements.

We also note the importance placed on ensuring that consumers receive information based on “disclosed personal circumstances and financial needs”. We agree that understanding the consumer is important in assessing the right fit of a financial product. We also note however that many consumers are highly resistant to providing personal and financial information that they deem to be non-relevant to their purchase of an insurance policy. We believe this is particularly evidenced as it relates to family circumstances and personal financial circumstances. We believe that the process needs to be respectful of consumer’s rights to only providing appropriate levels of information and this should not be overrun by “check listed” processes that may be more intrusive than required.

It is also important to note that one of the underlying principles in an insurance contract is the expectation that policyholders will make appropriate disclosures and as a result bear a shared responsibility for helping ensure this principle is achieved.

The Guideline indicates Licensees who do not interface with consumers need to have systems and controls in place to promote and monitor the suitability of the advice given to consumers relating to products offered by the licensee. We agree this is important, but

again point to some confusion or uncertainty surrounding the distribution of insurance products through brokers and the effect of this guideline on brokers.

**5. FSCO expects Licensees to disclose and manage any potential or actual conflicts of interest.**

Of interest in this principle is the area that speaks to developing incentives that consider the fair treatment of consumers rather than incentives orientated only towards the sale of specific products or sales volumes.

We believe this is a principle that should be kept clearly in view by all property casualty insurers.

**6. FSCO expects Licensees to provide continuing service and keep consumers appropriately informed, through to the point at which all obligations to the financial services consumer have been satisfied, including claims handling or the diligent provision of benefits.**

We agree this should be an ongoing expectation and core value and that business practise and corporate “professionalism” should reflect this.

**7. FSCO expects Licensees to have policies and procedures in place to handle complaints in a timely and fair manner.**

Having participated in market conduct information sessions with FSCO, we believe that the complaints resolution process in Ontario is very well established, provides a significant feedback loop to all stakeholders, and has created a well-established responsibility on insurers to treat complaints seriously and promptly.

**8. FSCO expects Licensees to protect the private information of financial services consumers and inform them of any privacy breach.**

We concur with this principle and believe this will be a rapidly developing area of concern for all consumers. While cyber risk is an important part of this equation, we believe it is also the responsibility of the regulator to place clear expectations on those collecting personal information to ensure that the disclosure and sharing of information is understood by policyholders and is treated by a high degree of respect by insurers. This may be particularly important in monitoring new entrants to the marketplace that may operate on model where there may be an opportunity for data to provide other sources of revenue or change the basic business model of insurance. We believe the regulator in



monitoring innovation needs to ensure there is a very clear balance between the convenience of digital interfaces and respect for consumer privacy.

In other words, innovation should not come at the expense of privacy, particularly where the consumer is either inattentive or not in a position to understand the implications of sharing certain types of information.

We look forward to hearing further as this consultation develops and we thank you again for the opportunity to provide comment and feedback.

Yours Truly,

A handwritten signature in blue ink that reads "John L. Taylor". The signature is written in a cursive style with a large initial "J" and "T".

John L. Taylor BBA, FCIP, FCLA, CHRL  
President  
Ontario Mutual Insurance Association