



DUTY OF CARE

BY TAN SENG CHUAN

On 17 May 2018, the Monetary Authority of Singapore (MAS) has “issued prohibition orders against six people for the mis-selling of investment products” (1). It was also reported in the same Channel NewsAsia report that “Mr Lee Boon Ngiap, assistant managing director for capital markets at MAS, stressed that financial institution representatives have a duty of care to their customers” – the topic that we examine in greater details in this article.

What is Duty of Care?

According to the Collins dictionary (2), Duty of Care is defined as “the legal obligation to safeguard others from harm while they are in your care, using your services, or exposed to your activities”. The Australian Victorian law handbook (3) states that duty of care is defined as “an obligation, recognised by law, to avoid conduct fraught with unreasonable risk of danger to others”. The Business Times (4) has also reported that “the number of complaints filed with Singapore-based Financial Industry Disputes Resolutions Centre (FIDReC) rose to 1,266 for the financial year ended June 30, 2018, up from 953 the year before”. It is even more important for us as financial practitioner to be more aware of this duty of care so as to better serve our clients in their financial planning journey, as well as minimizing & reducing the number of complaint reports.

Duty of Care may be considered when an individual takes legal action against another party concerning the Area of Tort & Contractual rights. This often happens when things turn sour involving the loss of money. In Singapore, the Anns 2-stage test (with the “two stages: proximity based on foreseeability of harm and considering of policy factors” (5)) is used to determine if there was any duty of care owed. In the recent case of “retired stockbroker sues Credit Suisse over US\$26m investment losses in 2008” as reported in a Straits Times article (6), the issue of duty of care was discussed in great details from paragraph 25 to 70 in the judgement report (7) while passing the judgement. Although most of us are not legally trained as financial practitioner, having appreciation and understanding of this duty of care will make us more mindful while we carry out our day to day business.

“CARE” Principle

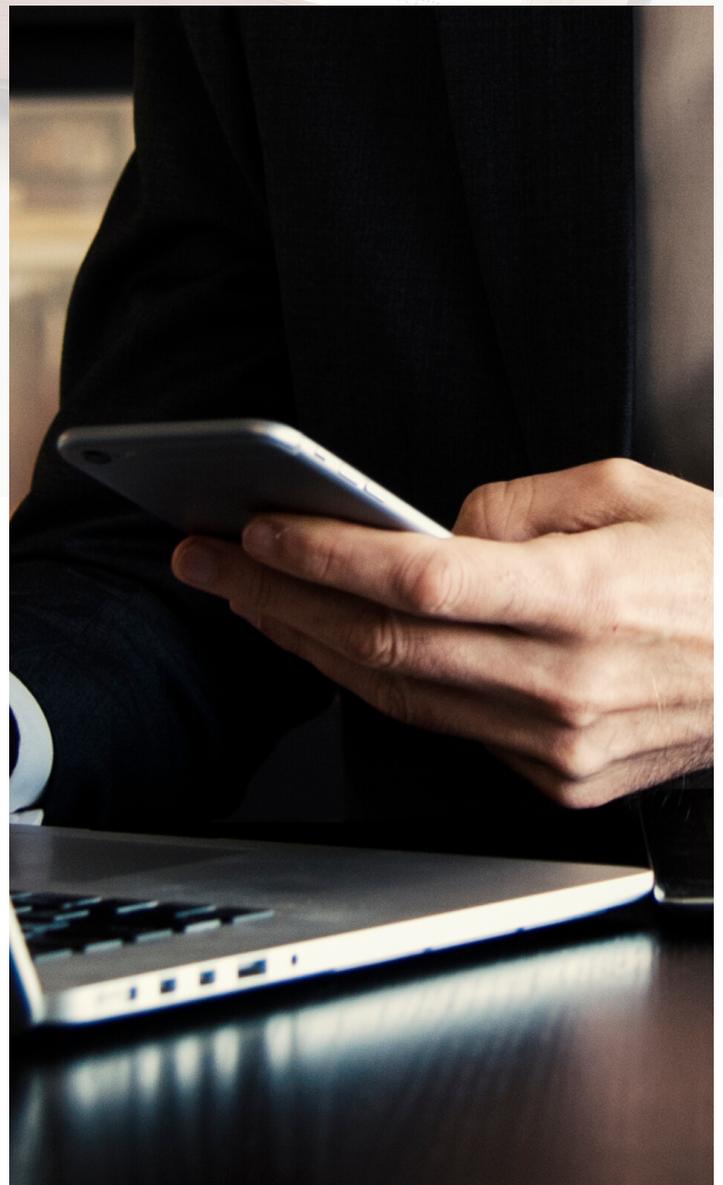
In Singapore, we do not specifically have any regulations being spelled pertaining to duty of care. However, the MAS does have certain regulations in place to fulfil this duty of care. There are the Guidelines on standards of conduct for financial advisers and representative (FAA-G04) (8) which spells out the conduct required by financial practitioners; as well as the Guideline on FAIR dealing (FAA-G11) (9) to deliver fair outcome to customers, including the “selection, marketing and distribution of investment products and the provision of advice for these products”. Regardless whether there are any regulations, below are the “CARE” principle: that we can take reference, adopt and endeavour to be in our practice as financial practitioner to better fulfil this duty of care:

C for Competent

Our industry has evolved to a stage whereby customers are having a greater demand for professional service & advice: having multiple needs; looking for financial planning, wealth management solutions & a wider range of more complex products. As such, we need to need to continue our learning, training & upgrading regularly to be equipped with skills & knowledge in both products & advisory; and to stay competent to better serve our client.

A for Acting in client’s best interest

Trust is one of the most important factors in our business. For us to gain the trust of client, apart from being competent, we must be able to act in our client’s best interest. According to a Business Times article (10), it was reported that “trust was consistently reported as the greatest determinant in the selection of a financial adviser”, and “respondents said that the most important attribute is for advisers to be trusted to act in clients’ best interests”. For us to do so, we will need to do a proper financial planning & needs analysis process first with our client; followed by recommending suitable & appropriate solutions/plans to meet their needs; and finally explaining the features/limitations/risk of these products & solutions. When we can take care of our client interest, we will have fulfilled the duty of care, and client will trust us enough to allow us to have a sustainable business.



R for Responsiveness

In the same Business Times article (10), it was also reported that “the top reason to switch firms and advisers was lack of communication and responsiveness (59 per cent)”, and “only 49 per cent of Singapore investors said their adviser is very accessible for questions or concerns, compared to 75 per cent globally”. From this, we see that being responsive is very important in the service industry as well. As much as possible, we should seek to respond to our client promptly. While there are times that we are unable to do so due to whatever reason, we should respond whenever possible, and importantly communicate this service level and expectation to our client to prevent misunderstanding. One guideline for this aspect is to use the golden rule of “Do unto others as you would have them do unto you”.



E for Empathy

There is a famous saying by former US president Theodore Roosevelt: “Nobody cares how much you know, until they know how much you care”. Apart from just being competent in our domain expertise, we need to show empathy and be a caring advisor for our clients: to provide a listening ear to their needs; and to be there for our clients when they are in need. With artificial intelligence & machine threatening to disrupt our industry, we should even practice this unique trait of human to be caring & empathic, so that we can build lasting relationship, and be the trusted practitioner of choice by our clients.

Conclusion

Getting ourselves involved in legal issues and souring relationship with clients as a result of duty of care issue is certainly something that we do not want to happen. I hope this article draws our attention to the topic of duty of care, and that we can be mindful of this in our day to day work. I also hope that the “CARE” principles above will be useful for one to take reference for our practice in fulfilling this duty of care; and that we can all do our best in our business ethically and compliantly. With this, we can then be the trusted practitioner to serve & add value to our clients to best represent our firms & companies; minimizing & reducing the number of complains; and together raise the professionalism & standards of our industry.

Notes

[Link \(1\)](#)

[Link \(2\)](#)

[Link \(3\)](#)

[Link \(4\)](#)

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