

#72

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Q1 Overall, do you agree or disagree with [standard 1] **Agree**
 and proposed commentary?

Q2 Please provide any comments on [standard 1] and the proposed commentary.

While in broad terms we agree with this Standard and the proposed commentary, we have a number of specific comments, as follows:

The proposed requirement in the Standard to “act in [the client’s] interests” is less onerous than the proposed duty to “give priority to client’s interests” under proposed section 431J of the Financial Markets Conduct Act (as set out the current draft of the Financial Services Legislation Amendment Bill (“FSLAB”)), which applies in more limited circumstances. In addition, the balance of the Standard and proposed commentary deals with concepts of “fairness”. We think there is the potential for confusion to arise from two separate requirements relating to client interests applying in quite different situations. To achieve this, we suggest the references to client interests should be removed from this Standard, leaving the sole focus on fairness. If the requirement is to remain, we think it should be relegated to the commentary.

We consider that the proposed commentary requiring advisers not to exploit clients’ vulnerabilities does not go far enough to address the issue of vulnerable customers. The term “exploit” could suggest there must be some deliberate misuse of a vulnerability to the advantage of the adviser. However, we consider it untenable that an adviser could fail to positively address an apparent vulnerability and still be considered to have treated a client fairly. This would conflict with an adviser’s general duty to act with care, diligence and skill which is scalable to both the particular circumstances surrounding the provision of advice and to the particular customer. We therefore propose that the commentary should be amended to “ensure any customer vulnerability is reasonably addressed where that vulnerability would be apparent to a reasonable person”. In addition, further guidance on what constitutes vulnerable should be provided together with robust examples.

The fifth commentary bullet point refers to “applying business practices that promote the interests of clients...” This appears to contradict the CWG’s intent in scaling back from setting expectations around process, and is a broad requirement that would benefit from clarification (and, perhaps, examples), if it is to remain. We also note that the second part of the bullet point “having regard to the nature and scope of financial advice” would appear to allow advisers to limit the extent to which they act in clients’ interests by limiting the nature and scope of the advice. If this requirement remains then, at the very least, this qualification should be removed.

The sixth commentary bullet point should be removed as advisers should not be expected to debate and decipher the “spirit and intent” of their other legal obligations. The point is adequately addressed in the next paragraph in any case.

We consider that there is a risk that limited scope advice (even if properly explained under proposed Standard 4) could be used by advisers to work around issues concerning replacement business within the life insurance sector. Additional commentary should be incorporated under Standard 1 to address inappropriate “de-scoping” of financial advice where such advice ought reasonably to be included.

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Q3 Overall, do you agree or disagree with [standard 2] and proposed commentary? **Agree**

Q4 Please provide any comments on [standard 2] and the proposed commentary. **Respondent skipped this question**

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Q5 Overall, do you agree or disagree with [standard 3] and proposed commentary? **Agree**

Q6 Please provide any comments on [standard 3] and the proposed commentary.

While we broadly agree with this Standard and proposed commentary, this is an area of particular concern and potential high risk to good customer outcomes. That being the case, we believe the commentary needs to be expanded to define a conflict of interest.

The Financial Markets Authority observed in its May 2018 report on conflicted remuneration (soft commissions) in the life and health insurance industry that many advisers failed to understand or identify conflicts of interest (e.g. shares in an insurer being offered to advisers). For this Standard to be effective, this needs to be defined with clear examples as to the impact remuneration can have on an adviser's ability to exercise care, diligence and skill. Conflicts of interest should be expanded to include potential conflicts.

The first bullet point states "where practicable, avoid conflicts of interest". In our view, this should be expanded to include "avoid, reduce or mitigate", together with additional commentary or examples that address how conflicts can be mitigated through disclosure. In addition, if this change is adopted the reference to "where practicable" should be removed, as in our opinion there should never be a situation where it is not practicable to avoid, reduce or mitigate.

The first and second bullets should be reordered as the identification of conflicts must occur before they can be avoided (or reduced or mitigated).

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Q7 Overall, do you agree or disagree with [standard 4] and proposed commentary? **Agree**

Q8 Please provide any comments on [standard 4] and the proposed commentary.

While we broadly agree with this Standard and proposed commentary, we are concerned that the example that has been employed here will have the unintended effect of promoting the “de-scoping” of a business replacement comparison. We suggest amending this example to promote good customer outcomes in the context of replacement business or removing it altogether. As drafted, we believe the example is inconsistent with good customer outcomes.

We also consider that this Standard should address vulnerable customers, specifically as to what is reasonable where a client vulnerability is apparent.

Further, we note the proposed Standard appears to focus on the financial adviser service rather than the advice itself, in the sense that much of the draft commentary focuses on the customer understanding the financial advice they have received rather than the underlying product or service. A key issue for the life insurance industry is ensuring that clients understand a policy’s benefits, features and exclusions. Therefore, we consider that this Standard should specifically reference ensuring the customer understands the key features (risks and benefits) of the product and/or service that the adviser is recommending.

The proposed commentary does not require an adviser to ensure that a client has understood the disclosure documents that they have received. Additional commentary should be added to ensure that an adviser has an obligation to take a customer through disclosure documents to ensure they are understood.

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Q9 Overall, do you agree or disagree with [standard 5] and proposed commentary? **Agree**

Q10 Please provide any comments on [standard 5] and the proposed commentary.

Given that suitability goes to the heart of the provision of financial advice we consider that multiple and more insightful examples should be employed here. Useful examples could include investment products not matching customer risk appetite and insurance products where the major benefits under the policy do not meet the customer’s circumstances.

The second paragraph of the commentary needs to be clarified. Specific examples as to the situations where an in-depth analysis is required would be beneficial, as would examples of suitable advice based on particular characteristics.

A clear statement should be included in the commentary to “never recommend a product or service to a client where a reasonable customer need has not been established”.

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Q11 Overall, do you agree or disagree with [standard 6] and proposed commentary? **Disagree**

Q12 Please provide any comments on [standard 6] and the proposed commentary.

While we acknowledge this is a topical issue, we do not support the inclusion of a Standard dedicated to customer privacy. We consider adviser privacy obligations are a step removed from their advice obligations and as such are adequately set out under existing privacy legislation and more particularly under the new Privacy Bill. There is also a risk that whatever requirements are included in the Code could be inconsistent with updated laws in this area.

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Q13 Overall, do you agree or disagree with [standard 7] **Disagree** and proposed commentary?

Q14 Please provide any comments on [standard 7] and the proposed commentary.

We consider advisers' requirements to respond to complaints are adequately covered elsewhere. Reference to acknowledging and resolving complaints should be included in the commentary of Standard 1.

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Q15 Overall, do you agree or disagree with [standard 8] **Agree** and proposed commentary?

Q16 Please provide any comments on [standard 8] and **Respondent skipped this question** the proposed commentary.

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Q17 Overall, do you agree or disagree with [standard 9] **Agree** and proposed commentary?

Q18 Please provide any comments on [standard 9] and the proposed commentary.

We welcome the decision not to include a requirement for a tertiary or similar qualification as this may have resulted in many advisers leaving the industry, leaving a gap while other/new advisers obtained a relevant qualification. This would have been inconsistent with the objective of ensuring the availability of financial advice.

It is not clear how this Standard will be applied to trainee advisers who are yet to obtain Level 5. We believe that further clarification on this point is required, perhaps by way of an example that specifically recognises how a trainee adviser can work in conjunction with others to satisfy the competence requirement.

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Q19 Overall, do you agree or disagree with [standard 10] **Agree** and proposed commentary?

Q20 Please provide any comments on [standard 10] and the proposed commentary.

Following the removal of minimum CPD hours, we believe that further guidance on what are "learning activities" should be provided. Examples could include mentoring programmes, preparing advice materials, attending (both participatory and non-participatory) courses. Further we support a requirement for every adviser to maintain a professional development plan.

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Q21 Overall, do you agree or disagree with [standard 11] **Agree** and proposed commentary?

Q22 Please provide any comments on [standard 11] and the proposed commentary.

Respondent skipped this question

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Q23 Overall, do you agree or disagree with [standard 12] and proposed commentary?

Agree

Q24 Please provide any comments on [standard 12] and the proposed commentary.

In addition to proposed requirements we believe there should be a minimum requirement for an adviser to have knowledge of, and competence in, the specific financial products and services that they are advising on.

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Q25 Is there anything missing from the draft Code?

Yes

Q26 If you answered yes, what is missing?

We consider there is a gap in the Standards which does not adequately deal with on-going support and servicing of clients. For long term products such as investment products and life insurance, we consider that there should be a positive obligation to provide on-going periodic servicing and support to clients, unless the client makes an informed decision to the contrary. This should also address appropriate remuneration (trail commissions) where the clients may not be receiving adequate levels of service to warrant payment of on-going service commissions. This was a key issue identified in the Australian Royal Commission.

Q27 Do you have any feedback on the examples, or suggestions on other examples that should be included in the draft Code?

Please refer to our feedback under the specific Code standards.

Code Working Group - Online Submission Form

Q28 Is there anything else you want to say?

Thank you for the invitation to provide feedback on the draft Code of Professional Conduct for Financial Advice Services ("Code").

AIA New Zealand and Sovereign welcome the introduction of the Code and support the continued focus on access to quality advice to ensure customers are able to make well-informed decisions that protect themselves and their families in their time of need.

Our comments on the questions posed by the Code Working Group ("CWG") in the consultation paper are set out below. All comments represent the views of both AIA New Zealand and Sovereign.

Our feedback is based on the expectation that matters such as record keeping will be addressed in the Financial Markets Conduct Act licencing process.

Broadly speaking, we welcome the simplified principles-based Code. However, given the level of regulatory scrutiny and adverse publicity that the financial services industry has been subject to both here and abroad, we consider that it is in the interests of the industry as a whole to have a Code that clearly articulates what good conduct looks like.

To this end, we believe that the Standards need to be supported by more detailed commentary that sets out expectations or indicative behaviours supported by more case studies or examples, to give the Standards appropriate context and facilitate interpretation/application. Rightly or wrongly, we anticipate that advisers will refer to the Code over and above, or to the exclusion of, any other legislation or guidance and as such the Code should be as self-sufficient as possible.

As it stands, the draft Code leaves too much interpretation to advisers and financial advice providers. Uncertainty benefits no-one. In the absence of guidance on a particular matter, whether or not a particular interpretation is correct will only become apparent once a matter has been heard by the disciplinary committee, by which stage customer detriment may have already occurred. Further, it leaves the disciplinary committee with the responsibility of giving most of the meaning to the Code, effectively "legislating" in the hands of a few.

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Q29 Name

Kristy Redfern

Q30 Your role or professional title

General Counsel

Q31 Individual or organisational submission

This is a submission on behalf of an organisation (eg employer)

Q32 If you give financial advice...

I am not an AFA, RFA or QFE adviser

Q33 My organisation or I give the following types of advice...

Life and/or health insurance

Q34 Organisation Name

AIA New Zealand and Sovereign

Q35 Type of organisation

Insurer

Q36 Size of organisation

Large firm (50+ staff)

Q37 If there are other things we should know about you or your business that would provide context to your answers, please provide details below. **Respondent skipped this question**

Q38 Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions.

No

Q39 Please provide your contact details (email and/or phone number) This is the only question that requires an answer. This information would not be released publicly. We may get in touch with you in order to help us understand particular points from your submission.

s 9(2)(a)

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