

9 November 2018

Dear Angus and the Code Working Group (CWG) members,

CODE OF PROFESSIONAL CONDUCT FOR FINANCIAL ADVICE SERVICES – CONSULTATION ON DRAFT STANDARDS

ASB Bank Limited (ASB) welcomes the opportunity to provide feedback on the draft *Code of Professional Conduct for Financial Advice Services (the Code)*.

For context, ASB is a registered bank and a Qualifying Financial Entity (QFE) Group, which comprises ASB, ASB Group Investments Limited, ASB Securities Limited, Aegis Limited and Commonwealth Bank of Australia (New Zealand Branch). The QFE Group has over 2 million customers (the majority of which are retail clients) and approximately 2,800 advisers who are employees. Approximately 97% of these advisers are Category 2 QFE advisers, with the balance as Category 1 QFE advisers and AFAs.

We acknowledge that ASB's submission may be published on MBIE's website, and may be released in response to a request under the Official Information Act. ASB does not seek confidentiality for any aspect of this submission, other than my direct contact details below.

We have also contributed to the New Zealand Bankers Association submission on the Code and endorse the points made therein.

If you require any further information in relation to this submission, please do not hesitate to contact me.

Yours sincerely,

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Victoria Johnstone
Head of Regulatory Affairs
ASB Bank Limited
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Introduction

1. ASB welcomes the focus on consumer outcomes at the heart of the new advice regime, and the regime's desire to ensure increased access to quality advice for all New Zealanders. The Code is an important pillar in the new regime's structure and we commend the high level of industry engagement from the CWG in its drafting.
2. We acknowledge the Code provides for minimum standards of professional conduct that need to work in practice for anyone giving regulated financial advice to a retail client and must cover a large range of advice situations, in addition to being clear and understandable to both advice givers and consumers.
3. Accordingly, we strongly support the principle-based approach taken by the CWG in the development of the Code, which we believe will allow for flexible application of the Code across a large variety of advice situations.
4. In general, the accompanying commentary for each standard provides appropriate additional information as to each standard's overall intent (noting some specific observations on the commentary for a number of standards, below).
5. We also strongly endorse the approach of not including prescriptive process descriptions in the commentary to show how compliance can be demonstrated for each standard, as we consider this would dilute the flexibility provided for by the principles based approach.
6. For example, Standard 4 specifies that a person who gives financial advice must take reasonable steps to ensure the client understands the financial advice but does not include a description of exactly what reasonable steps should be taken. This is appropriate, as what amounts to a reasonable step to ensure a customer understands will differ depending on the advice situation.
7. In addition, including prescriptive process descriptions might restrict or hinder innovative approaches to the provision of advice as the advice environment evolves, particularly in the digital space.
8. Consistent with the above, although providing examples to supplement the commentary shows in some limited circumstances how the Code standards might work in practice, we think on balance all the examples that have been provided in the Code (under Standards 4, 5 and 9) should be removed for the final version. By providing explicit examples, the risk is that these will be interpreted as 'best practice' across different advice circumstances, and therefore become a de facto compliance benchmark, which would undermine the principles-based approach of the standards themselves.

9. The FMA as the licensing body has the option to issue further guidance (which may include the provision of good practice examples in relation to specific and real issues that require clarification) with respect to Code compliance as the full impact of the regime becomes clearer through the transition period.
10. The remainder of this submission provides specific comments on each standard and associated commentary.

Standard 1: Treat clients fairly and act in their interests

11. Overall, we agree with inclusion of a standard that explicitly references a requirement to treat clients fairly, and the provided commentary (in particular bullet points 1 to 4) articulates clearly what this means in practice.
12. We note the concept of the second part of this standard (acting in a client's interests) already occurs as a stand-alone duty within the proposed legislation (see 431J) specifically in respect to the management of conflicts of interest, rather than as a broader requirement. It is unclear what the elevation of this concept to the Code would mean in practice with respect to required adviser behaviour, beyond that already considered in legislation, and different to treating clients fairly.
13. Further, although the commentary provides one example that includes a reference to the interests of clients (bullet point 5) it is noted as an example under an umbrella statement of treating clients fairly. To this end, Standard 1 could be simplified by removing 'and act in their interests' without losing (or confusing) what we consider to be the overarching purpose of this standard; that is, the concept of fairness in adviser/client interactions.
14. As a point of clarification, we have interpreted the inclusion of bullet point 6 as a signal to the advice industry that applying a narrow approach to the interpretation of advice obligations specified in the FMC Act, FMA Regulations and Code without considering fairness is inappropriate. Accordingly, we consider this an important point to retain in the final version of the Code as it emphasises the broader conduct concept of the 'can we, should we' test. For clarity, if the CWG agrees that this was the intent of bullet point 6, this concept could be expanded on further in the commentary.

Standard 2: Act with integrity

15. We agree with this standard and its proposed commentary.

Standard 3: Manage conflicts of interests

16. We agree with this standard and its proposed commentary.

Standard 4: Take reasonable steps to ensure that the client understands the financial advice

17. We agree with this standard in general, but have some concerns (outlined below) regarding the inclusion of the words 'all material risks and consequences'.
18. We note here the Code extends the legislative requirement under 431I in relation to reasonable steps to ensure client understanding to include not only the nature and scope of the advice and its limitations, but also all its material risks and consequences.
19. We understand the inclusion of this additional requirement seeks to elevate the quality of advice received and help consumers make better informed advice decisions. Although we agree in principle with this intent, the inclusion of the words 'all material' could be problematic in practice. 'All material' is a high threshold, which could create the risk that it becomes more practical in some cases not to provide advice. Even if the advice is provided, there is a risk that an advice provider 'over-discloses' in order to mitigate the risk of non-compliance. This was one of the key issues with the old prospectus and investment statement regime under the Securities Act that the introduction of the Financial Markets Conduct Act regime sought to specifically address.
20. We suggest the CWG working consider replacing the words 'all material' with 'key' or 'significant', which may go some way in reducing the above risks.
21. As per our overarching comments in 8. above, we recommend the example given for this standard is removed from the Code. Regardless, the draft example provided has a number of issues associated with it, primarily around the concern that it does not represent the promotion of a good customer outcomes with respect to life insurance replacement practices.

Standard 5: Give financial advice that is suitable for the client

22. We support the inclusion of a standard that promotes the suitability of financial advice, but consider it should include a reasonableness requirement, similar to the drafting of Code Standard 4. For example, amending the standard as follows:

A person who gives financial advice must *have reasonable grounds* ensure that the financial advice is suitable for the client. ~~The person must have reasonable grounds for the financial advice,~~ having regard to the nature and scope of the financial advice and the client's circumstances.

23. We note here that we will need to consider what we might know about the client's circumstances, and then what this might mean for the setting the nature and scope of the advice when we develop our process and system design with respect to this standard.

24. The concern here is that if we know something about a client's circumstances (such as the existence of a personal loan with ASB) we should not exclude this when setting the nature and scope of advice (for example if this same client seeks advice from an ASB nominated representative on the placement of a term deposit), as we consider this would not be acting in the spirit of the Code or indeed our own standards and overall strategic direction (e.g., to give better and more advice).
25. However, similar to some of our concerns outlined above with respect to Standard 4, there is some risk that this on a practical basis may result in process complexity and compliance risk, which could impact on whether we choose to provide advice in certain circumstances.
26. We consider the concept of an implied nature and scope as an important point in the CWG's intent of this standard. It would be helpful if the concept that the nature and scope of advice can be implied is elaborated on further in the commentary.

Standard 6: Protect client information

27. We disagree with the inclusion of this standard under the general principle that the Code should not seek to impose obligations that are already addressed by other legislation. For example, retention, use, or sharing of bulk client data is a matter already regulated by privacy law. The Code should not impose any additional standards on its use, including the ability of a provider to collate bulk client data and using it (in an anonymised manner) to understand general clients' needs and developing better products and services to meet those needs. Requiring that consent is obtained prior to using client information in an anonymised manner is restrictive and may unnecessarily prohibit a provider's ability to understand and meet clients' needs.
28. If there is the need for increased functionality or regulation of existing privacy arrangements (e.g., to include protection for retail customers that are not individuals), this should be addressed as part of consultation and reform on the relevant legislative regime (noting a review of New Zealand's privacy law is currently underway).

Standard 7: Resolve complaints

29. We agree with this standard and its proposed commentary.

Standard 8: Not bring the financial advice industry into disrepute

30. We agree with this standard and its proposed commentary.

Standard 9: Have general competence, knowledge, and skill

31. We agree with this standard and consider the Level 5 outcomes set an appropriate minimum standard for general competence, knowledge, and skill. Overall we think this standard will lift the broader industry capability and help advisers to better consider the general context in which the customer seeks advice, without risking a decrease in overall advice access by setting an unnecessarily high qualification level for the majority of advice situations.
32. Although referenced, we think the outcome focus of the standard should be emphasised and elaborated further in the commentary around equivalency (a reference to a financial providers in house training could be useful here). This will help to further clarify that the outcome of the qualification is the key requirement of this advice standard, rather than the process specified in the qualification (e.g., the Six Step Process for the provision of personal financial advice).
33. As per our overarching comments in 8. above, we recommend the examples given for this standard are removed from the Code.

Standard 10 Keep competence, knowledge, and skill up-to-date

34. We agree with this standard and its proposed commentary.

Standard 11 Have particular competence, knowledge, and skill for designing an investment plan

35. We agree with this standard and its proposed commentary. We strongly agree that Level 5 should be considered a provisional transitional standard, which will be raised in the longer term as the regime beds in.

Standard 12 Have particular competence, knowledge, and skill for other types of financial advice

36. We agree with this standard and consider the Level 5 qualification outcomes under the product strands are appropriate minimums (as per Standard 9) which will assist in the regime's aim to improve access to quality financial advice.