

Code of Professional Conduct for Financial Advice Services

Submission Template

Submissions close Monday 30 April 2018

Please send submissions to:

code.secretariat@mbie.govt.nz or

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

Information about you

<i>Share your details</i>	
i.	My name is Chris Boon. I am an AFA and the Principal and Managing Director of Adelphi Insurance Brokers Ltd. My submission is from a risk and health adviser model. Adelphi intends to become a FAP.
ii.	My contact details are S 9 (2) (a)
iii.	<p>Adelphi Insurance Brokers Ltd. (Adelphi) is a nationwide Advisory Business that has contracted advisers throughout New Zealand and provides a lead generation model through a designated call and customer care centre . I have 10 to 12 advisers throughout New Zealand, a client retention person, customer support person, customer care manager, call centre supervisor, 8 call centre staff, a General Manger/Sales Manager and me. A total of approximately 26 people.</p> <p>Our main role is risk and health advisers. In a secondary role we give class advise for Kiwisaver and a referral for general insurance.</p> <p>s 9(2)(b)(ii)</p> <p>Our advisers are predominantly brand new to the industry and I train them, coach and mentor them. I continually review and audit them in the field. They are required to attend all available provider functions and recently must join the IFA. Training is a major theme in our organisation.</p> <p>I believe we run a compliant model. We have a full CRM programme which must be kept up to date with all client information. I subscribe to Strategi and Barry Reid vets all our material and regularly audits our advisers.</p> <p>Our approach to clients is a consultative approach. The advisers will conduct a Fact Find/Needs Analysis to identify the client needs, circumstances and tolerance to risk. They will then produce a Statement of Client Advice for the client and if it meets the client needs and circumstances they will implement an insurance solution. It is a customer focused approach.</p> <p>Additional information on Adelphi is available at www.adelphiinsurance.co.nz</p>
iv.	<p>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. (See page 2 of this document)</p> <p>The only area of confidentiality is the volume of business we produce</p>

Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>My view is that I agree entirely but it needs to be principal based. If an adviser generally puts the clients interest first then the advice must be in the clients best interests. I believe the framework from the AFA Code spells that out and if adhered will put the clients’ interests first.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Having a compliant process where the adviser can show and justify how they reached certain outcomes will ensure the customers interests come first. Regular audits will keep the adviser accountable. We already do this.</p>

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	<p>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</p> <p><i>Absolutely. If someone says no to this they are in the wrong industry.</i></p>

Keep the commitments you make to your client

D.	<p>Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.</p> <p><i>I believe it would be beneficial for a FAP (which we intend to become) have its own Code of Ethics, documented ethical processes, ethics training, and compliance function. This should outline how the FAP and adviser puts the client needs first. My caution is that for a small to medium size business to survive the compliance costs must to be kept down.</i></p> <p><i>Adelphi has these processes in place but for us to take on a full time compliance person would be cost prohibitive.</i></p>
E.	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p><i>A regular audit process but if this is too onerous then the FAP will be bogged down in paperwork. I think simply quarterly auditing of maybe three ‘random’ cases per adviser would keep them accountable.</i></p>

Manage and fully disclose conflicts of interest

F.	<p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p>The current disclosure statements already do this. Adelphi goes one step further and has an 'About Adelphi' which clearly outlines who we are, which providers we deal with and how we are remunerated.</p> <p>My strongest caution in this area is that the authority doesn't paint the adviser as commission grabbing crooks. Some maybe and they need to be exposed but most advisers already do the right thing by the client.</p>
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Do no harm to the client or the profession

G.	<p>Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.</p> <p>Absolutely. If someone says no to this they are in the wrong industry.</p>
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p>No I don't believe so. If the adviser follows a compliant process which puts the client's needs first then they are doing the right thing. If an adviser is outside of this then they need to be removed from the industry. Possibly and 3 strikes and you're out process. Having said that the legislation can get too top heavy and the adviser lives in fear and actually doesn't do the right thing by the client out of fear of making a mistake.</p>

Keep your client's data confidential

I.	<p>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</p> <p>The current Code states that an adviser must retain client records for 7 years. I don't think there is a necessity to add to this.</p> <p>I would have thought the sharing of data was covered by the Privacy Act. It's also important to not restrict advisers access to client information because they could be giving advice without the full information.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Yes I do</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No</p>

Ethical processes in Financial Advice Provider entities

L.	<p>Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?</p> <p>Yes, as stated above</p>
M.	<p>Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?</p> <p>No. I would have thought that this is covered off in the Disclosure Statement. Too much information will bog down the client.</p>
N.	<p>Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?</p> <p>No. Each FAP will be run differently with different leadership styles with different cultures but if a FAP is compliant and putting the client’s needs first then the leadership and culture will be consistent with the Code.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No</p>

Ethics training

P.	<p>Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.</p> <p>Yes</p>
Q.	<p>Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.</p> <p>Yes</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Possibly. If the FAP is maintaining its code of ethics as evidenced through a regular audit process they would have been doing their own refresher training. If they are outside of the boundaries then it’s something the authority can direct them to do.</p>

Resolving ethical dilemmas

S.	<p>Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.</p> <p>Yes, but we also have Employment Law to contend with. If an employee steps outside of the ethical boundaries then the employer has to work them through an employment process.</p>
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Compliance functions

T.	<p>Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?</p> <p>With ROBO Advice there should be but an adviser would come under the Code</p>
U.	<p>Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.</p> <p>Possibly but this would vary from business to business. Have to be careful of malice intent.</p>
V.	<p>Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?</p> <p>I think this could be self-monitored because any area of discrepancy would become evident in quarterly external audits.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Absolutely. If it gets to the point where every company has to have its own Compliance Officer, many Advice Businesses will exit the industry</p>

Responsibility for the whole advice process

X.	<p>Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.</p> <p>No. This becomes difficult if an Adviser wants to contract to a FAP for support, training and sharing of resource costs. These advisers would run their own business, own their own clients and it would be unfair that the FAP is responsible for that advisers advice. This would particularly apply in an aggregation model.</p>
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Reinforcing good ethical behaviour

Y.	<p>What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?</p> <p>I think there is a danger in over complicating this process. Advisers need to comply with the Code and get out and advise people, not be stick at a desk doing paperwork.</p>
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p>I believe the current AFA Code works for this. I strongly believe the current Category 1 products and Category 2 products differentiation should remain. Following the 6 step advice process documents the process. If you overload the client they will not read the information and will be less informed than they are now. Sometime less is more.</p>

Advice-giving standards

AA.	<p>How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10).</p> <p>They work fine</p>
BB.	<p>Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)</p> <p>Again we risk closing the client down if we overcomplicate this process.</p>
CC.	<p>Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?</p> <p>RFA’s need to be more accountable, as do bank representatives. We constantly find clients who have been insured by a bank, never been reviewed and have no idea what they are covered for. They most often misinsured as well.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Absolutely. Despite what people think advisers are receiving in commission most good advice businesses have a huge cost structure. Every layer of compliance adds to that cost.</p> <p>s 9(2)(b)(ii)</p>

EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>As above</p>
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Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>No I agree with your statements</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>I think this is already outlined and the current Code covers this</p>
HH.	<p>Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?</p> <p>Must identify the client's circumstances and needs before advice is given and the advice must meet the stated needs and circumstances.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>The statement in point 133 is fine and accurate but let the adviser outline this to the client. If it's a forced statement it indicates the adviser is only doing it because he/she has to.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>Only if the client clearly states they just want a price for a particular level of cover and don't need advice. This does happen with some clients.</p>

Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>I agree with the statements of 'fit for purpose' advice processes and flexibility depending on the service provided. Over complication is definitely area that needs to be avoided because the more complicated it becomes the less the client understands.</p>
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Organisational standards

LL.	<p>What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?</p> <p>I agree it is hard to define a nature. People have it or they don't but the current fact find/needs analysis approach helps an adviser stay on track throughout the process. Making it too generic will allow for errors</p>
MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p>Yes, because we are already focused on the service and delivery the adviser is giving to the client. If the organisation is monitoring it's advisers then the organisation will operating with good conduct. Also, you don't want to take the focus off the adviser and onto the organisation because bad advice could creep in.</p>

General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes but I don’t agree that a formal qualification makes a good insurance adviser. The ability to relate to and connect with people does. That way they can draw out the persons individual circumstances and needs.</p>
OO.	<p>Are there other factors, which contribute to combined expertise, that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.</p> <p>As above. We don’t want to replace experience with academic qualifications.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>As above. If the FAP can train and develop good advisers by training them experientially then the client’s needs will be met.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>As above</p>
RR.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>Some of the best advisers and most experienced insurance adviser I know will leave the industry if they suddenly had to sit a Level 5 or above qualification. Ongoing training is crucial but this will show out in an audit process.</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>One factor the FMA hasn’t considered (or maybe they have) is the fact that national and offshore conferences have a high degree of learning attached to them, both from the insurance provider and the peer discussions. These peer discussions wouldn’t happen in the normal course of business.</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
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TT.	<p>What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?</p> <p>I think it is far too prohibitive. A Level 7 degree doesn't mean the person will be any more ethical than someone who genuinely cares for their clients. I think the assumption that the majority of the general public has an understanding of insurance products is wrong. When Adelphi's advisers visit a customer they are most often underinsured, over insured or misinsured.</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>They should have their work independently audited so they can show what process they went through to meet the clients objectives, circumstances and needs. Some of the best insurance advisers are RFA's.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>I believe it's too restrictive. I believe there should be a distinction between Category 1 products and Category 2 products as it now stands. Investing someone's money requires a more of an academic understanding. Insuring someone, as long as an adviser is properly trained, monitored and follows ethical and procedural processes is very much an experience skill.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>It's far too prohibitive. You will lose very good, experienced, competent and ethical advisers from the industry which will only exasperate the underinsurance problem in New Zealand.</p>
XX.	<p>In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?</p> <p>The bulk of it is good but I strongly disagree that insurance advice is lumped in with investment advice and financial planning. These are two completely different skills. A lot of investment advisers are only mediocre at insurance advice and I would never attempt to give investment advice. It's not field of expertise.</p>
YY.	<p>What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?</p> <p>Separate insurance advice from investment and financial planning advice.</p>

Other comments

Share your views

ZZ. Are there any other comments you would like to make to assist us in developing the Code?

I have trained over 50, new to the industry advisers, and from my experience the ones with degrees are bright but they often lack basic life skills, life experience and sometimes common sense. People with life skills, an ability to empathise and connect with people are the best, most ethical and most likely advisers to put the clients' interests first.

I understand a level 5/6 or 7 degree for investment advice and financial planning (currently category 1 products) but not for insurance advice (currently category 2 products). A competence level is required and we need a Code of Conduct and Code of Ethics and advisers must be accountable but if you force insurance advisers down this track you will rob the industry of most of its most experienced and ethical advisers. Please stay with the distinction between Category 1 and Category 2 products