

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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Jamie Lester Director Advice Plus Limited</p>
ii.	<p>Please provide your contact details</p> <p>S 9 (2) (a)</p>
iii.	<p>Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)</p> <p>Having been in the industry for 22 years and owning my own business as an advisor for 14 years I have built a solid insurance advisory business. We currently have our own business to broker shareholders, and three administrative staff.</p> <p>S 9 (2) (b) (ii)</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>Please do not publish our revenue declarations above publically</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>Any criteria to be implemented regarding standards of advice needs to be weighed up against the time required to provide such advice and then compared to the ongoing income received by the adviser for providing that advice in addition to what a client is prepared to pay. Otherwise, unprofitable advisors will not see the benefit of having such a business</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</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>Yes</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>
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E.	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?
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Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation?
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Do no harm to the client or the profession

G.	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. Yes, agree
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

Keep your client's data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper? Yes agree
K.	Are there other aspects of maintaining client confidentiality to consider? Client information needs to be shared between stakeholders where the desired outcomes is to achieve best advice for the client. Although it is acknowledged that client authority must be provided as part of this process. I.e. sharing information with prospective insurers to get a understanding of best possible terms available

Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?
M.	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?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

Ethics training

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning. An initial ethic training course may be necessary for ongoing requirements to refresh is simply a money raising exercise for training organisations.
Q.	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.
R.	Should there be a requirement for ongoing refresher training on ethics? No. signed declaration of adherence to criteria should be sufficient. Specific attendance to course only add time and cost constraints to running business

Resolving ethical dilemmas

S.	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. An industry wide framework should be provided,.
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Compliance functions

T.	Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?
U.	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.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

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>The financials service provided should have limited responsibility based on the fact that they have provided a process that meets the standard however the responsibility to use that process should sit on the shoulders of the adviser themselves .</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>Brochure or disclosure provided on at initial meeting</p>
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking?

Advice-giving standards

AA.	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).
BB.	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.)
CC.	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)?
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Trail commission should go with the servicing adviser not staying indefinitely with the originating adviser. This presents some problems in regards to.</p> <ol style="list-style-type: none"> 1. Advisers simply getting clients to sign change of servicing advisers forms to gain trail commission when they do not maintain servicing responsibility 2. Advisers who originated the business not getting compensated for their trail asset 3. Higher risk of losing renewal commission through simply signing away servicing rights will reduce the multiple businesses are sold for as the income will be at higher risk 4. Significant loss for income to the originating adviser if lower upfronts and higher trails become industry standard then business taken soon after origination 5. Ongoing administrative issues for insurers <p>Solution</p> <ol style="list-style-type: none"> 1. Renewal commission for servicing adviser changes after a period of ongoing servicing (e.g. 3 years) this means <ul style="list-style-type: none"> - the originating adviser gets 3 years of renewals for no serving costs thereby meeting purchase costs - adviser taking on new servicing does not have to offer advice indefinitely without receiving the servicing income - upfront purchase of the client not required and ensures an adviser who purchases a client base at least gets his investment returned to him therefore maintain current business values - Less incentive for advisers to simply go hunting for renewals sign over
FF.	

Advice process

GG.	Do you think there are any other components that should be included in the design considerations of an advice process?
HH.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process?
II.	<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>Standard insurance-based advice should involve documentation of the outcomes required by the client in the event of death or disablement, the resources they currently</p>

	have available to them to address this need and therefore the gap required to be filled with an insurance recommendation.
JJ.	Should any of the key aspects that we have listed above be removed? If so, why?
KK.	Are there any situations in which an advice process need not be followed?

Personalised suitability

LL.	What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?
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Organisational standards

MM.	<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>Provide guidelines and templates to complete</p>
NN.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

General competence, knowledge and skills

<i>Share your views</i>	
OO.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes as long as the papers required to achieve competence knowledge and skill are relevant to the provision of advice. As an insurance adviser I started to go through the level 5 training and the first paper, (International Money and Markets) was far too indepth for the level of knowledge I required relevant to the advice I give. The papers required need to be seen as relevant and adding value to the day to day advice requirements of the discipline involved.</p> <p>Also more credit needs to be given for tertiary qualifications and bachelors degree. I have a bachelors degree majoring in economic which has definitely influenced the quality of advice I give, but this has never been recognised by the industry as relevant.</p>
PP.	<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>
QQ.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Advice in small businesses is based on the combined strengths of the adviser within Adviser with complementary knowledge can be assessed as a while entity</p>
RR.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Need to be careful not to make the required, aggregate competency too high for the individual advice being offered. The coal facing adviser still needs to be able to operate at the required level of competency and understand what he is required to do and why even though he may not specifically possess the required qualifications</p>
SS.	<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>
TT.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Cost and time taken, assuming the individual is running his own business or it is a business only containing 1-2 advisers. Do not force small businesses to have to join the larger groups in order to maintain their own ethics, advice quality and profitability</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
UU.	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?
VV.	How should RFA's experience be recognised?
WW.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
XX.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
YY.	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)?
ZZ.	<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>You need consider the way in which advice has been offered for the FAP/adviser up until this point. I would suggest our current advice process would well exceed any education pathway you could provide us. An audit of our system might uncover a few areas that need refining but should certainly not require us to complete a whole level 5 education pathway. The time and money spent putting us through a full education qualification would be better spent assisting us to refine the current process we have in aplice which may be 80-90%</p>

Other comments

<i>Share your views</i>	
AAA.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>s 9(2)(b)(ii) [REDACTED] Our clients come to us via referrals from professionals such as accountants and lawyers. In addition to this, we must actively network and hunt for business opportunities and hope for referrals from the odd client although these are few and far between.</p> <p>On paper, this industry appears to be a license to print money but in reality this is rarely the experience of a new advisor.</p> <p>New Zealanders do not see life insurance as a necessary cover the same way they do with fire and general insurances. Life insurance is not bought it is sold. For this reason, anyone choosing to sell insurance must get themselves outside their comfort zone in order to make sales approaches. We are required to overcome people's stereotypes in order to gain trust and generate our income. While some advisers thrive on this type of work the majority find the sourcing of new clients to be the hardest part of the day-to-day activity. For this reason, the incentive to put yourself outside your comfort zone is regularly measured time taken to offer advice and by the return achievable for doing so.</p>