

# 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](mailto: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](mailto: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](http://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.	Please provide your name and (if relevant) the organisation you represent Paul King. Auckland Financial
ii.	Please provide your contact details <b>S 9 (2) (a)</b>
iii.	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)  I'm an AFA. There no situations with which I'm unfamiliar. First licensed to give financial advice on investment and insurance products in the UK in 1988. I was an IFA in the UK as well as working for a Stock Broker as head of technical support for IFAs and in sales, marketing and product design and delivery, and strategic account management for major life & pensions companies. I came to New Zealand to front the launch of KiwiSaver for ASB. I hold Institute of Chartered Insurance certificates I, II and III  I have science degrees in Psychology and Chemistry and awards for post-graduate work. BHSc (Hons), BSc, GCertBHSc, MNZPsS
iv.	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)

## Principles for drafting the Code

<i>Share your views</i>	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?  I'm in favour of principles-based advice, broadly. I am concerned this will lead to a lack of diligence in the provision of financial products to fulfil properly identified needs and a 'fix it if someone complains enough' approach.  'Outcomes', if not good, will only be examined after the fact, there is a possibility that this approach could lead us back to the 'finance companies' situation. Indeed, with RFAs giving 'class advice' on KiwiSaver (an investment product) and receiving commission, I would suggest we may already have an 'outcome' based system for RFAs.

B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Suitability is a key issue. The need for onerous documentation of the suitability of advice is not necessary when 'diligence' could be a guiding principle.</p>
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## 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>There is a requirement for such a statement but inevitably, testing whether such a requirement has been met is always going to be open to interpretation without strict definition. If these words are to be used, definitions need to be tight enough to make testing them a reasonable activity.</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>Yes, ethical standards <i>towards the client</i> should apply to all providers of financial products <i>where advice is required</i>. Advisers and sales/ marketing operatives and operations are not the same thing. Advisers should be differentiated as being held to higher ethical standards over and above the common law.</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 am a full member of the New Zealand Psychological Society. There is a code of ethics for psychologists. The guiding principle is Non-maleficence and beneficence wrt the client. These are standards under which advisers should be required to operate.</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>Yes, again for, advisers. Disclosure should be prominent (as it has been in the UK for decades). There is nothing wrong with charging for a service and as with other professional services, this should be explicit. In saying this there should be a requirement for <i>advisers</i> to explain the implications of the costs of commission (if that be their preferred method of payment) built into the financial products they recommend.</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>No. This prevents criticism of and in the industry and is unhelpful.</p> <p>Advisers being required to act with due diligence and non-maleficence and beneficence toward their client, a code of conduct, should be enough. Advisers should be required to protect the interests of their clients and not be unable to criticise the industry.</p> <p>Sales and marketing operations and operatives need only to be bound by the common law. The two channels, for purchasers of financial products should be clearly separated and easily identified.</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>Yes, see above E and G.</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 Privacy Law is weak in its ability to act upon breaches. It is good in stipulating its requirements. This law should be sufficient to deal with anonymised data.</p> <p>This issue has nothing to do with a code of conduct for <i>advisers</i> in relation to how they work on behalf of their clients.</p>
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J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Not entirely. If there is a Law of Privacy, which there is, then this law should be sufficient.</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>Ethics is not a ‘process’. As above, a principles-based approach with a requirement for due diligence and acting in the interest of clients, including explicitly explained charging and the effects of that charging on financial products, being guided by non-maleficence and beneficence – <i>for advisers</i> ‘is’ a ‘code of ethics’. There is no need to produce a proscriptive process. Having many processes written down and reviewed is open for too much argument and interpretation at the point of the need to review following a reasonable complaint due to a ‘bad client outcome’.</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, see above L.</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, for the same reasons as explained above in L. Due diligence and an attitude and practice of non-maleficence and beneficence toward clients in a principle-based regime where outcome is all pervading is sufficient.</p> <p>Grand corporate statements in respect of values and ethic are largely a waste of time.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>Yes, due-diligence and non-maleficence and beneficence toward the client.</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>No, in all cases, not specific to roles. There are widely available web-based ethics training and checking systems available. It should be an FMA requirement that everyone involved in any way in <i>advice</i>, including all staff related to a business, pass these tests periodically. The FMA should provide these tests so that the standard is common to all.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes, as above answer Q.</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>No. due-diligence and non-maleficence and beneficence toward the client includes this, in particular, conflict of interest, for example.</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>No, all <i>advisers</i> should be suitable qualified. There should be no-one giving any advice for which they are not qualified, under any circumstances.</p>
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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>No, this is part of normal, lawful practice for firms with a number of employees other than the adviser (s). If only the advisers then their conduct is already covered by the Code.</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>No. as above for question U. Advisers are already covered in this respect, by the Code. Firms with people other than advisers are covered by the law and Governance principles.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Yes. Individual advisers and firms of only individual advisers that are acting in the proposed new environment of a Code with an outcomes lead, principles-based outlook should not have to provide burdensome (and cumbersome, indeed, counter-usefully long and complicated) 'proof of suitability'. As such, the need to audit these is anathema.</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>This question, with respect, is badly worded. I can't see what the Committee is 'getting at' here. Meeting ethical standards should be a function of adherence to the Code, which should include the requirement for ethical training and assessment on a regular basis (web based is fine). A 'bad outcomes' <i>complaint of significance</i> will highlight any gaps in ethical understanding and behaviour.</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>The principles I have described at length above. There is no need for a 'mechanism', indeed, the production of such in a formal way by any number of difference entities would be unhelpful, to say the least.</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>Any form of advice, whether algorithm 'robo' based or human should be held to the same standards. Otherwise, it is just sales/ marketing and <i>should be clearly identified as not being advice.</i></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>An ambiguous question and again, with respect, not well put. I assume you mean the proposed changes? If so, how might one reach a conclusion to the workings, in practice, of something which is not in practice? If you mean how is the current AFA code working, then with the exception of the onerous requirements to produce impracticable documents representing suitability, the current AFA code is fine.</p>
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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>As above, the main problem is the requirement to produce hugely impracticable documents showing suitability and, the ABS and disclosure documents could and should be simplified so that clients might reasonably be expected to actually read them.</p> <p>Also, fees and charges should be ‘up-front’ explicit in terms of explaining exactly how commission is charged in insurance and investment contracts. It is not good enough to use the ‘I charge a fee but don’t worry about that, the life company/ KiwiSaver provider pays it... and then have the \$amount hidden away on page 12 of the secondary disclosure statement.</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>Does this apply to ‘churning’? If so the answer is obvious I would have thought. The current regime of extremely high (relatively) up-front commissions promotes the temptation to find ways to justify churning. This isn’t something the new Code can deal with, too easy to get around no matter how it’s worded.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Yes. For instance, onerous documentation of evidence of ‘culture’, ethics, Statements of Advice, proof of suitability, audit, etc.</p> <p>This is a prime reason why I, as a person pretty much ‘running my own ship’ am in favour of principles-based, outcomes related compliance. It should be enough that I am suitably qualified, up to date with CPD and act only within my areas of expertise. This under a regime of due-diligence and non-maleficence and beneficence toward my clients.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>The current code (AFA) is extremely ‘paperwork’ heavy. To better ensure that clients are properly informed, explanations of <i>an adviser’s (not a salesperson or operation)</i> can be put on less than one page, as can suitability of recommendations.</p>

## 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>There does not need to be a ‘process’. By which I mean, the current 6 step process can be summed up as ‘understand your client and their needs and only provide solutions</p>
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	<p>which are of benefit to them and, which not cause them to be in a worse situation'. The 6-step 'process' is mechanical.</p> <p>If a principles-based regime is to be implemented, then the whole advice-giving system can be made much less prescriptive.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>No. Proper qualifications and CPD <i>for advisers</i> is all that is needed. Sales and marketing operations should be clearly identified as such.</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>No.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>The need for a mechanised 'process' is not present when properly qualified <i>advisers</i> up to date with CPD, acting within their areas of knowledge and expertise are giving advice.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>All of them, as above.</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>There is no need to stipulate minimum standards of suitability analysis when properly qualified <i>advisers</i>, up to date with CPD and acting within their areas of expertise, are giving advice.</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>When <i>advisers</i>, properly qualified, up to date with CPD and acting within their areas of expertise are giving advice and <i>only those individuals may give financial <u>advice</u></i> then there is no need for any of this.</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. I am my firm. I do not need to comply with standards which are unnecessary when I am properly qualified, up to date with CPD and acting within my areas of expertise... that are designed to try to 'control' groups of salespersons whom are not.</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>No. In the case of product advice, an individual either has the qualification or they do not.</p>
OO.	<p>Are there other factors, which contribute to <b>combined expertise</b>, 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>This is the area of my <i>greatest concern</i>. Individuals give advice, individual, properly qualified, up to date and properly working within their areas of expertise. NOT groups, or companies. This is where the biggest problem in the proposals occurs.</p> <p>This, like it or not, is a ‘safe-haven’ <i>Grandfathering</i> option to give un-skilled and un-qualified persons the ability to operate in a ‘grey’ world of pseudo-advice.</p> <p>I’m quite sure I see the hand of the PAA in here. As someone from the UK having been involved in financial services for much of the time since 1988 when regulation began (Financial Services Act 1986), it is my opinion that the PAA is nothing more than a lobby group for the interests of salespeople that happen to be working in the financial services sector.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>If one was an unqualified salesperson looking for a way to maintain access to extremely high (relatively) levels of commissions I’m sure I could come up with many.</p> <p>As an AFA working on behalf of my clients in my own business, I can see none.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>Advisers are either properly qualified or they are not.</i> This approach seems to me fudged to allow salespeople a way to continue selling and does little or nothing to help the general (retail) public, personal or business, to differentiate between the two.</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>The proposal misses the opportunity to properly differentiate between advisers and salespeople. In so doing it is proposed to have a raft of guidelines which are designed to try to control people whom are not properly qualified advisers. This is anathema in terms of the stated aims of an principles-based and outcomes regulated regime.</p> <p>There is nothing wrong with retail customers getting financial products from sales and marketing outlets. They do it all the time. However, advisers should be independent, qualified professionals working on behalf of the client.</p> <p>If this whole exercise was to be so delineated, then the need for onerous processes and checking procedures for the likes of 'culture' would not be a consideration.</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Proper entrance qualifications and on-going CPD are all that is required. Level 5 is adequate for all levels of financial advice but, additional modules should be added. For instance, 'personal and corporate taxation', 'Company valuation and insurance'.</p> <p>There is no need for level 7 qualifications. I have level 8/9 qualifications, for reference.</p>

## Particular competence, knowledge and skills

<i>Share your views</i>	
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 am an AFA, it would have no impact on the advice I give (and nor should it). I would hope my compliance costs and obligations wrt documentation, in a regime which is principles-based and outcomes regulated would be reduced. Certainly, for the interests of clients whom would be better served with less onerous documentation this would be the case.</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>It should not. The opportunity to obtain the requisite level 5 qualifications which, are hardly 'out of reach' for anyone purporting to be a financial adviser, is open to all.</p>

VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>If I was a salesperson rather than an adviser, acting on behalf of my client, I would think there are significant advantages. I could continue what I'm doing in an industry which offers extremely high (relatively) commissions by effectively being 'grandfathered' into an organisation with a person whom will 'sign off' on my sales activity.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>The public are amazed that 'financial advisers' need no qualifications. The proposed changes will allow this situation to continue, with the perception that it has not.</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>It could miss the opportunity to clearly delineate between advisers and salespeople. The principles-based, outcome regulated approach I applaud, but it only works if this clear delineation is made. If not, the quality of work, advice, and diligence which a properly qualified, up to date adviser can give will be seen as the same as that of a salesperson acting under sign-off.</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>There is no need for qualifications above level 5, but more level 5 modules could be introduced. There is no need for continued examination, that is what qualifications and CPD are 'for'.</p>

## Other comments

### *Share your views*

- ZZ. Are there any other comments you would like to make to assist us in developing the Code?
- The principles-based, outcomes regulated approach is a good one. What must be at the heart of this opportunity is clarity for the client.
- Clients should be aware that there are qualified advisers, that will work for them independently and, that there are salespeople. There is no problem with an individual seeking to purchase insurance or make investments from either source.
- ABS, SOA, and disclosure documents are massively onerous, and I would suggest, rarely read nor understood by clients.
- A principles-based, outcomes regulated regime should feature simplified information for clients and a clear delineation between qualified independence and salespeople.