

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.	Ben Bland Consulting Ltd Ben Bland
ii.	S 9 (2) (a)
iii.	Registered Financial Adviser – Mortgage & Finance Broker
iv.	n/a

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? Is integral to all interaction with clients and fundamental to what all Advisers should do.
B.	Are there any further principles that should be included, or existing principles that should be removed? We need to act in the best interest of our clients, however, Banks quota requirements might have an undue influence on the most appropriate placement of a client’s business. Banks should not be able to cease to operate with Brokers who are acting in the best interests of clients under a quota system.

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>Adviser need to always act in the best interest of the client with open and honest behaviour.</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>Advisers should be seen to be operating at more than the minimum requirement.</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>A independent code of ethics would be structured with the client at the centre of all we do</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</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>yes</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>All advice must be in the best interest of the client</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 use of all personal information is and should be covered by the Privacy Act</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>No, The Privacy Act applies</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Not if it is aligned to the Privacy Act requirements</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, I agree this should be documented at License holder level.</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>yes</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</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>This needs to be set an industry level</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>Existing experienced operators in the industry will generally be operating in an ethical manner – this should be addressed in training at an industry entry level for newcomers.</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>As above</p>

R.	Should there be a requirement for ongoing refresher training on ethics? no
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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. Yes, there should be a framework where an Adviser sees any perceived ethical dilemma. Any other issue can be appropriately managed by the formal Complaints process.
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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? no
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. Covered under wider legislation
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? no
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Adding unnecessary compliance and cost makes Advisers less effective in delivering a good outcome to the client

Responsibility for the whole advice process

X.	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. An Adviser should document any perceived conflict of interest which they can then show to a 3 rd party or client – they should not be required to document every transaction.
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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>Exception management – substantiated customer or 3rd party complaint should cover this.</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>significantly more customer contact is via skype and phone calls as technology drives business</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>The complexities relevant to the scope of advice should drive the documentation requirement ie: simple mortgage advice should not require the level of documentation that more complex advice in relation to life/health/income protection and investment advice</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>
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>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Requiring advisers to maintain extensive records for simple mortgage transactions will create substantial cost in time and money. Advisers should be required to keep emails/hard copies of discussions and outcomes that can validate the advice given.</p> <p>Any substantial increase in compliance costs will be adverse to all clients and ultimately will be passed on to the client.</p>

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

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? No – there is real danger of over complicating advice, in particular, for more simplistic mortgage advice.
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? Yes – where the guidance is general in nature.
HH.	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? The use of technology needs to be considered and incorporated
II.	Should any of the key aspects that we have listed above be removed? If so, why? It is important to keep documentation to a minimum for simple advice
JJ.	Are there any situations in which an advice process need not be followed? No – a standard should apply to all

Personalised suitability

KK.	What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above? Personalised suitability analysis should be relevant to the level of complexity around the advice – for more simple advice like mortgage advice this documentation should be very simple (let's not over complicate). Where advice is more complex then additional requirements should be required.
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Organisational standards

LL.	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? Good organisations will actively promote the standards and will ensure a high level of advice meets code.
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MM. Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

Implementing appropriate client first culture in the organisation is essential, however, documenting every transaction will be detrimental to the client in the long term as Advisers get bogged down in documentation, not delivery.

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><i>Agree, particularly in reference to experience or other training meeting the L5 requirement rather than a need to actually holding L5</i></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><i>Significant weight should be given to the level of experience held in an organisation and the appropriate knowledge share in the organisation.</i></p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p><i>It recognises experience and relevant other education</i></p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p><i>none</i></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><i>If implemented with the lowest possible compliance for simple transaction this will benefit all stakeholders (let’s keep it simple)</i></p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p><i>Good operators are continually talking to all parties in the market and abreast of current requirements. If, at an organisational level, they consistently share information in a formal way, and stay abreast of relevant changes this should meet individual Advisers requirements</i></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>

UU.	<p>How should RFA's experience be recognised?</p> <p>Relevant industry experience is a critical factor in determining capability. eg: long term ex-Bankers with relevant experience</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Appropriate industry experience is more relevant to good client outcomes than a Tertiary qualification.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</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>Compliance costs must be kept to a minimum. Standards need to validate those working in the industry but must not become a burden.</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>Relevant industry experience is critical to those existing operators in the market – those delivering an existing high-quality service should not be adversely impacted by a new regime.</p>

Other comments

<i>Share your views</i>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>Experience and a history of providing quality advice is the key to providing clients with an on-going level of advice.</p> <p>Mandating Advisers on attending courses where they are more knowledgeable than those presenting is neither helpful or appropriate.</p>