

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>David Beattie, Booster Financial Services 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>Booster (previously Grosvenor Financial Services) has been providing investment and administration solutions for non-aligned Financial Advisers in NZ (and in Australia from 2002-2012) since 1998. I have personally worked for Booster since 2000 and my role over that time has involved developing close working relationships with Financial Advisers and understanding their needs and challenges.</p> <p>Booster itself does not employ any Financial Advisers and offers its services to Financial Advisers purely on the basis of a Service Agreement which does not require Advisers either to generate any minimum levels of ongoing business or to exclusively utilise Booster products. Nor does Booster provide any form of up-front commission or annual rewards for meeting sales targets.</p> <p>Booster pays Advisers an ongoing annual client service fee from the management fees charged to investors. This service fee is calculated as a %age of Funds Under Management and ranges between 0.25% - 1.05%pa. These ongoing servicing fees are fully disclosed by the Financial Advisers.</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>

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>Whilst we agree that the focus should be on providing “good advice outcomes” for clients, there is a very high likelihood that clients will understand this to simply mean the</p>

	<p>best product(s). This may be appropriate in some relatively simple advice situations (eg mortgage broking), in the more complex areas of investment or financial planning, the most important outcome is the provision of good outcomes through “good advice processes”. A demonstrably “good advice process” will inherently provide a high likelihood of delivering good advice outcomes as a result. We submit that assessing the effectiveness of a good advice process is also easier than measuring good advice outcomes. A good process should, by its nature, include assessing the pros and cons of the key issues that are typically difficult to quantify and compare with many products.</p> <p>A good advice process should also explicitly recognise the nature and significance of the required outcome, i.e. the (documented) process to be followed for a simple term life product outcome would be significantly different from the documentation and process required for a full financial plan for a high net worth client.</p> <p>A good advice process should also ensure that the appropriate level of competence, knowledge and skill is applied to the clients’ circumstances. This would include acknowledgement of those situations where a qualified financial adviser is required and that it is not appropriate for an unqualified nominated representative to be providing this financial advice.</p>
<p>B.</p>	<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>Agree. Additionally though, it is incumbent on all financial product manufacturers to also ensure that their products and any incentives provided to support their products do not inherently undermine an adviser's ability to act with honesty, fairness and integrity, i.e. unreasonably high commissions and conflicted product sales incentives; inappropriate or unsustainable product performance promises, etc.</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>No. These are better addressed by individual Financial Advice Providers in their own codes and policies.</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>

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. Minimum standards should require documentation showing clear evidence that conflicts have been considered, avoided where possible, disclosed (if unavoidable) and an appropriate management plan in place where required. This is particularly important within Vertically Integrated Organisations (VIOs), where minimum sales target requirements are often in direct conflict with working in the interests of clients.</p>
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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.
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? No.

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.
K.	Are there other aspects of maintaining client confidentiality to consider?

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"? Yes
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? Yes. The standards should include demonstration of clear evidence that codes, policies and processes are consistent with the principles of working in the interests of clients and customers.

O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?
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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. Agree
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. Agree
R.	Should there be a requirement for ongoing refresher training on ethics? Agree

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. Agree
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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? Strongly agree
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. Agree
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? Yes, for larger FAPs.
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>Agree</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>
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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>

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>We agree with your views expressed in point 128, particularly relating to the clients whose existing products will be <u>reviewed</u> by the <u>Nominated Representative</u> of a different FAP. Evidence is clear that Authorised Financial Advisers are currently required to apply a different (and higher) standard of documented review and advice process than those of a QFE working for a VIO. This must be addressed in the Code, where Nominated Reps are required to follow exactly the same review and advice process as an FA.</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.	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.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process?
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? Agree
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? All key advice should ultimately be provided in a written form, either as Statement of Advice (SoA) for the initial and reviewed overall product recommendations or plan, or a Record of Advice where the client has been updated on any relevant event subsequent to the SoA.
II.	Should any of the key aspects that we have listed above be removed? If so, why? Remove allowing situations where verbal advice alone to the client is sufficient.
JJ.	Are there any situations in which an advice process need not be followed?

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? Agree that personalised suitability analysis is required as per your point 138. Whilst we support minimising the risk of over-compliance and improving access to good financial advice, this should not be at the expense of removing obligations for both financial advisers AND nominated representatives of vertically integrated FAPs to also clearly demonstrate the personalised suitability any time they are recommending a replacement
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	product. Whilst some generic determinations may be possible in very straight forward situations (eg, someone new to KiwiSaver, or taking out a new term life insurance policy), we strongly believe that “good advice outcomes” will only be consistently achieved when a personalised suitability analysis is required, <u>particularly</u> when replacement products are recommended.
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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?
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. Not at all.

General competence, knowledge and skills

<i>Share your views</i>	
NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not? Agree
OO.	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.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
RR.	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)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	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?
UU.	How should RFA’s experience be recognised? RFAs should be required to sit and pass Level 5 if they wish to continue to provide product advice, irrespective of their experience.

VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
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>Quality advice will not be consistently achieved by allowing an FAP to rely on its processes to support Nominated Representatives who do not hold full Level 5 qualifications. Availability of advice is not achieved by relaxing qualification standards, it is achieved through FAPs investing in more fully qualified Nominated Representatives.</p>
YY.	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?

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>Our strongest overarching view is that Nominated Representatives must be subject to the same Code Standards as Financial Advisers. As a result, they should be required to have the same level of minimum qualifications, follow the same advice processes, and be subject to the same level of penalties for non-compliance.</p>