

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>Brian Klee – I am a retired Financial Adviser but active with the following operations: www.insuranceclaimsupport.co.nz and www.life-info.org.nz</p>
ii.	<p>Please provide your contact details</p> <p>PO Box 39-125, Wellington Mail Centre</p> <p>Phone: 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><u>As per the two websites above.</u></p> <p>As a Financial Adviser I started in 1972 for one insurer before joining with 2 others to start an insurance brokerage business in 1977. Since then I've worked in various brokerage roles, as an independent contractor, including international companies, Aon and Willis. In 2001 I founded <i>Special Risk Insurance</i>, giving insurance advice to people who had complex medical, occupational or pastime issues.</p> <p>I am a Chartered Life Underwriter (CLU), Past-President and Life Member of the Life Underwriters Association of NZ (now IFA), Life Underwriter Association Training Course Moderator (4 years), Chair & Member of their Ethics & Practice Committee (13 Years), and IFA Disciplinary Tribunal Member 2013-present.</p> <p>My comments are primarily reflect an industry and consumer opinion ahead of those of a Financial Adviser.</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>My submission is not confidential, and I have no objection to my name or other personal information being made available. My comments are restricted to "insurance advice standards", <u>not</u> investments or mortgages.</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>I am happy with most of these. However, I submit that #52 applies more to investment products rather than insurance or mortgage products regarding good advice outcome. Performance is related to policy or mortgage documentation, rather than within any “range”.</p> <p>This highlights the CWG’s difficulty, where generic financial standards are trying to be set covering investments, insurance and mortgages and the need to examine each discipline separately at times.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Sticking to a Service Code in preference to an Occupational Code is a huge challenge.</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>Absolutely.</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, like other established international frameworks.</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>No opinion.</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>Definitely yes. This is one of the blights levelled at the insurance industry presently that must be improved for improving consumer confidence.</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>I would be happy with the present AFA standard. However, there are many RFA's who voluntarily subscribe to AFA standards, e.g. those with the CLU designation.</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>Not sure but probably.</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.</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.</p>
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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? Yes. Optional for corporates.
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.
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers? Not at this stage.

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. Yes. I suggest that as part of the licencing process, all FAP's are formally examined with an Ethics Paper, before they can practice.
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. Yes.
R.	Should there be a requirement for ongoing refresher training on ethics? Yes – periodic industry accreditation.

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.
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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? Yes, for larger institutions and Robo-Advice but not for small or sole-operator FAP's.
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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. Yes.
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, but not for sole or small FAP's.
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Of course – time away from critically important “income-earning activities”.

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. Yes – by passing an approved Ethics Paper, subscribing to an industry Code of Ethics and undertaking continuing education sessions in this area.
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Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? As above. The industry must also have standards set in this area. They are not regulated and have been guilty of contracting to Financial Advisers whose morals and ethical standards have proven to be unacceptable, e.g. Gary Patterson's earlier conviction was ignored.
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Conduct and client care

Advice situations

Share your views	
Z.	Are there other delivery methods that should be considered when testing our thinking? Don't think so.

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>Generally, they work well. Agree CS-7 could be re-worded.</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>Agree with 128 & 129.</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>None obvious.</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Certainly, small FAP compliance costs must be safeguarded.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Agree with #130.</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>Not presently obvious.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Difficult to provide <u>service</u> standards that would cover all occupational disciplines?</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>Don't think so.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>No. You are providing service standards, rather than occupational ones. The latter can be establishing within each discipline.</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>Agree in principle with points 135-144 with a few exceptions:</p> <p>#138, refers to Financial Planning - where does “Business Insurance Planning” fit? This area of expertise is not limited to “product advice” but more complex areas concerning Key Persons, Buy/Sell Agreements, etc.</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>Best practice guidelines, mixed with unpaid and timing-consuming compliance. Advice is required on when an email response will satisfy these standards.</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>N/A</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.</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>Educational “Study Groups”</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Improved consumer confidence and ethical standards.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Some will leave the industry, or retire.</p>

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)? It contributes to a more robust profession and better standards.
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? Some will learn faster than others, e.g. youth versus the mature adviser.

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? They are appropriate <i>theory</i> for financial advisers; <i>practical</i> knowledge must be sort from other resources.
UU.	How should RFA's experience be recognised? There are a number of RFA's who have qualified to Level 7 (CLU) who have elected to not become AFA's because they don't engage in investment advice. These individuals should 'grandfathered' along with AFA's. Otherwise, RFA's should have a 3-5 year period to upskill. RFA's who belong to a professional Association like NZFAA should also be given greater recognition because they subscribe to the member organisation's higher standards.
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill? Consistent educational standards amongst all FAP's.
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill? As mentioned before, some will leave or retire from the profession.
XX.	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)? It equates to standards within other professions, i.e. legal, accounting, engineering, medical, etc.

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>Each discipline must be measured separately. Some insurance products are much more complex than others and advisers who don't know these thoroughly will cause problems as they lack the product knowledge required. Business Insurance Planning (which is not the same as Financial Planning) requires Level 6, or above. It requires knowledge of business structures, legal documents, estate planning, etc.</p> <p>Level 7 qualifications also include both the CFP and CLU designations.</p> <p>A mandatory a university degree would destroy the industry.</p>
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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>Financial Advisers include disciplines in finance, investing, insurance and mortgages and writing a Service Code must consider each of these disciplines/occupations.</p> <p>Defining what is <i>Sales</i>, versus <i>Advice</i>, is a critical issue that must be clearly resolved with Financial Advice Services. I understand MBIE have been charged with this key issue but it must be defined and encompassing all the models operated today.</p> <p>I reiterate, Insurance Companies are not (yet) regulated because the 1908 Life Insurance Act has never been updated. To establish a <i>Service Code</i> for Financial Advisers before insurers are regulated appears wrong.</p>