

# 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.	Ross Campbell AFA FSP 75183 Campbell Insurance Brokers limited.
ii.	S 9 (2) (a)
iii.	General Insurance Broker
iv.	Not confidential

## Principles for drafting the Code

<i>Share your views</i>	
A.	<p>Firstly, congratulation for developing a simple yet comprehensive approach.</p> <p>It would be surprising anyone can have objections to the overarching theme, nor the category's and standards required.</p> <p>I would, however, like to raise some concerns. For clarity, I will follow the order of consultation paper.</p> <p>Page 9.</p> <p>Ethical Behaviour.</p> <p>8 &amp; 9.</p> <p>While this is impossible to be specific because no organisational standards are included in this document, it is difficult to imagine how the overarching theme of "good advice outcomes." might be bettered? If however, someone has a better theme, then perhaps this should be considered for all parties.</p> <p>Likewise, if the individual category minimum standards are indeed the minimum, then surely you cannot be suggesting these be reduced for selected companies?</p> <p>If we look at each category in isolation.</p>

1. Ethical behaviour.

Fully support a strong stance for all participants regardless of size or experience.

2. Conduct & Client care.

Both appear to be central pillars upon which this legislation stands.

3. General Competence, knowledge, and skill.

If we accept the general principle that specialised training/ experience is a requirement when providing personalised advice in the areas listed. Then it is difficult to make an argument that some organisations can obtain this information and make suitable recommendations with people of inferior experience and qualifications.

How can they do this, when everybody else cannot?

I can only assume that some companies suggest they have robust oversight or internal review process that makes them a materially lower risk.

This approach would appear to have clear and obvious dangers for the following reasons.

Untrained or people who do not reach minimum standards would in many cases miss critical information that might to an experienced person raise a red flag.

Once missed, the false diagnosis would result and “Good Outcomes” would be lost.

Summary.

If I understand the forces in play, selected large organisations are suggesting a self-regulating model for them only, with perhaps more significant fines for breaches. This approach is supported by statistical data proving them to be “good citizens” for want of the correct term.

**I would like to offer a counter perspective.**

**To remove any doubt, I will use actual examples where this suggested approach would fail.**

In the late 1980's Natona Mutual ran a campaign called Springboard.

This company decides to “roll” its own clients from old life policies to newer versions. They do this because old computer systems becoming outdated. Costly to administer. No longer profitable. Looking for new business.

They offer clients a small bonus to move across if they increase their investment. They fail to mention the new policies have substantially higher internal costs and commissions.

Tens of Thousands of new contracts are written on these clients at increased premiums.

Unfortunately, the internal costs of the new contracts absorb the value of the old bonuses the clients had taken many years to accumulate.

Some less than honest agents, cash in the old bonuses and apply these monies to the new policies to cover the first two years of premiums. They use this as a selling feature telling

clients they get the first two years for free. In fact, their own cash values funded the first two years.

As you may be aware, if a policy runs two years, there is no write back on the agent.

What happened in following years when a small percentage of people wanted some of their money out of the policies.

1. The less than honest agents typically went to jail.
2. The life company paid the clients the full amount of the bonus monies owed.

If I recall correctly, the company protest its innocents, but it is well known internally they are fully aware of what was going on with these dishonest agents. How else were the bonus monies transferred and applied as new premiums?

Outcome.

The life company makes millions of dollars. The cost of paying back a few bonuses which they had retained as costs to administer new policies was not at all troubling.

The Springboard campaign was regarded by the company as the most successful campaign ever run. So successful that it was later copied by Colonial Mutual and I believe others.

The very few unhappy clients got their money and went on with their lives, and the others absorbed the loss probably unaware to this day of the true cost.

Other versions of this conduct.

Life insurance companies went through a cycle of funding agents to buy client bases. Of particular interest were agents from other companies.

These purchasing agents were advanced low or interest-free monies, but this was subject to very high new business targets being achieved.

In practice, to meet these target, agents found themselves under huge pressure to roll clients from the previous company to the new company.

The practice was referred to as "golden handcuffs". Many good agents went bankrupt and eventually the practice was stopped. Alternatively, perhaps I should say modified.

### **This took place a many years ago, so does this occur today?**

There are many instances today of what I call chequebook business going on.

For example, it is common for banking staff under pressure to sell more products to infer to clients that if they want a loan, then they would benefit from having their life insurances with them also.

The result being many clients who have existing life policies are then cancelled. The worst situation being those with level premiums to age 80 contracts. These clients pay additional monies in early years to avoid much higher costs later.

We see banks staff effectively cancelling these in favour of initially cheaper contracts.

These same clients are very unlikely to be able to afford the new contract in later years.

They have effectively lost significant money at both ends, however the potential loss of not being able to keep the contract in years when they will most likely need the cover maybe disastrous financially.

Despite seeing this behaviour in my previous career, never have I seen a client take action or complain. Were it to occur, almost certainly the bank would make a negotiated settlement and move on with the same practice.

This is a very effective business strategy if you ignore the 99% casualties rate.

### **General Insurance Industry.**

#### **Background.**

General insurance contracts are in many instances impossible to read. For example, if one insurer decides to not include coverage for a specific subsection, then it simply isn't included.

Experienced brokers might pick this up, but for a business owner carefully reading the contract, it simply isn't there.

For direct insurers communicating to unsophisticated or inexperienced purchasers, this reduces costs at claim time and allows a more competitive price.

Good for business, bad for customers.

Future trends.

As we move into artificial intelligence, where people purchase directly online, how will a business owner know what they are purchasing, or not purchasing?

Today: You currently have many large insurers operating and providing insurance advice and products without taking even the most basic steps to ensure the product matches the client needs.

How is this possible?

This business model remains because the same chequebook approach is taken, thus ensuring authorities never appreciate the size and scale of the abuse.

Worse, I see submissions from large insurers suggesting the statistics show the consumer complaints are mostly against brokers/ agents.

I would respectfully suggest the statistics are extremely misleading for the reasons mentioned above.

If I understand the intent of the consultation paper correctly, these same companies would appear to now be asked for commercial help to lower their costs of compliance so they can better compete against smaller firms trying to provide advice too often unsophisticated clients on very complex contracts.

These large organisations are in fact well resourced and best placed to train and educate

their staff.

There are many other examples where coverage is changed in the general insurance industry with no discussion or regard to the consumers.

B. Are there any further principles that should be included, or existing principles that should be removed?

# Ethical behaviour

Act with honesty, fairness and integrity

## *Share your views*

C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.  Agree.
----	---

Keep the commitments you make to your client

D.	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.  Yes. I believe the current code is an excellent basis for client care.
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?  I believe you should have same standards for all parties. Keep it simple.

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? Yes, too many advisors act in situations that might potential void their professional indemnity insurance.
----	---



## 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>Not. There is much internal pressure to keep advisers silent when they come across unprofessional behaviour.</p>
H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? The nature of investing requires a level of risk in order to achieve a return on funds, especially when tax and inflation are considered.</p> <p>We want to encourage innovation.</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>Need more information. Buy generally against the concept.</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>Fire &amp; General insurers refuse to provide client files, thus making it impossible to provide an accurate review of the clients current position.</p> <p>This needs to be addressed so recommendations are sound.</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>No, I think the concepts are simple and therefore easy to review should it be required.</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>My concerns over our corporate providers have been covered above. I believe their operations require proactive scrutiny.</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>Most are small so not required.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No.</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>Yes.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes.</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>If trained, then this shouldn't be required. The concepts or pretty simple.</p>
----	---

## 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, because I believe the advice must come from a qualified adviser or you risk missing the entire purpose of quality advice.</p>
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>Yes.</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>Yes, where staff numbers say exceed five?</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Always, we must make it attractive for smaller firms to exist and prosper. This is often where excellence occurs.</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>The advice process requires training and experience, especially at the front end. A final signoff will window dressing at best. This isn't primarily about ethical behaviour, it's about outcomes.</p>
----	---

## 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>Treat others like you would like to be treated your self. Or how you would like a close family member to be treated in the same circumstance.</p>
----	--

# 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? No.

## 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.	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?
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?
II.	Should any of the key aspects that we have listed above be removed? If so, why?
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>While there is much risk of abuse, a large number of clients do not want the full advice model.</p> <p>Too much process puts people off, which while not easily measured, causes them to seek poorer quality providers.</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>Clients expect advice, but few are prepared to pay for it. Imposing your will on these clients typically doesn't work. We need to keep flexibility so we can educate clients over time, not put them off on day one.</p> <p>Advice like education is in many ways a journey. Good people is the key, then trust them to do a good job.</p>
-----	--

### 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>None.</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>

## 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?
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>In my area of general insurance, 80% of my advice is unrelated to Insurance products. It is more around exposure to risk and education. The product is a possible solution, but may not be the best or only option.</p>
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?
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.	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)?
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

<b><i>Share your views</i></b>	
ZZ.	Are there any other comments you would like to make to assist us in developing the Code?