

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.	Chris Stevens Vivid Financial Services Limited
ii.	S 9 (2) (a)
iii.	I'm a 15 year finance professional having worked across banks and in corporate finance. I have been a financial adviser in NZ for the past 2 years.
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.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>No issues with what is presented and the design meets my current standard operating procedure when dealing with individuals. I also use this type of operating procedure for companies and other entities.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Banks are enforcing certain minimum quota limits on mortgage brokers. If the quota is not met, then banks could remove the adviser's accreditation with them. This could have the effect of “forcing” an adviser to present the client with “not the best advice outcome”. This goes against the economic theory of commercial competitiveness.</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 agree.</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>A code of ethics should go further than anything legally required. An adviser's ethics goes to the core of the advice given to a client. A separate set of ethics should be set across the mortgage adviser industry.</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>Set at industry level, with the major groups dominating the ethics required. This however, should not be made by the banks (as they are a supplier). The standard should be publicly available.</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, of course, Conflicts of Interest must be declared upfront and allow the conflicted party to decide an appropriate outcome.</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>
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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 advise must be in the best interest of the client. If the ethics and code cover the minimum standards, that should be sufficient.</p>
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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>Should be completely 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, reference to the Privacy Act 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 this should be documented covered at the 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>I think this should be held at the industry or license holder level and available to the public under an industry body.</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>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>Not really, ethics should be engrained in the adviser already and clients/suppliers should move toward people with greater ethics. Experience counts.</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>If it is required, then yes.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No, people won't change their ethics.</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>Yes, and is similar to addressing conflicts of interest. If there are perceived issues, then the adviser should document the decision-making process. Issues handled through complaints process</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</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>No, captured/governed by other wider legislation</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, we don't agree with the requirement</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Unnecessary compliance, adds costs and makes advisers less effective.</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>Advisers should only document potential issues, not every decision.</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>Exception management and register of client complaints.</p> <p>License holder could conduct random audits of the process undertaken by the adviser.</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>All types of customer contact is happening via electronic methods (Skype and phone calls). The code needs to handle all types of client/adviser interaction.</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 advice that is given needs to be commensurate with the complexity of the product the adviser is giving advise on. Eg. Investment and Insurance are complex, but a mortgage or a refix of interest rates are not complex.</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>Unsure</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>Compliance cost/time takes away time from actually providing advice and researching the advice that is to be given.</p> <p>Any increase in the current levels of compliance cost will ultimately be passed on to the client in some form.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>None that I can think of</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>No</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes as long as the guidance is general in nature only.</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>The use of technology needs to be kept in mind at all times</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>Simple advice should be able to be handled without extensive 'advice' documentation</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>Standards should apply at all times for Financial Advice Providers</p> <p>When you're not being remunerated – its in a personal situation (not business and you are not engaged by the individual)</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>Personalised suitability analysis should be relevant to the situation and the complexity of the person and their situation. This could go absolutely beyond what is actually required to give "good advice" and lead to less competition in the market and therefore the loss of advice for consumers.</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>Making sure an appropriate setup is correct at an industry level.</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>No, an industry level client conduct code should suffice with businesses going above the conduct code if required, based on what they do and what type of usual advice they give.</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>Agree that advisers should have completed level 5 certificate in their respective fields and/or have sufficient experience in their field.</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>Experience should be the main factor in this definition.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>It places a focus on specific and product type education and experience.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>None</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>Good advice should be more affordable and more “correct”, but only if the compliance costs are kept reasonable.</p>

SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Good advisers are constantly in the market and finding out about what is happening, enabling quality advice to be given.</p> <p>There should still be an element of CPD required each year, but this must be specific and directly related to the adviser's core business (not box ticking).</p>
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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>It should be relevant experience and it needs to be tested somehow to prove that the adviser is competent.</p> <p>Experience should be considered more important than</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Relevant experience can be used where the adviser doesn't have level 5 or a finance related degree.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Current advisers may not actually be good, but have the 'experience' to meet the standard.</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>
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>

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>A successful adviser will have been in the industry for at least 3 years – to prove they can earn a living.</p>