

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.	Dr Andrew Hubbard Citizens Advice Bureaux New Zealand Ngā Pou Whakawhirinaki o Aotearoa
ii.	S 9 (2) (a) S 9 (2) (a)
iii.	The purpose of our organisation is to: <ul style="list-style-type: none"> • Ensure that individuals do not suffer through ignorance of their rights and responsibilities or of the services available; or through an inability to express their needs effectively — Me noho mataara kia kua te tangata e mate i tōna kore mōhio ki ngā āhuatanga e āhei atu ana ia, ki ngā mahi rānei e tika ana kia mahia e ia, ki ngā ratonga rānei e āhei atu ana ia; i te kore rānei e āhei āna ki te whakaputa i ōna hiahia kia mārama mai ai te tangata. • Exert a responsible influence on the development of social policies and services, both locally and nationally — Kia tino whai wāhi atu ki te auhatanga o ngā kaupapa ā-iwi me ngā ratonga ā-rohe, puta noa hoki i te motu.
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) No

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>Good advice outcomes <i>We do not consider “good advice outcomes” to be a useful overarching theme for the Code. It is too vague a concept to be measurable (as pointed out in para 53). It could give consumers a false sense of security - most consumers would take ‘good advice outcomes’ to mean that the advice they get produces good outcomes, yet para 52 makes it clear that this is not what is meant in this context.</i></p> <p><i>We prefer the notion of client-centricity as an overarching theme.</i></p> <p>Principle 2 <i>We think it is dangerous to draft the Code on the assumption that clients</i></p>

	<p>already have a ‘basic knowledge’ of financial matters. Not only is it not clear what is meant by ‘basic knowledge’, there also seems to be an implication that consumers who have no knowledge of financial matters do not qualify for, or need, protection under the Code, when in fact these are the very people who most need the protection offered by a Code.</p> <p>Principle 3 para 67 The Code is of little use to consumers if they cannot understand what it says. The aim should be to have clients understand everything the Code says about standards of advice, rather than understand it ‘where appropriate’.</p> <p>Principle 5 We agree that the same standards of ethical behaviour should apply to all advice situations. Para 71 makes a strong statement: ‘we support universal ethical standards on the basis that ethics cannot be compromised’, which we support. We think the Code should impose a set of ethical behaviour standards for all providers to adopt and follow. We do not agree with the proposal (paras 74 and 89) that individual providers be permitted to draft their own code of ethics tailored to the ‘particular culture’ of their organisation.</p> <p>We do not think that the term ‘minimum’ should be used with reference to ethical behaviour standards – an action is either ethical or not ethical, there is no sliding scale from minimum to maximum.</p>
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

<i>Share your views</i>	
C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.

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.
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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><i>We do not agree with the proposal that individual providers be permitted to draft their own code of ethics tailored to the ‘particular culture’ /‘risk appetite’ /‘corporate values’ of their organisation. This undermines the principle of universality (Principle 5) and could lead to ethics being compromised. Consumers need to know that no matter where they go for financial advice, the same standards of ethical behaviour apply.</i></p>
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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><i>Yes it should. We would like to see this standard include a ban on commissions and other forms of conflicted remuneration (see attached submission). Para 116 acknowledges that ethical behaviour does not come ‘naturally’ to everyone, and that providers need constant reminders to honour their ethical obligations. Removing conflicted remuneration from the advice landscape would make it much easier for providers to act in an ethical fashion. It would make it easier for them to avoid conflicts of interest and significantly reduce the need to manage conflicts of interest and communicate these to the client.</i></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>
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>We see no reason to exclude from the Code that which is imposed by legislation, rather we see the Code as an opportunity to reiterate legislative requirements in plain English. We also see it as an opportunity to inform and empower consumers, who will not necessarily be familiar with the content of the legislation. The Code should provide consumers with a comprehensive (not partial) picture of their rights in relation to financial advice services.</i></p> <p><i>A standard on/statement about doing no harm to the client is therefore necessary. It will help reinforce to consumers the rights that they have under the legislation and serve as a reminder to providers of their obligations to clients.</i></p>

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?
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"?
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>We do not agree with the proposal that individual providers be permitted to draft their own code of ethics tailored to the 'particular culture' /'risk appetite' /'corporate values' of their organisation. This undermines the principle of universality (Principle 5) and could lead to ethics being compromised. Consumers need to know that no matter where they go for financial advice, the same standards of ethical behaviour apply.</i></p> <p><i>We think the Code should impose a set of ethical behaviour standards for all providers to adopt and follow.</i></p>
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

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><i>We agree.</i></p>
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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.
R.	Should there be a requirement for ongoing refresher training on ethics? Yes.

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. <i>Such a framework should be included in the Code itself.</i>
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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
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.
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.	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.
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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><i>We recommend the introduction of a ban on conflicted remuneration as a means of reinforcing good behaviour - the mechanism being the removal of the temptation to act unethically.</i></p> <p><i>See also our answer to F.</i></p>
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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?

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.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p><i>The wording in para 127 seems to imply that standards of client care set in the new legislation (e.g. nature and scope of advice) will not be reiterated in the Code. If this is the case, we would see it as a missed opportunity to remind consumers of their rights, and providers of their obligations.</i></p> <p><i>We see no reason to exclude from the Code that which is imposed by legislation, rather we see the Code as an opportunity to reiterate legislative requirements in plain English. The Code should provide consumers with a comprehensive (not partial) picture of their rights in relation to financial advice services.</i></p>
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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?
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes.</p>
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.	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?
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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.

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.	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?
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

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