

30 April 2018

Code Working Group
c/o Code Secretariat
Ministry of Business, Innovation and Employment
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Submission: Code of Professional Conduct for Financial Advice Services

This submission is from the Financial Services Council of New Zealand Incorporated (FSC).

The FSC represents New Zealand's financial services industry having 33 members at 30 April 2018. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers plus law firms, audit firms, and other providers to the financial services sector.

Our submission has been developed through consultation, and represents the views of our members and our industry. We acknowledge the time and input of all our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

We therefore support the intent of the Code and, in general, we agree with the key concepts in the Code. However, we believe there are eight areas where more thought or a different approach may deliver better results. We expand on these areas overleaf.

I can be contacted on **S 9 (2) (a)** to discuss any element of our submission.

Yours sincerely

Richard Klipin
Chief Executive Officer, Financial Services Council

Recommendations

1. **Aim for ‘good advice experience’ rather than ‘good advice outcomes’**

The FSC supports strong and sustainable consumer outcomes. We are therefore supportive of the Code Working Group’s (CWG) overarching theme of delivering good outcomes for consumers. However, we believe that ‘good advice outcomes’ may unintentionally go further than the financial advice process. For example, it may have the unintended consequence of leading consumers to believe a good outcome relates to the overall performance of the underlying product/service recommended, rather than the outcome of the financial advice process.

The majority of FSC members support that the word ‘outcome’ is removed and the phrase ‘good advice experience’ is used instead. This could have the added benefit of making it easier to measure success (re: paragraph 53).

2. **Consideration of existing regulatory guidance on ethical behaviour**

We recommend that the Code should draw principles from existing relevant regulatory guidance. However, we submit that the Code should not elevate existing regulatory guidance to binding rules.

To the extent that you wish to specify ethical requirements in the Code, we recommend such ethical principles and standards be clear and defined.

For consistency of application, we recommend that all Financial Advice Providers (FAPs) should be subject to the same minimum standards of ethical behaviour. FAPs should then be able to operationalise, or add to, those minimum standards in the way that best suits them. That could mean adoption of the ethical standards straight out of the Code or inclusion of the standards into their own code of ethics/conduct.

3. **The Code should not include detail on Privacy but should reference following the law (including Privacy Laws)**

We strongly disagree with the inclusion of aspects of maintaining client confidentiality in the Code. We note a revision of the Privacy regime is underway and introduction of limits or restrictions on the use of client data/information is best dealt with through that. If drafted adequately, it is possible that the unethical use of client data could be captured within the other ethical behaviour standards. We also query whether there is a risk that the changes proposed in the Code start to move away from the ‘principles-based approach’.

We will be making a submission on the consultation for the Privacy Bill in which we are likely to illustrate the importance of consumer access by referring to examples such as:

- Access to advice, and in particular, cost-effective advice, will mean increasing use of systems to deliver good advice experiences. Machine learning and artificial intelligence are likely to be used extensively in automated advice, and they require access to a large body of data, and this should be permitted.
- Improving the quality of advice requires training, and often, peer review. It may be desirable that actual client files are used in such processes. It should be acknowledged that in small FAPs peer review may not be possible, even with anonymised client files. But to disallow it would have a significantly negative effect on the quality of training, and therefore future advice quality.
- In many other online services, consumers may opt out of specific privacy provisions in order to receive a free or discounted service e.g. consumers may allow insurers access to wearable health device data in order to receive discounts and benefits. Permitting a limited opt-out may therefore allow greater access to advice for consumers unable to afford typical advice fees.

4. A practical approach to competence requirements, with further consultation

The FSC is concerned that the draft suggests essentially two approaches: one for product advice, the other for financial planning, and only appears to consider the pathway to competence for either Authorised Financial Advisers or Registered Financial Advisers (**RFAs**).

We would like to see a much more detailed approach to assessing competence requirements for different product segments and include pathways for advisers in different forms of regulatory supervision – including advisers in QFEs. We suggest this review include a list of qualifications that current advisers may hold, and how they will be treated in transition. We support the concept of assessing current knowledge and skill by using a recognised test of prior learning for advisers such as RFAs and those in QFEs to provide a pathway for them.

We note there is also an issue to resolve around the definition of competence in relation to product categories. For example, a financial adviser should not need to be an expert on derivatives in order to provide advice on insurance. The proposal to set minimum standards of general competence, skill and knowledge may introduce unnecessary competency requirements for many advisers.

It is important that a practical approach is taken which can be applied to the range of advice situations. For example, we suggest that a way to ensure refresher training on law and regulations does not become a box-ticking exercise is to include it with CPD requirements. We note this may also be a solution to question R, with ongoing refresher training on ethics being obtained as part of CPD.

We request that the final version of the Code provides real-life examples of how to assess a FAP and an individual in combination, including where digital systems are involved.

We would like the Code Working Group to note that the FSC is not submitting on the suggested requirement for a Bachelor's degree (in a specified subject) as members have a range of views on this matter.

Overall, we feel strongly that the matter of competence is such an important one for consumers, affecting both the quality and cost of advice provision, that we need the opportunity to review draft proposals again in a further round of consultation before being presented with a draft Code.

5. Consideration of existing legislation and standards in relation to advice

In line with recommendations two and three, we believe that where possible the Code should refer to existing legislation and leverage current regulation. This has the benefit of keeping the Code current over the long-term.

We support the CWG's decision to bring across existing Code elements.

In addition, we recommend use of

- a. the International Organisation for Standardisation or the NZ Standard (AS/NZS 10002:2014) definition of a complaint.
- b. existing legislation rather than introducing new advice-giving standards.

At an over-arching level, it will be important that the Code is scalable and works for businesses of all sizes, without imposing additional costs which will likely ultimately be borne by the consumer.

6. Clarity needed on product advice vs financial planning and alignment with the Financial Services Legislation Amendment Bill (Bill)

We note that the CWG have drafted the document presumes the Bill changes ‘investment planning’ in the definition of financial advice to ‘financial planning’. We recommend the final Code includes clear definitions of ‘product advice’ and ‘financial planning’, especially in relation to insurance, and the distinction should not be based on product type or the number of products being advised on.

7. Standards need to be delivery agnostic

We agree with paragraphs 123-124 in that the standards need to be ‘delivery agnostic’. The Code therefore needs to ensure that all scenarios on the advice spectrum are captured, including existing class advice to personalised advice. All existing communication channels also need to be considered e.g. phone, direct meeting, video conference and e-mail. Subject to scope of advice, providers may be able to take a more proactive approach to the provision of personalised financial advice i.e. electronic direct messaging, so care should be taken to ensure the Code does not limit that.

8. Suitability analysis should not be required in all circumstance

We support the concept of flexibility in the requirement for a suitability analysis in all circumstances. Examples include:

- a. where an adviser talks in front of a crowd or writes a paper for a general audience we recommend a suitability analysis should not be required.
- b. when the client has a need determined by a third party such as an accountant telling them to get a certain amount of insurance in a business scenario. In such a case suitability has largely, and perhaps entirely, been pre-determined.