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

	Share your details
i.	Please provide your name and (if relevant) the organisation you represent Michael Lay – Foresight Financial Planning Limited
ii.	Please provide your contact details
iii.	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) I am a one man band Authorised Financial Adviser
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

	Share your views
A.	What comments do you have regarding the overarching theme of "good advice outcomes" and the underlying principles? It depends on your definition of a "good advice outcome" and this needs to be clearly defined. For example, an adviser might follow all the principles of Best Advice when recommending a particular investment. If that investment subsequently failed to perform up to the client's expectation, the client would see that as not a good outcome. Similarly, if a claim for trauma insurance was declined because the client's condition didn't meet the definition in the policy, the client would not consider this a good outcome, even if the process to decide on the product was robust. Perhaps the word "outcomes" should be dropped as the term will mean different things to different people.
B.	Are there any further principles that should be included, or existing principles that should be removed? None that I can think of

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. Yes

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. It is fundamental with ethical behaviour for a financial adviser to keep one's word. However, for that to be practical, this can really only extend to their written word unless their verbal word is recorded. If all advisers were required to present their clients with a comprehensive Terms of Engagement in every instance, this should go a long way to eliminating any undue expectations. Perhaps the Code Committee could give some guidelines for advisers to help them design their TOEs.
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? It is unnecessary for them to have their own code of ethics as the standards set in the Code of Conduct should be sufficiently robust. However, this should not preclude their doing so as this could be one way they set themselves apart from others.

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? Most definitely – this is a critical area of the Code and so should include minimum standards on the management of conflicts. In particular, section 93, it says that must "ensure that their advice is not materially influenced by any conflicts of interest." This a real problem for VIOs as there will usually/always be a conflict, especially if the client already has an existing financial product as the adviser's responsibility to their employer is to attempt to replace that contract with one of their own, even if it is far inferior to the one the client has. Therefore, to make it abundantly clear to the client, we recommend that it must be made clear, in writing, that the adviser will make recommendations on their company's products only and that these might not be in the client's best interest. Also, in section 94 sub-section headed Communicate you say that "any actual or potential conflicts that arise should be communicated." We recommend that SHOULD be replaced by MUST.

Do no harm to the client or the profession

G.	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. I agree that this is important and we would recommend that prohibiting insurance companies from promoting the churning of business should be mandated
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

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.	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?
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.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning. Yes. This could be accomplished by including a general 'course' covering ethics and the by requiring that a minimum number of hours for continuing professional development are devoted to ethics refresher.
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 as in section P above

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.

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?
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.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
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.

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?

Conduct and client care

Advice situations

	Share your views
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.	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? I strongly believe that one of the fundamentals of ensuring "good advice" is that, all advice must be given in writing in a manner that is easily understood by the client and that this written advice must be signed and dated by both the adviser and the client. We recognise that some Financial Advice Providers might believe this to be too onerous but we feel it is so important that it should be mandatory. As an alternative, we would consider verbal advice where this is recorded, with a copy of the recording given to the

	client and both adviser and client sign that the advice was given verbally and that both have a copy of the recoding that can be used if any dispute arises.
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? We do not believe that any aspects should be removed. However, we strongly disagree with the suggestions outlined in the second section on the "explanation" in the following areas: • "a standardised document prepared and retained by the Financial Adviser". A copy of this document MUST be given to the client and both adviser and client signing and dating the document. • In the same section re verbal advice see earlier comments that we believe all advice should be in writing or, at the very least be recorded if given verbally with a copy of the recording given and acknowledged by both adviser and client. We recommend that the situations where recorded verbal advice can be given in place of written advice must be written into the code to prevent the decision on where it is appropriate being left to the Financial Advice Provider
JJ.	Are there any situations in which an advice process need not be followed? None whatsoever

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? I believe some of the proposals will, inadvertently, lead to bad advice rather than good advice. The fundamental "problem", in my opinion, lies in the wording of "makes a recommendation or opinion" in definition of Regulated Financial Advice as "makes a recommendation or gives an opinion about acquiring or disposing of (or not acquiring or disposing of) a financial advice product." The issue is where the acquisition of a product results in the disposing of an existing product without due care, or often any care, being taken to ensure the new product is at least as suitable as the existing contract. Our question s "how do we ensure that sufficient analysis is done in these cases OR, more particularly, how can the Financial Advice Provider, DEMONSTRATE that their NR or FA has taken this into account?

	I would recommend, as a very minimum, that a record of the advice be in writing signed by the client, or verbally with a date-stamped copy of the recording given to the client. This MUST include details of any relevant (insurance for insurance, investment for investment, mortgage for mortgage etc.) financial products the client currently holds and the advantages and disadvantages of the new product.

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

	Share your views
NN.	Do you agree with our interpretation of the meaning of "competence, knowledge, and skills"? If not, why not? Yes
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? The advantages of including "or has an understanding of" allows advisers who have been in the profession for some time to be able to demonstrate their understanding by peer assessment without the expense of passing exams which would, potentially, cause some advisers to leave the profession, thereby limiting he availability of advice.
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? One factor to consider would be the cost. We recommend ways be explored as to how this could be done at minimal cost, perhaps by a 3rd party "test".

Particular competence, knowledge and skills

	Share your views

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? I see no problem with identifying the two types of financial advice PROVIDED they mirror legislation. For example, Product Advice is "makes a recommendation or gives an opinion about acquiring or disposing of…." Financial Planning is "designs a plan……"
UU.	How should RFA's experience be recognised? Your suggested approach of considering other means of assessment other than formal examinations, to be a sound one as, the costs to formally attain Level 5 could see many current advisers leave the profession which would diminish the availability of advice. I would recommend the assessment of files by someone who is Approved by the Code Committee as one possible approach
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)? See above notes regarding Insurance Planning requiring a degree (or equivalent)
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? See above. I do not agree that all Investment Planning requires a degree level qualification. There should be some other qualification available above Level 5 but not at degree level. If no such qualification currently exists, I believe one should be created. There is more than sufficient time for one to be developed before advisers have to reach the standard – until November 2021?

Other comments

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