

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.	Please provide your name and (if relevant) the organisation you represent Russell Forward , Director Forward planning ltd
ii.	Please provide your contact details S 9 (2) (a)
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) We are a 2 person business , I am the advice giver and my daughter provides back office functions and handles all claims . s 9(2)(b)(ii) I am an RFA at present and have 30 years experience as an agent of a life insurer for 5 years and 25 as a broker . We deal with mums and dads and have a wide range of commercial clients .
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) Nothing in my submission is confidential

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 from an insurance perspective are generally determined at claim time . to ensure a good outcome , I have to know my client , understand what their needs may be , provide easily understood advice , explain any limitations in the advice or product/s , manage their expectations and explain any conflicts of interest .</p> <p>Many clients have a single need . This may be to provide a simple public liability policy or protect a mortgage with life insurance . In my experience , insurances decisions are driven largely by cost and if you try to do the perfect job and look at all the risks , the cost puts them off doing anything . Our business is about building a relationship and as the trust between us grows , they are more receptive to taking advice and acting on it . It is not simply about having a robust process to gather information and report back as the decisions people make are I believe are influenced by trust that you have their best interests at heart .</p>

B.	Are there any further principles that should be included, or existing principles that should be removed?
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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. Absolutely I believe that disclosure of fees or commissions in actual dollar terms is essential .

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>Part of the correspondence with clients initially should explain the nature of the relationship going forward . every client has different needs and expectations so as long as the ongoing nature of the relationship is explained and understood then this is acceptable . It would be difficult to prescribe a single method of meeting ongoing commitments other than to state that the adviser must follow the process agreed with their client .</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>An adviser must do what they say they are going to do . Pretty simple , and what they say they are going to do is what any reasonable person , given their position could expect from an adviser offering that type of advice or product</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 disclosure of remuneration in dollar terms , no upfront commission payable on any products replaced by another policy , and that all renewals are transferrable to any alternative adviser appointed by the client . At present many life renewals remain the property of the seller of the policy not any subsequent adviser appointed . This will discourage replacement business , and encourage better adviser / client relationships</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>Advice is subjective and each adviser will have different views on products and delivery . what is appropriate today could be considered poor in the future , but bringing the profession into disrepute is more about the actions of the adviser than the actual advice , particularly if such advice can be shown to be in the clients best interest at the time .</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>All advice must be to the sole benefit of the client and be shown to have been beneficial</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>The privacy act covers this and the ability to demonstrate that you have good processes for storing client data</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>There are so many ways now of communicating with clients . all reasonable care and attention must be shown</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Establishing with a client how they like to receive communication and having them understand that some methods are less secure</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>Most bad behaviour in my experience is driven by adviser greed . total disclosure of remuneration will manage much of this</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>A code of ethics is an easy statement to make at a corporate level but enforcing it is another matter . Do we Swear a simple oath and be held to account ? There should be a minimum standard and organisations can expand on it to reflect their unique market position</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>Everybody becomes accountable for their own actions</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>Are there actually levels of ethical behaviour . Is their levels or degrees of honesty or compassion etc ? I think not</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>There should be a standard of ethics set and a simple course to help advisers understand what type of actions may be considered to be unethical and how to establish best practice . The same standard for everybody .</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>Those officers who are shown to encourage questionable behaviour in order to meet sales objectives should be subject to the same outcome . their training or course will be different as their contact is not direct with the client</p>

R.	Should there be a requirement for ongoing refresher training on ethics? Yes
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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. Yes a training organisation that also provides advice on referral nfrom an adviser . This helps the training organisation build a portfolio of scenarios on which to base its training
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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? No this is a buck passing exercise . Every adviser is accountable for the advice they provide . Who is going to sign off my advice ? other than me personally
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. Perhaps specialist compliance organisation doing annual audits on each practice , commensurate with the size and activities of each adviser practice .
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? How do the many small sole traders manage this ?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? An annual audit has a cost which reflects the size of the business . Larger organisations could engage an inhouse auditor

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>Yes same std for all</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>Total remuneration disclosure of all fees and commission receivable from a sale of product or provision of advice</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>

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>We all have to be able to justify our actions , advice or inactions as being fair and reasonable</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>

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.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>The small adviser practices play an important role in the market and cant absorb the same level of cost as a corporate . There should be the same type of compliance but scaled to the amount of business being done . The more business done the greater the compliance as there is greater risk . Certain types of practice have greater risk attached . EG how much life cover an individual needs is subjective . Insuring business assets is easier to determine as an absolute value .</p>
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

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>Discovery , reporting , disclosure , agreement on the process and implementation , confirmation of placement and agreed reviews if necessary</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>5 step process , but adviser customises to each client</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? Some very simple transactions , eg insuring a car , boat or caravan as a one off should be subject to a reasonable level of care but the remuneration is so minimal that the process has to be simple or advisers will simply decline to offer these . Recognition that some products are “ simple “ and certain types of advice , eg around assisting with claims must be simple but subject to reasonable care
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?

	A range of ‘ simple “ products or restricted types of advice not associated with generating revenue
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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.	<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>The provider of robo advice is subject to the same test of suitability as an adviser . Was the product they purchased actually what they needed ?</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Skills are learned in practice and many of these are about life skills and personal interaction which cant be taught in a class . experienced advisers can help people make the difficult decisions . They know when to push and when to back off and allow clients space to arrive at their own conclusions . This is why industry experience has to have some value to the regulators . education is not the only answer . Grandfathering all existing advisers is not the answer but you cant reasonably expect every adviser to gain a university degree . The answer I believe is to recognise experienced advisers and upskill then over a given time frame . Most of us old guys are wealthy in knowledge on how product works and how products perform at claim time . what we need is education on the code and how to apply it , legislation , ethics and client management and compliant processes . Allow the educators to design courses for all the relevant branches of the industry .</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>A lower level of competence is required to assist people into kiwisave than designing an investment portfolio . As is advising on car insurance versus a business interruption cover . Identify simpler products and set standards for care of these . Many new Zealanders need simple help setting up kiwisaver and gaining an understanding of this product . getting people into these products is vital to the future wealth of the country so don't make it too restrictive to provide advice . Once a kiwisaver account reaches a certain threshold then it triggers the recommendation for greater levels of advice . A client in the worst kiwisaver plan is better off than one who isn't saving . encourage adviser practices to advise on simple products</p>
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.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Products are ever changing so we need to keep up with product development so these must be part of CPD programme . an annual audit will determine if an adviser is meeting their obligations and any identified areas of concern would trigger a need to renew a unit standard .</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> <p>There should only be 1 standard that we all adhere to . The products each adviser uses will determine the delivery of that advice .</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>That the educational requirement reflects the time in the industry and then previous claims against the adviser are considered as to their competence . No automatic grandfathering but reduced educational requirements to obtain a qualification</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill? Most experienced advisers have more specialised practices and can generally display competence , product knowledge and many skills . We are likely to be weaker in having robust client files and in knowledge and application of legislation and implications of pending changes . We will have great skills in client care and relationships</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</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. 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?

The challenge is to recognise that there are many branches of financial services . Investment planning , simple savings and investment products , life , health and disability products , fire and general insurance , mortgage broking , personal loan providers , share brokers etc . We should be licenced to provide advice and product delivery in our chosen area of expertise and then be able to display competence in the knowledge and delivery of the relevant advice and products in those disciplines only . This is where experience can demonstrate competence . Then educational standards for the code standards and time to modify practices to become fully compliant . I don't need to know about investment planning , but I need to be able to refer a client to an appropriate adviser . It is my responsibility to be good in my chosen field and ensure my client understands what advice im limited to . It is not my responsibility to know and understand what their investment needs may be , but I do need to understand trusts and company structures and read balance sheets . I need to understand policy ownership and legislation relating to my products . These can be done with simple courses and exams to ensure the content is understood . If you make the requirements too onerous it will drive a lot of the aging adviser force to early retirement making it more difficult to have underinsurance issues addressed and encouragement for clients to make the tough decisions in life .

This has to be weighed up against how advisers are remunerated going forward . Commissions encourage new blood into the industry . I could never have made it through the early years as an adviser without upfront commission but now , I seldom choose that as an option . There has to be financial encouragement to new blood into the industry and then a transition to building a long term sustainable business on lower renewal commissions .

Increasingly today , I discount the upfront commissions to nil on life products and charge a fee commensurate with the time and effort involved in placing business type insurances . this discounts the premium by 25 to 30% . My fee is typically 30% of what the upfront would have been . Transparent business and the policy is affordable for longer . Its never subject to another adviser coming in and rolling the policy over as they wont do it if theres nothing in it for them . I still get a small renewal commission paying me to service the business . Our fire and general business is all renewal commissions and if you lose the client , you lose the income . lots of incentive to keep them happy and stay in contact .

I hope this gives you some insight into our business which will be very similar to many other advisers operating today . If you understand how we operate then it may help in how you make changes going forward .

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?