

Code of Professional Conduct for Financial Advice Services

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

Information about you

<i>Share your details</i>	
i.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Graeme Lindsay</p>
ii.	<p>Please provide your contact details</p> <p>S 9 (2) (a)</p>
iii.	<p>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)</p> <p>I am a Registered Financial Adviser. I commenced as a life insurance agent in January 1969 and have worked continuously since then as an agent, and since 1983 as a broker.</p> <p>I was a director on the national board from 1975 to 1978 and then president of the Life Underwriters Association of New Zealand from 1981 to 1983.</p> <p>I was a member of the Board of Directors of the Life Brokers Association for several years in the last decade.</p> <p>My activities for the last 25 years have been split between the brokerage business and our second business that provides detailed analysis of and research on life and health insurance products to other advisors.</p> <p>I trade through my company Strategy Financial Services Ltd. I am the only adviser employed by the company. My wife Heather Anderson is a chartered accountant and manages the financial and administrative affairs of the company.</p> <p>I am currently aged 69.</p> <p>My comments in this document focus on the applications of the proposed code to life and health insurance advisers/brokers.</p>
iv.	<p>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)</p> <p>No</p>

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”</p>

	<p>and the underlying principles?</p> <p>My view is that the focus on the theme “good advice outcomes” will create problems for consumers. Despite your paragraph 52, I believe consumers will interpret and expect “good advice outcomes” to mean that the product advised will perform well.</p> <p>I believe that the name needs to change. “Outcomes” implies that the results of the advice will meet the desires of the consumer, i.e. the product/s will perform.</p> <p>I was overseas at the time you ran your consultation roadshows, but I do understand that this concept was not supported by the majority of advisers at the Auckland meeting.</p> <p>I struggle with the notion that you will be able to draft standards (para 66) that will apply to multiple business models and delivery mechanisms effectively. Much of the requirements outlined in your document clearly apply to large organisations, not the “one-man band”. I suggest that separate standards should apply to large and small organisations.</p> <p>Whilst the intent of your paragraph 67 is laudable, my experience is that retail clients don’t and won’t give a toss about the Code.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>No</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>Yes</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>No. You are going beyond setting the rules. If you proceed as suggested above, you will essentially be converting less formal undertakings into legal obligations.</p>
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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>From a one-man band point of view, the notion of my having to have my own code of ethics if I decide to register as a Financial Advice Provider is nonsense. Clearly, this re-emphasises the need for separate codes for small and large operators.</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>No. The legislation should be sufficient to cover conflict of interest. The key point is clearly that conflicts should be disclosed.</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>No comment</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 don't believe that any additional standard is required</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>No comment</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 comment</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No comment</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>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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 - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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>No - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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 - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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 - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</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 - for small advice practices, these requirements would be highly expensive, and of no value. For large corporate organisations, there may well be justification for documentation as suggested.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>The only outcome from suggestions in the above questions would be a proliferation of “Ethical Consultants to Financial Advice Practices”. For small Financial Advice Providers this would be yet another cost of doing business that would add no value at all to either the practice or its clients.</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>Yes</p>
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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? No comment
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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? No comment

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). No comment
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.) No comment
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)? No comment
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? For small FAPs in the life insurance space, the potential compliance cost of disclosure of commissions will, in many cases, be significant. To illustrate, in the course of a life and health insurance advice transaction which could spread over several months, there could be 3, 4 or even 5 different disclosures of commission required. This because in the course of advising the client, we will consider many different products, sizes of policy, and providers of products. I believe that it is crucial that commission disclosure be simplified to minimise the cost of multiple disclosures which will only have the effect of confusing the client.

EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Para 130 raises the question of replacement business.</p> <p>For many years in my practice, when faced with the need to replace an existing in force policy, I have produced a detailed, comprehensive comparison of the old product with the new product we recommend.</p> <p>Given the concerns expressed by the FMA in respect of “churn”, I recommend that advisers be required by the code to produce a detailed comparison when recommending replacement of an in force policy. Clearly, such comparison must be in written form.</p>
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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 - the FAP should be free to design its advice process as it chooses. The Code should simply establish the rules which must be followed. It should not prescribe the details of the individual FAP advice process.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>No. The Code should simply prescribe the rules. Individual FAP’s should then be free to design their advice process based on their culture, values, and the needs of their clients.</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>No - the FAP should be free to design its advice process as it chooses. The Code should simply establish the rules which must be followed. It should not prescribe the details of the individual FAP advice process.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No - the FAP should be free to design its advice process as it chooses. The Code should simply establish the rules which must be followed. It should not prescribe the details of the individual FAP advice process.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>I am sure that there will be some</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>Adopting the third bullet point in para 141 would be in direct contravention of the whole goal of “good advice outcomes”. Allowing a Vertically Integrated Organisation</p>
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(VIO) to avoid providing comparison between its product and an existing or competing product, would be to give immunity to the VIO from the need to consider the client's best interest.

Life and health insurance advisers all over the country will be able to quote situations where all of the main banks routinely look to replace existing insurance products with their own in-house products. No consideration is ever given to the best interest of the client.

Two days ago I had a call from a long-standing (18 years) client advising that the ASB has told him that they want all his business. This includes his life and health insurance. They were not interested in the quality of products he has in place, his family's real needs, or any other factor. They simply wanted to replace the in force insurance products with their own.

I have heard anecdotal statements that indicate that bank clients are told that changing all their insurance to the bank is a conditional of approval of a mortgage loan.

Accordingly, I firmly believe that the third bullet point in para 141 must not be included in the Code.

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>The contents of paragraphs 145 to 151 clearly apply with large organisations. For the sole practitioner, they simply create another practice manual which will be expensive to produce and provide no value.</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>Yes. They simply create another practice manual which will be expensive to produce and provide no value.</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>No comment</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>The whole concept of “combined expertise” is a nonsense. For example, an FAP has three practitioners. None of them has complete “competence, knowledge and skill” but in aggregate, they do. Accordingly, the FAP is a licensed to give regulated financial advice.</p> <p>One of the three practitioners dies. The FAP no longer has “the combined expertise”.</p> <p>This illustrates the ludicrous concept which can only result in poor advice outcomes. It is my view that all advisers should be able to demonstrate “competence, knowledge and skill.”</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>See OO above</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>See OO above</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>See OO above</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Making the proposed unit standard a renewing obligation is simply another unnecessary roadblock to small advice firms. Financial advisers are generally intelligent people who will remain current with their obligations under the law. Making it a renewing obligation simply adds another cost, in both time and money, for no added value.</p>

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>I fail to see any advantages. The disadvantage is fundamental. Product advice is not advice it is sales! This plays right into the hands of the VIOs (the banks) and would allow them to masquerade their product sales as advice.</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>Given that the stated objective of the system is "good advice outcomes", however it is renamed, the only way to recognise experience of RFAs is to have a competent team of evaluators reviewing a prescribed number of the RFA's recent files. This would allow a competent evaluator to ascertain the competence, knowledge and skills of the RFA.</p> <p>I have been active as a life and health insurance agent and broker for almost 50 years. My competence, knowledge and skills have all increased steadily over that time as I have evolved my processes to ensure that the quality of my advice meets the expectations of my clients. In my early years, I did all available study courses to build my knowledge. My skills increased steadily from experience and from a number of mentors over the years.</p> <p>My competence is perhaps best reflected in the comments of a new client I met with yesterday. He is a highly qualified structural engineer who commented that the quality of the advice he received from me was way beyond his expectation.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>It sounds good in theory, but ignores the reality of experienced advisors who have learned their craft over many years.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>The primary disadvantage of your approach denies the reality that investment advice, i.e. saving for retirement, is considerably more complex than life and health insurance advice or mortgage advice. By trying to have one size fits all, you run the real risk that the availability of advice will contract because experienced specialist life and health insurance and mortgage advisors will leave the business, rather than go through the nonsense of having to study what they have been doing successfully and well for many years.</p> <p>Further, anecdotal comments from RFA advisers who have completed the Level 5 requirement recently in anticipation of your imposing that requirement, have indicated that they learned absolutely nothing! A real waste of time and money!</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> <p>The proposed standard will do nothing to enhance the quality of advice,</p> <ul style="list-style-type: none"> • will certainly reduce the availability of advice as mature RFA advisers will leave the business, • will involve many ongoing advisers in unnecessary compliance costs for no value to consumers, and • will hardly promote innovation or flexibility.
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> <p>To avoid the risk that experienced life and health insurance advisers will leave the business, thus reducing the availability of competent advice, you must include a mechanism whereby experience can be recognised. Such Grandfathering should have an expiry date – eg 10 years so that an adviser of say, 20 years experience. Further the mature adviser should pass a test to ensure that she/he understands the discipline issues, and have a file audit to ensure competence.</p> <p>The notion that RFAs transitioning into the new system would require a degree, but AFAs advising on investment do not, is absurd. Investment advice is far more complex than insurance advice.</p> <p>People new to the business of giving life and health insurance advice do not need a degree and imposing such a requirement will further reduce the availability of advice to consumers. There will be fewer people coming into the business! The level 5 requirement for new and less than 20 years experience advisers has merit.</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>Given the reports from the Royal Commission into the Banks in Australia, you might be better employed in developing a Code for the Banks in NZ!</p>