

13th March 2018

Submission on the Code of Professional
Conduct for Financial Advice Services

by

John Heritage

Information about you

<i>Share your details</i>	
i.	Please provide your name and (if relevant) the organisation you represent John Heritage, John Heritage & Associates
ii.	Please provide your contact details S 9 (2) (a) ; 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) Sole practitioner, RFA, advising on personal and business insurance. I have been a financial adviser for over 35 years both in NZ and the UK.
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 confidential or sensitive in my submission.

Principles for drafting the Code

<i>Share your views</i>	
A.	What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles? I agree with everything that is outlined by the Code Working Group
B.	Are there any further principles that should be included, or existing principles that should be removed? No comment

Ethical behaviour

Act with honesty, fairness and integrity

Share your views

C.	<p>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</p> <p>I agree – it is the only way.</p>
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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>There could easily be a regulation stating that if you make a commitment to a client you are duty bound to honour it, unless exceptional or unforeseen circumstances prevent you doing so. But surely commitments that go beyond legal requirements are a matter of personal conscience and integrity, rather than regulation?</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>Should probably be left to FAPs, but see my first sentence at D above. On the other hand, if all advice (inc commitments) was given in writing this would automatically pin the adviser down and make him/her accountable to the client.</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>Totally agree with the 4 elements outlined. If a conflict is recognised an ethical adviser should decline to provide advice, explain why and perhaps recommend another suitable adviser.</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>Once again – totally agree, in order to maintain the integrity of the profession (not ‘industry’ please) and thereby the public’s trust in it. By definition, professionals are perceived as caring people, concerned to ensure a good outcome for their clients - positive connotations. In contrast, referring to ourselves as ‘the industry’ implies our main concern is about selling product - negative perception. This has been a bugbear of mine for years because if we don’t look on ourselves as professionals how can we expect the public to do so? Surely this is the outcome we want, and I feel it is much more likely to come about under the new code of conduct.</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>The wording used by the Working Group seem exactly right. Professional bodies such as PAA and IFA have codes of conduct and ethics anyway. Perhaps it should be compulsory to belong to such a body?</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 as seems irrelevant to me, as a sole practitioner.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>I agree.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>The only cost might be remote storage (and possible encryption) but that would be incurred by making a business decision.</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>I agree.</p>
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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>Why not? If such a code exists it should be available.</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>If a FAP has gone to the trouble of constructing a code, surely that code will be endemic in its culture?</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No comment.</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>I agree.</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>I agree – ethics training should be universal.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Yes – it could be as simple as completing an online questionnaire, with a high pass mark required to have licence renewed. This should be required (say) every 3 years.</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>I agree.</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>Yes – some person or entity must always have ultimate responsibility to ensure a level playing field.</p>
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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. I agree.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? Good idea, but how can a one-man band test themselves? It would have to be external.
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? An external process will automatically have a cost attached. This would obviously be an added burden for all providers, but would impact most on those at the lower end.

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. I agree.
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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? As per point 116 of the Executive Summary. This should help to ensure that ethical behaviour becomes second nature.
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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? Can't think of any.

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>The current standards seem to work well. Even as a humble RFA I try to follow them, though ‘limited advice’ is more appropriate in many cases. And, by definition, ‘class advice’ generally requires a lower standard anyway.</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> <p>No comment.</p>
CC.	<p>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)?</p> <p>No comment</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>No comment.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Agree with the points specified.</p>

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 comment.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>This is a very good idea, which could help avert future problems.</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>All advice, no matter how simple, should be conveyed to the client in writing. Then it is on the record if a future problem or dispute arises.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>Yes – ‘execution only’ situations, since there is no needs analysis being done and no advice being given, other than choice of provider. ‘Limited advice’ situations would not normally</p>

	require full needs analysis either, though would require some degree of advice – so a modified process is appropriate.
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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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I agree with the proposal and refer back to my answer at JJ above.

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?
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No comment.

MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.
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No, it wouldn't.

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>I agree.</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>No comment.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>It seems a sensible approach.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>No comment.</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>The proposed standards should ensure good advice outcomes and therefore fewer complaints against advisers.</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>A very good idea – could be part of the ongoing CPD requirement.</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 agree with this approach, and I would probably not change the products I advise on – other than actively selling KiwiSaver again.</p>
UU.	<p>How should RFA’s experience be recognised?</p> <p>By one or more test papers. Someone may well have been active for years but this is no demonstration or guarantee of their competence, knowledge, understanding or ethics!</p>

VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>If you can't demonstrate your knowledge by passing a test paper you should not be advising the public!</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Older advisers may feel aggrieved, may object and may choose to retire - a mass exodus is undesirable. There will inevitably be a cost for taking test papers, unless they can be done online and auto-assessed.</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 standards are highly appropriate to ensuring higher standards and better quality outcomes.</p>
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>I believe credit should be given for relevant qualifications obtained overseas. In my case I obtained a CFP in the UK but it is not recognised in NZ so I was not given any cross credits when taking the Level 5 papers. I find this objectionable as it is, supposedly, degree equivalent, and, more importantly, it is meant to be confirmation of having attained an internationally accepted standard of competence and knowledge. Actual degrees <u>are</u> recognised in NZ so why not CFPs?</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>Why not make it compulsory to belong to a profession body such as PAA, IFA, soon to be Financial Advice New Zealand of course? If membership was compulsory the body concerned could be responsible for policing standards of ethics and behaviour as part of its disciplinary function. Membership might also encourage the public to regard us as a <u>profession</u> in the same light as solicitors, accountants and doctors. That has positive connotations so surely that is the image we want to portray? At the moment we are seen as 'the insurance <u>industry</u>', which promotes a very negative image and, in the public perception, aligns us with secondhand car salesmen etc...?</p>