

# 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](mailto: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](mailto: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](http://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 Kayne Henderson (Henderson Brokers Ltd/Canopy Group)
ii.	Please provide your contact details <b>S 9 (2) (a)</b>
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) RFA (currently) and mainly risk insurance products. Very small amount of KiwiSaver.
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.

## 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? No comments. I find them all very good and logical.
B.	Are there any further principles that should be included, or existing principles that should be removed? No. Anything further and it starts getting over complicated.

# 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. Pretty self-explanatory hence no expansion on answer.</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>Unsure exactly what is meant here.</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>I don't feel there should be an additional code. However, if there was it should be at the provider's discretion as to how this was built into their own culture. Provided the minimum standard was being met should be enough.</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 but the question remains as to how this is regulated/policed? What will stop someone from NOT disclosing conflicts of interest such as shares in the company that owns the insurance company, e.g. CBA?</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>Yes, again self-explanatory. Like cricket really...bring the game into disrepute and you get fined. This makes us all look bad so I agree totally.</p>
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H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose? Possibly yes otherwise there are no repercussions if someone does. Needs to be worded very carefully though as we don't carry crystal balls and we can't know what the client doesn't tell us. Wording around 'in isolation' should be considered.
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## 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?  The same as normal laws governing data protection and the passing on of client details. Take these as the standard.
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?  Yes.
K.	Are there other aspects of maintaining client confidentiality to consider?  This should be part of competence in today's environment. If you are not competent enough to have modern systems in place that protect client data it should be disclosed too. Cost will be an implication but that is no different to every industry in the world right now. Standard cost of doing business I would have thought.

## 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"?  Yes but only once. Is it a vital part of doing business and therefore a realistic cost or should it be a once only requirement that is built into the culture of the provider?
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?  No.

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>Yes. In respect of new staff. There should be a requirement for them to take on 'apprentice' type roles whereby the new adviser or staff member is remunerated via some type of salary agreement while they train/become qualified. As part of this apprenticeship they have the providers culture of ethics ingrained in them. I feel this apprenticeship process is crucial to the 'good advice outcomes' philosophy as it means new advisers are not desperate for commission in the early days and forced to take risks. They will eventually become better advisers. No different to the building industry, medical industry etc.</p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>Apart from the above comment, 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>Yes, see comments above re apprenticeships type schemes.</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>Yes, 100%.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>Maybe. Time is a cost to advisers too. Refresher courses should only be a requirement if they are scaled to reflect experience of an adviser. I.e. don't waste experienced adviser time with irrelevant courses.</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>Yes.</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. Accountability is a key component of 'good advice outcomes'. This person signing off should NOT be the adviser themselves as there is too much room for them to skip certain steps.</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>
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. Just an explicit sign off procedure should be fine. Again, time is money for advisers. There needs to be accountability on the part of a regulator to ensure policing of ethical behaviour.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Yes. The time this process takes and also the payment for who does this vs what other productive task they could be performing for the provider/adviser.</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. It should be part of the providers' culture! They set the standard and anyone who doesn't adhere to this culture should be scrutinised.</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>Nothing. Should be left to the provider to instil this in their advisers/employees. And please don't have a requirement for pointless emails reminding people. Let's presume innocence before guilt in that the large majority of advisers do what is right by their clients.</p>
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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.

## 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). The remaining standards work well.
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.) Yup have already highlighted the one definition.
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)? Replacement advice. Almost an afterthought in most of the consultation papers I have seen so far. However, this is one of the main problems these changes have stemmed from. I firmly believe there needs to be more discrepancy given to replacement advice vs brand new business advice.
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Not if the process is outlined as part of the organisational culture.
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others? Yes. Replacement business as mentioned.

## Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? Limited Advice or clients simply instructing us to do something. When people are as time poor as they are today even one meeting can be tough for them. There needs to be protection for us if the client simply states what they want and/or doesn't care about full advice process.
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GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes! Don't write the template for us but don't leave it entirely to our discretion either. If you truly want better outcomes for the consumer there should be some sort of guidance as to expectations on the adviser and the provider.</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.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No but be mindful of the language used. Ambiguity is not great in relation to 'good advice outcomes'. Words like 'Enough information...' etc is hard to quantify. One advisers 'enough' is completely different to another advisers and the client's interpretation could be different again. Be clear and concise with requirements.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>No. Even with limited advice for example, there should be some process requirements for this. If the client still isn't happy about signing one form etc the adviser should walk away.</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>I really like this concept as per some of my comments above. However, it would still be good to know the expectation of said standards so everyone is left with no illusions about what is required. Yes, we can be flexible in how we present these to clients, how we process these but however we wish to shape it in front of the client it should still meet certain standards clearly set out. As mentioned above, ambiguity is not great when you are looking to achieve 'good advice outcomes'.</p>
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## 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>Hard to answer as this would be a work in progress. Do I think it is a good idea? Yes as culture breeds good advice outcomes. How should this be done practically? I don't know. Explanatory material would be good but again, allow for flexibility in the application of said standards but not using ambiguous wording.</p>
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MM. Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

Yes and no. Do it once, do it properly and only need to report in once a year etc. would be my level of compliance here. Will clients care? Probably not. So minimum time spent on this long term is key but it should be done right to begin with and maintained once a year to ensure standards are retained. Who policies this? i.e. who do we report to? That is another question as there needs to be accountability. This should sit with organisations who pop up like OSH money making entrepreneurs. It should sit with industry bodies who have a clear and concise overview of requirements.

## 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>Yes.</p>
OO.	<p>Are there other factors, which contribute to <b>combined expertise</b>, 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. However, be careful that the inclusion of robo-advice does not allow digitally minded people to run firms that do not understand the Code. Yes, their firm as a ‘provider’ will be subject to the Code but digital platforms use ‘very small print’ to get around things such as privacy, data collection etc.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Keeps the bar high for entry which in turn means a higher standard of adviser.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>Possibly the ongoing education. Be careful not to overburden adviser in terms of time and money to remain upskilled. Once standards of ethics, competence etc are in place it should be enough as good processes will flow from it. Experienced gained instilling these ethics &amp; processes should be enough to retain minimum standards.</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>Enhances the reputation of the industry. However, be mindful of this if any considerations given to regulating commissions. Take everything in context. You can’t have the best people giving advice to achieve good outcomes if they can’t earn what they are worth to a client at claim time!</p>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Is it necessary? Does a qualified lawyer have to continually sit a unit standard to retain their licence? Experience counts for a lot and a code of ethics/standards also counts for a lot. If people had to pay to continually sit a unit standard it would not sit well.</p>

## Particular competence, knowledge and skills

<i>Share your views</i>
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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>Product Advice – level 5 is OK but gives no regard to experience. Talking for a brand new adviser here. Apprenticeship type system works well here in that a brand new adviser needs to have L5 papers done as well as 1 years’ experience within an existing firm/provider before they are given a licence of their own. Again, safer for clients.</p> <p>Financial Planning – difficult one here as these tend to be experienced advisers and you have to balance the barriers to entry vs the number that will drop off in coming years. However, I do believe a higher standard of education is required. L7 could be a step too far but certainly entertain the idea of a L6 paper of some description provided it doesn’t cripple them financially. Remuneration in this area can be a slower burn than other areas so this needs to be taken into account in terms of the barriers to entry. i.e. lower remuneration but higher costs of competence fair?</p>
UU.	<p>How should RFA’s experience be recognised?</p> <p>Dependant on years of experience. 2-3+ years of experience should be taken into account and less L5 papers required as a result. Especially relevant if they have a Bachelor degree.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Higher level of competence sure but you are still relying on people’s interpretations of that knowledge when dealing with clients. But in general, higher skilled people will give better chance for good advice outcomes.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Cost &amp; time. You are asking people to take a hit in their pockets while they upskill which is where I feel the apprenticeship type system would work well as it gives people time to get to this point while being remunerated. Sure, there is a risk for the provider who takes on these new advisers and pays for their apprenticeship but this is a natural recruitment risk and will require firms to invest in better people, not just those with the gift of the gab.</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>Absolutely necessary to improve the level of trust in our industry. Better education, better skill etc. Will need industry bodies to ram that message home to consumers but that is not for the code to worry about. Need to be careful there isn’t a significant ongoing cost to education such as resitting a unit standard regularly. This would irritate advisers and push people away.</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>As per above, for people brand new to the industry at L5 level, there needs to be a level of relatable experience applied too. Sitting a paper doesn't mean you should be able to go out straight away and deal with clients livelihoods on your own.</p> <p>Planning capability baselines are OK.</p>
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## 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>In assessing my responses to this paper I also reviewed the level of consultation that was undertaken with consumers directly to understand what they want. I felt this was extremely important as it meant the rules weren't being shaped by people who 'think' they knew what consumers wanted.</p> <p>It disappointed me greatly to see the only consultation with consumers was done via two 'online questionnaires'. One that had 250 (approx.) responses and one that had 500(approx.) responses. For an issue so important I would have thought these sample sizes were very small. Questionnaires also lack context which can be misleading such as the question around online advice. Sure, people want online advice (robo-advice) but there should have been a follow up question asking if they would then purchase financial products online. i.e. no differentiation between advice and sales.</p> <p>For all the organisational muscle involved in this I would have expected market research companies be engaged in focus groups around the country to understand more about what the consumers want. It would have been especially relevant when it comes to terms offered by the new Bill in respect of Adviser vs Nominated Representative which I personally feel misses the mark by a long way. Again, a good marketing consultation process would have given better outcomes.</p> <p>That said, a lot of what is now in front of Select Committee can't be changed so I just hope that the changes being proposed do not have to be revisited again in 5 years due to lack of understanding from the outset.</p>