

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 Michael Connellan – Solace Financial Limited
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) Registered Financial Adviser specialising in Risk & Health Insurance
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) Happy for my submission to be used and shared in my name

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 issues happy with all that
B.	Are there any further principles that should be included, or existing principles that should be removed? There should be less pressure (and threats) from providers (insurers and banks for mortgages) to put business with them, or lose your agency. Not common in the insurance space but I work alongside a number of mortgage brokers and this is a major issue they have to deal with.

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 absolutely.</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>Sorry I don't follow this question. As stated above (C), advisers should always put the interests of their client first and foremost and act with honesty fairness and integrity. Beyond that I'm not entirely sure what is being asked 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 think these would need to be structured at the larger group or industry level</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, happy for COI to be declared</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>I agree</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 in the client's best interests</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>This should already be governed by the privacy act, so don't feel that there's need for additional code standards for this</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>As above, not necessary as covered by the privacy act</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No</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>Yes but as stated above I feel that this should be agreed at a higher industry or group level, rather than at the smaller FAP level. If we have to have our own code of ethics then I agree that it should be documented and reviewed at an agreed interval</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>See above. If we have to have this, then yes publicly available i.e. a link on your website</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, as above if this becomes a requirement, this should be agreed at a higher industry or group level, rather than at the smaller FAP level</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>Experienced operators in the industry shouldn't have to. But I understand that new entrants to the industry could have training. If training on ethics needs to be anywhere, I would make it part of whatever education requirements become necessary for advisers to gain their license.</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>As above</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No</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. But really this should be part of the general advice process that an adviser follows. i.e. your recommendation</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</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, this is captured under wider legislation</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</p>

W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Adding unnecessary compliance will increase overall costs and the end result will be that advisers become restricted on how many clients they can actually help.</p>
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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>This should be covered off during the general advice process that an adviser takes a client through. However, this is another question which I'm not entirely sure that I'm understanding correctly.</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>As above, this should be covered off during the general advice process that an adviser takes a client through</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> <p>It seems to mostly cover face to face – what about advice via telephone or video conferencing?</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>The complexity should drive the analysis and documentation requirements. I.e. a client who tells me they want \$250,000 of Life Cover and just wants to look at the market from a pricing perspective, shouldn’t require as comprehensive a report as a client who wants Income Protection and needs advice on the right policies for their circumstances</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>Not sure on this but happy to be contacted to discuss further</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>Not sure on this but happy to be contacted to discuss further</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>As above, the complexity of the advice should drive the compliance requirements. Simple scenarios could be evidenced via email trails. More complex advice requires separate reports and analysis. If we have to start providing lengthy documentation to clients for even the simple things, most clients won’t even read it and the cost of time to the adviser in following such bureaucracy means they can’t help as many people. Or another reality could be that advisers can no longer afford to help the smaller clients creating a vacuum of advice for arguably those who need it most.</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>No</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>Please don’t over complicate it. I had clients recently who were referred on to me and they’d recently had advice from another adviser. He had taken them through a 30 page report with multiple options, scenarios and policy wording comparisons. They were utterly confused by the end of it and in their words ‘didn’t want that adviser back through their door.’ After I’d gone through the core functions and pricing of the main products they wanted, they thanked me for making everything so much simpler to understand and putting them in a position to make an informed decision.</p> <p>I don’t want to see the industry get to the stage where we have to put a 30 page report in front of clients and then they tick the box that they’ve received and understood it, in</p>
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	<p>the same way that we all blindly tick yes to the Apple terms & conditions document that we get every time our technology is being updated.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Yes happy for that</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>One very important thing – Bank tellers or bank Insurance Managers, need to be held accountable to the same standard. I often see terrible advice that clients have received from the bank. Recently a client who showed me their new BNZ policy which they had just taken up, replacing their old Fidelity Life policy. They had said to the BNZ, if you can match these benefits and save us some premium we'll move. The new policy put in place by the BNZ was cheaper but totally different benefits and had removed the Mr's Income Protection policy completely. The clients felt stupid but had just trusted that the banker was doing the right thing by them.</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>As above, keep documentation to a minimum for simple advice like when a client pretty much places an order for some straight Life Cover or vanilla mortgage advice.</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>If you are helping someone you know in a personal capacity and not being remunerated for it. You should be able to then get a waiver for them to sign.</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>As stated above this is fine for most of what I do in the Risk Insurance space, less necessary for things like simple mortgages.</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>The advantage is that the good companies/brokerages will manage this and their advisers appropriately. Hopefully this will then drive the bad eggs (both brokerages as well as their advisers) out of the industry.</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>As stated many times above, the 'client first' culture is the key principal to drum into every person in the organisation. Monitoring this through exception management and auditing would be far more effective than having everyone bogged down with bureaucracy.</p>

General competence, knowledge and skills

<i>Share your views</i>	
<p>NN.</p>	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Agreed.</p>
<p>OO.</p>	<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>An advisers experience and industry background should certainly be factored in.</p>
<p>PP.</p>	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>It recognises an adviser’s education and experience</p>
<p>QQ.</p>	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>None</p>
<p>RR.</p>	<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>By recognising those advisers who already have the Level 5 Certificate in Financial Services/university degrees in business and finance/significant experience in their respective field; you can reduce the overall cost and disruption to the industry in terms of education requirements. By matching advice complexity to the documentation and reporting required, this would also reduce the cost of compliance and time.</p>
<p>SS.</p>	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Good operators are constantly talking to everyone in the market and are abreast of relevant changes. If at an organisational level a business can prove they consistently share information and stay abreast of developments this should suffice to keep advisers registered. If an organisation had consistent complaints it would need to prove a change in structure.</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>
UU.	<p>How should RFA's experience be recognised? Time and types of roles in the industry should count for something</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill? It would minimise the disruption on the industry as a whole</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill? Nil</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)? This is going to be a period of disruption in the industry with the vast majority of advisers needing to go back to school for their required qualifications. Anything that can be done to lessen that impact the better</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? Happy with the above. As long as we're saying here that someone who already has their Level 5 Certificate in Financial Services won't need to go back through it again. I'm ok with bridging papers if there's something new which wasn't covered off when I did my Level 5 in 2012.</p>

Other comments

Share your views

- ZZ. Are there any other comments you would like to make to assist us in developing the Code?
- No. My main points have been covered above but for clarity:
- Don't over complicate the advice process, that's not what clients want and will lead them to being less informed and more susceptible to advisers trying to confuse them into doing something which isn't in their best interests.
- Make sure the banks and those giving advice from behind the counter are held to the same set of standards as we are. The banks and insurance companies must also be stopped from applying pressure on advisers to give them more business purely from the perspective of meeting their quotas.