

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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Robert Thumath. Mortgage Mart (NZ) Ltd</p>
ii.	<p>Please provide your contact details</p> <p style="text-align: center;">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>20 years self employed mortgage advice, typically restructures, consolidations, first home buyers ...the full range of mortgage finance requests.</p> <p>My organisation used to charge the client direct and then started being paid by the lenders. Have also had white label lending products. What this meant in practice was to take lending applications, assess them, see if they fit within product guidelines, formally submit to Lenders Mortgage Insurer for approval to their guidelines and only then submit to the funder.</p> <p>This gave us a unique insight into the whole process from origination through to issuance. Mortgage Mart was also the “mortgage manager” which meant ongoing client liaison and monitoring. This was securitised funding and gave us the ability to undercut the banks but with (often) superior products. Unfortunately the Australian based funder for this pulled out of NZ during the GFC.</p> <p>Mortgage Mart was also involved in arranging life and trauma insurance from the beginning, first as a referrer only and then through our own agreements with various life companies.</p> <p>We have always used comparison modelling in mortgages and latterly with insurance to try to ensure the best fit at the best price for our clients, and if we did not have an agency with whoever had the best products (mortgage or insurance) then we would try to get that agency so we could always offer what we thought was the best available.</p> <p>We have developed our own computer model to use with client questionnaire to standardise risk protection recommendations.</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>

Principles for drafting the Code

Share your views

- A. What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?

First of all I would like to comment that while those in the FMA, the Code Working Group and MBIE among many, are paid well to sit at their desks writing reports in judgement of (Independent) commission based advisors we the said advisors have to effectively pay to contribute, by taking time out of productive (income earning) day/s.

Back to my submission in relation to “Good advice outcomes”.

Good Advice Outcomes are hard to argue against but even harder to define.

It also highlights to me that it is very hard or in fact impossible to legislate ethics.

A good advice outcome would/should be that as many consumers as possible have access to independent, informed and ethical advice to ensure they have the best cover available taking into account their own particular circumstances and budget.

I maintain that the independent advisor model is the major reason for change and improvement in personal risk policies offered to consumers in NZ and is thus one of if not the major driver for “Good Advice Outcomes”.

At a producer/advisor meeting this writer attended that very fact was confirmed by the insurer. “Why aren’t you selling our policies?” we were asked. “We improved the commission and we are one of the highest payers of commission yet you still haven’t been selling our products”. Then he detailed introduced changes that the independent advisors had been asking for including contract guarantees in their policies.

This evidenced that the majority of independent advisors do in fact have the best interests of their clients at heart.

In the recently released FMA report much attention is drawn to a relatively miniscule proportion of RFA’s and AFA’s who might not have followed best practice. But even there the FMA report fails to disclose much more than that some advisors did not record (or follow) correct procedures. Why did the report not detail example of how the “churned” policies had disadvantaged the client? Did they?

Or did these advisors simply work harder because of the bonus available? This would be common for employees in all sorts of businesses, to put in extra effort to

hit target if a bonus is on offer.

If I were to buy the “book” of a retiring “aligned advisor” would I not have a duty under “best advice outcome” to look seriously into upgrading (churning??) as many policies as possible? (After taking into account current requirements, policy features and potential exclusions involved of course!) Would that put me under the spotlight?

There are various reports published that mention policies “churned” for little real benefit for the consumer. Most of these comments are from uninformed commentators who have no real idea of the differences between policies. Who decides this? The FMA reported that the product score had little bearing on whether a policy was changed or not. The advisor might say otherwise. How was this determined?

Purchasing the right insurance policy is fiendishly difficult. Making anything resembling a rational and informed choice requires knowing which future events are covered by the insurance, and the likelihood of the insurer paying up if a claim is made.

Finding out which events are covered by a policy often requires wading through lengthy and complex product policy documents. In addition, making any reliable assessments about whether the insurer is likely to pay up on a claim is next to impossible for the average consumer.

Many advisors attend regular product training as well as using paid outside research to back up their own research and experience.

The public statements coming from FMA and MBIE contribute to the distrust of advisors and steer consumers to VIOs such as the banks.

Does this contribute to a “good advice outcome?”

I would say not.

An example. A client of ours had a carefully designed policy package. He went to the bank for a refinance who had a stipulation that they had to have two or more other bank products in order to qualify for an interest rate discount. One of those products was life insurance. The bank salesperson told my client he was “over insured” and sold them a new bank policy.

Any independent, informed advisor will confirm that many bank policies are barely fit for purpose in comparison with what is available, and with terms and conditions that can be changed at will by the bank insurer. A comparison of the bank vs existing Mortgage Repayment Policy for the above mentioned client showed existing policy benefits that would be lost when they switched to the bank policy as follows,

Advanced Payment, Bed Confinement, Future Insurability, Home Care, Inflation Adjustment - on claim, Occupational Retraining Pre Disability - Time worked, Reinstatement, Travel and Transport, Waiver of Premium, Back to Work, Child Care, Future Reduction in Wait Period, Inflation Adjustment - in benefit, Injury Benefit, Partial Disability, Rehab & Home Modifications, Trauma Benefit, Guaranteed Policy Wording, Upgrade Policy Wording

I have heard some claim that many of these “supposed benefits” are worthless or not relevant to “proper insurance”. My answer to that is that any insurance is possibly worthless...until you need it.

It is further claimed that personal risk policies sold by advisors contribute to the cost of said policies because of the outrageous high commissions paid to advisors. The truth is that commission only sales is almost certainly the lowest cost distribution model for insurers. No buildings and rents, no salaries and holiday pay, no unproductive staff and their costs to carry.

The FMA report concedes that about one third of insurance advisors are earning less than the minimum wage (gross) which could well be at least partly because many do operate under high ethical standards

The online-only insurers that claim their policies are cheaper because they don't pay brokers(advisors) are really trying to hide the fact that their policies are so poor they would rarely be sold by advisors no matter how much commission they offered.

ASIC report 489 Oct 12 2016 details “declined” rates of claims against policies introduced by advisors vs non advised. The “declined” rate is 71% higher.

Client Interests standard of care. It was raised in the Code Working Group discussion paper part two, “... This makes a broad “best interests” duty impossible without clearly limiting scope of engagement, but that in turn would undermine the intent, of the “best interests” principle. An alternative could be to restate the existing Code of Conduct’s “client interests first” duty (Code Standard One)....Any broad-based high-level duty mandated in a revised Code of Conduct will struggle to be tightly defined and enforceable. This leads to a further question – *if it doesn't add to existing statutory duties, then why have it?...*”

Good question. We independent advisors have an existing and recently upgraded duty of care to the client and this is reinforced by the ability of the client to use potentially punitive provisions of dispute resolution schemes as well as us being open to legal action through the courts without the protection of Limited Liability Companies. (Armitage vs Church)

A further question would be “if it ain't broke why fix it?”

The actual detail in the FMA report highlighted not that “advisors are flogging

	<p>insurance only in their own interest” but rather than the overwhelming majority are now operating with full duty of skill care and ethics.</p> <p>The biggest issue to many informed advisors in this industry is in the VIO model masquerading as advice. This has been made worse by the proposals to accept “aggregated advice” as an option.</p> <p>The idea that now they will in effect be able to write a tick box paper process and make sure they have at least one AFA equivalent in the organisation and to be defined as giving advice is quite preposterous especially on the ever increasing requirements imposed on individual advisors. It is hard to see how this can possibly lead to “improved advice outcomes”</p> <p>Equally the removal of “natural person” requirement for advice giving is not likely to give rise to “better advice outcomes”. Many of these models will be owned by the VIOs and will be barely more than a sales and cost cutting device.</p> <p>Many advisors, myself included uses robo advice type computer models but to assist not to replace personal involvement. I submit that they should only be allowed in that context, in what has been described as a “hybrid” model.</p> <p>The personal interview is a vital and integral part of the advice process. We are still not at the stage in computer technology where AI can replace human intuition.</p> <p>Thankyou</p>
<p>B.</p>	<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

Share your views

C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. Yes
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Keep the commitments you make to your client

D.	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. No. There are bigger fish to fry
E.	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? -

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. Much is made of this in the FMA report. They single out commission based sales and “soft” commissions and appear to be promoting a prescriptive process in respect to conflict of interest. Yet conflict of interest is inherent in all sales.</p> <p>But back to financial advice which does have a legislated duty of care ... A VIO FAP or employee has an inherent conflict of interest in selling a (very often) substandard product without any real analysis of best advice outcome.</p> <p>Is that going to be singled out in the next FMA report?</p> <p>Another glaring example. The NZ Government passed increases in accommodation supplement in 2017 which would almost certainly be passed directly to landlords,(borne out by subsequent rent average increases) when approx. 75% of our MPs are in fact landlords.</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</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>No</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>Not the main issue at this point</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</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>No</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>Sounds like a field day for “compliance specialist”s and basically meaningless in practice.</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</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. The FMA report highlighted 4 advisors out of approx. 3,700 who needed formal censure, a tiny percentage (0.108%) which I would respectively submit is quite exemplary and a fine example for other professions to aspire to including the law profession yet alone real estate agents.</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. I fail to see how it will contribute to “best advice outcome” given the above results.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</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>
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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?
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.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

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.
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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?
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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?

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).
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.)
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.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process?
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process?
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?
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?

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.	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.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
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.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	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?
UU.	How should RFA’s experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?

WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?
XX.	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)?
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?

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?