

# 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 Jenny Campbell, CEO, The Mortgage Supply Company and NZ Mortgage Advisers Ltd
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)  <b>I lead a group of 120 mortgage advisers based around New Zealand. Some of these advisers work under our branded Mortgage Supply model, with the remainder operating under their own brands, but belonging to our Mortgage Advisory Aggregator group – NZ Mortgage Advisers Ltd.</b>
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)  <b>Nothing confidential</b>

## 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?  <b>This overarching theme is great. This philosophy should be at the heart of all advisers’ business models. We also really liked the overarching theme of ‘Clients Interests First’, as this was very clear, and easy to communicate to all parties.</b>  <b>We don’t particularly like the new phraseology of ‘Client needs take Priority’, as believe this language is a little woolly. For example – are these needs ‘a’ priority, or ‘the top’ priority? There is too much room for different interpretations.</b>
B.	Are there any further principles that should be included, or existing principles that should be removed?  <b>No</b>

# 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><b>This should be a given. This requirement must be given the highest possible priority, and we believe that this Standard could encompass the 'Ethical behaviour' requirements discussed below.</b></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><b>This sounds like a nice idea in theory, but would be extremely difficult and cumbersome to have a clear minimum standard of an 'impression or expectation'.</b></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><b>Would the Code of Ethics be a prescribed form?</b></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><b>Conflicts of interest should be disclosed, but this should be able to be covered off in one comprehensive Disclosure Document.</b></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><b>Again, this should be a given.</b></p>
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H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p><b>Clauses discussing ‘client harm’ is inflammatory and would do nothing to increase the confidence in consumers towards professional advice. Surely this could be worded better?</b></p>
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## 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><b>The Code is not an appropriate place for specifics of data collection and storage. There should be an overarching Standard of ‘Keeping clients data confidential and secure’.</b></p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p><b>Yes – but in a simple broad framework</b></p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p><b>No comment.</b></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><b>No objection, as long as this is not a cumbersome process.</b></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><b>Would not a ‘Corporate Code of Ethics’ be somewhat overkill for a one-man-band adviser?</b></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><b>Again, overkill for one-man-band advisers. ‘Leadership and culture’ should not be in the Code of Conduct.</b></p>
O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p><b>No Comment</b></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><b>Should be part of routine CPD.</b></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><b>This should only apply to larger financial Advice Providers.</b></p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p><b>As part of routine CPD.</b></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><b>'Clients Interest First' solves almost ALL ethical dilemmas. We can't see how a formal framework would be required.</b></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><b>ABSOLUTELY NOT. This is a major concern to us. 'Sign-off' will add an enormous burden on advisers and groups, and will delay outcomes for customers. Mortgage clients are always time-bound, and the added complexity of 'sign off' is completely unnecessary. Mortgage advice given by an adviser is in practise already signed off by a lender, and in most cases, by the client's solicitor. This is more than enough oversight. Also – for a one-man-band adviser, who would even give this sign off? Themselves?</b></p> <p><b>We would be also very concerned that if advice is 'signed off' by another party (say a Head Group for example), then the adviser may feel that the ultimate responsibility for that advice does not sit with them, and <u>if advisers are not personally accountable for their own advice, we will see poorer client outcomes.</u></b></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><b>Again, not required for most one-man-band advisers. Could easily be covered off in a normal internal complaints process.</b></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><b>No – again, complete overkill for the smaller advisers. There is not even evidence that violations of ethical behaviour is a problem in the mortgage advice space, so what would they be looking for? This looks like ‘a solution looking for a problem’, rather than the other way around.</b></p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p><b>YES of course. Regulation must be in place to solve a problem, and create better outcomes, not just to create compliance processes for the sake of it.</b></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><b>Yes – within reason</b></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><b>How do you know that this is necessary? Do advisers really need to be told everyday to behave well? This seems to be outside of the scope of regulation.</b></p>
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## Conduct and client care

### Advice situations

<b>Share your views</b>	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p><b>No Comment</b></p>

## 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). <b>No Comment</b>
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.) <b>No Comment</b>
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)? <b>No Comment</b>
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? <b>Extra costs always need to be considered.</b>
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others? <b>No comment</b>

## Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? <b>Recognition that not all advice processes need to be same. The Mortgage advice process is very time bound, and cannot be staggered into different meetings with written recommendations prior to implementation etc. Clients to not want an overly complicated process with piles of disclosure and paperwork. They want quick, efficient, and easy to understand processes, with a clear cut outcome.</b>
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? <b>Guidance material is always welcome</b>
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? <b>No</b>
II.	Should any of the key aspects that we have listed above be removed? If so, why? <b>No Comment</b>
JJ.	Are there any situations in which an advice process need not be followed?



	<b>There does need to be recognition that sometimes the advice process has to by necessity be shortened.</b>
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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? <b>We support the notion that advice can and should be given in certain circumstances without a personalised suitability analysis. This would be especially applicable to simple advice around mortgages.</b>
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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? <b>Templates or Guidance Notes are always appreciated.</b>
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. <b>As long as these processes are scalable, they should be achievable.</b>

## 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? <b>Agree</b>
OO.	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. <b>No Comment</b>
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills? <b>Sharing knowledge and experience is a key element to good advice within Firms, and this exchange of knowledge should be formally recognised.</b>
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills? <b>No Comment</b>
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)? <b>Encouraging upskilling in a meaningful and relevant way (i.e. through less formal methods such as knowledge sharing), will create better advice environments.</b>
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? <b>No Comment</b>

## 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? <b>This raises concerns for us around advisers in larger firms. The playing field must be level, relative to the complexity of the advice being given.</b>

UU.	<p>How should RFA’s experience be recognised?</p> <p><b>Existing advisers should be able to complete a ‘back fill’ type quiz or test to check on basic competence.</b></p> <p><b>Making an established adviser go back to complete their ‘Speciality Strand’ – in our case - the Residential Properly Lending Strand would not improve the quality of advice, as that course would be completely revisionary for established experienced advisers.</b></p> <p><b>We do however, think that all new advisers should complete this course.</b></p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p><b>We like the idea of some flexibility around proving competence.</b></p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p><b>No Comment</b></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><b>No particular comment</b></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><b>No comment</b></p>