



**Submission on the Code of Professional Conduct for Financial Advice Services
April 2018**

Feedback submission from Perpetual Guardian and Openly Investing Limited:

This submission is made on behalf of Perpetual Guardian and Openly Investing Limited. Perpetual Guardian is the trading name of The New Zealand Guardian Trust Company Limited and Perpetual Trust Limited. Both companies are registered statutory trustee companies pursuant to the Trustee Companies Act 1967.

Perpetual Guardian is the result of the coming together of Perpetual Trust and Guardian Trust. As two of New Zealand's oldest trustee companies, we have over 130 years of experience in providing estate planning options for New Zealanders.

Perpetual Guardian has offices nationwide; with over 140,000 Will relationships and administering or supervising assets valued over \$100 billion.

The New Zealand Guardian Trust Company Limited, Perpetual Trust Limited and Openly Investing Limited are wholly owned subsidiaries of Complectus Limited.

Openly Investing Limited ('Openly') provides investment management services to Perpetual Guardian under an agreement for services executed by all parties. Openly is a new entity and has been providing these services since 1 January 2018. Prior to this date, Openly's Authorised Financial Advisers were employed within the Perpetual Guardian Investment Management team.

Both Perpetual Guardian and Openly can be contacted at:

Lynne Carroll
Head of Risk and Compliance
Level 13, 191 Queen Street
PO Box 1934, Shortland Street
Auckland 1140

Principles for drafting the Code

<i>Share your views</i>	
A.	<p><u>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</u></p> <p>We agree with the underlying principle of “good advice” however we would suggest removing the word ‘outcomes’ because the focus should not always be on the outcome but instead the process taken.</p>
B.	<p><u>Are there any further principles that should be included, or existing principles that should be removed?</u></p> <p>No comment</p>

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	<p><u>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</u></p> <p>We agree with the requirement to act with honesty and integrity. However, we suggest replacing ‘fairness’ with ‘good faith.’ Fairness may be ambiguous in differing contexts. In addition if the term ‘fairness’ were to be used, it would need to be consistent with the references in the FMCA as the superior legislation.</p>

Keep the commitments you make to your client

D.	<p><u>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.</u></p> <p>We consider that the minimum standards should extend beyond strict legal obligations because the client should be able to expect more than a tick box approach from their adviser.</p>
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E.	<p><u>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?</u></p> <p>We agree that a Financial Advice Provider should have its own Code of Ethics. The Financial Advice Provider should be required to maintain a Code of Ethics which meets the minimum standards of the Code of Conduct, however the requirement should allow scope for the Financial Advice Provider to expand beyond the minimum standards in the Code and tailor its own Code of Ethics to its particular business.</p>
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Manage and fully disclose conflicts of interest

F.	<p><u>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</u></p> <p>No comment</p>
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Do no harm to the client or the profession

G.	<p><u>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.</u></p> <p>Yes, we agree with this.</p>
H.	<p><u>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</u></p> <p>We do not consider this to be necessary. This is because if the provider is compliant with all elements of the code and legislation they should not be able to do harm to the client.</p>

Keep your client's data confidential

I.	<p><u>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</u></p> <p>We do not consider this should be subject to the Code as it will be subject to privacy laws. In addition, care should be taken to not over prescribe for obligations given how quickly technologies are advancing.</p>
J.	<p><u>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</u></p> <p>We consider that confidentiality obligations should be included to the same extent as required by other professions, including doctors and lawyers. This will ensure that the financial industry is seen to be meeting the same standards of a profession and ensures the protection of its clients.</p>

K.	<p><u>Are there other aspects of maintaining client confidentiality to consider?</u></p> <p>No further comments.</p>
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Ethical processes in Financial Advice Provider entities

L.	<p><u>Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?</u></p> <p>Yes, we consider that this will ensure a Financial Advice Provider is held accountable for its ethical processes.</p>
M.	<p><u>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?</u></p> <p>Yes, we consider that the Code of Ethics should be publicly available. A Financial Advice Provider should have nothing to hide in this regard and it will ensure there is transparency and accountability for compliance with the Code.</p>
N.	<p><u>Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?</u></p> <p>We do not consider that Financial Advice Providers should be subject to additional standards in respect of leadership and culture. We consider that these standards should already be driven by the top levels within the business and setting additional standards in the Code will go too far.</p>
O.	<p><u>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</u></p> <p>Not at this stage. We consider that additional standards beyond what is proposed by the Code will be driven by competition and reputation.</p>

Ethics training

P.	<p><u>Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.</u></p> <p>Yes, we agree with this requirement.</p>
Q.	<p><u>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.</u></p> <p>We consider that ethics training should be provided to all employees within the business regardless of their role. This is because the culture and ethics of the industry will be driven by all those involved within the business, regardless of their position and level.</p>

R.	<p><u>Should there be a requirement for ongoing refresher training on ethics?</u></p> <p>Yes, we consider refresher training should be undertaken annually to ensure this captures new starters and remains front of mind.</p>
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Resolving ethical dilemmas

S.	<p><u>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.</u></p> <p>Yes, this will provide guidance to the financial advisers.</p>
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Compliance functions

T.	<p><u>Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?</u></p> <p>No, we consider the company name should only be required as they are ultimately responsible for the advice.</p>
U.	<p><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.</u></p> <p>Yes, a compliance function should be in place, including whistleblowing policies and procedures.</p>
V.	<p><u>Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?</u></p> <p>We consider this may be going a step too far, particularly with regard to smaller companies within the industry. Instead we suggest at a minimum that companies are required to internally report and monitor incidents, breaches and complaints to ensure that any ethical violations are detected.</p>
W.	<p><u>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</u></p> <p>Yes, there will be compliance costs involved however this is a cost required to lift industry practice.</p>

Responsibility for the whole advice process

X.	<p><u>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.</u></p> <p>We consider that the Financial Advice Provider should ultimately be responsible for meeting all standards throughout the whole advice process. This is consistent with all other legislation which allows for outsourcing in some respects but requires the provider to ultimately remain responsible for ensuring compliance with the laws and regulations.</p>
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Reinforcing good ethical behaviour

Y.	<p><u>What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?</u></p> <p>We consider there may be scope for advisers to sign up to an oath i.e. the banking and finance oath. Financial Advisers could be required to include reference to the Code in all their advice documentation however there is a risk that this will become a tick boxing exercise and devalue the ethical process. We note that this is indicated in the proposals released by MBIE on 10 April for ‘Disclosure requirements in the new financial advice regime’ (page 11, para 22B).</p>
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Conduct and client care

Advice situations

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

Advice-giving standards

AA.	<p><u>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).</u></p> <p>Ethical behaviour is unquestionable but we can improve with better disclosure from Financial Advice Providers with regard to specified measurables i.e. fees, commissions, dispute resolutions, reporting.</p>
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BB.	<p><u>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.)</u></p> <p>No comment</p>
CC.	<p><u>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)?</u></p> <p>Not specifically however we do consider that there should be greater transparency given to cases heard by the Disciplinary Committee. Where an adviser has been found in breach of the Code, the adviser’s details should be disclosed to the public, along with background to the case. This should however be subject to some safeguards and have particular regard to the level of offending.</p>
DD.	<p><u>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</u></p> <p>The education and compliance framework will need to accommodate more staff than just the AFAs. This will have a greater financial impact on smaller Financial Advice Providers than the larger corporates.</p>
EE.	<p><u>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</u></p> <p>No comments</p>

Advice process

FF.	<p><u>Do you think there are any other components that should be included in the design considerations of an advice process?</u></p> <p>Yes. To efficiently measure how much the client understood the advice given, the risk associated and the outcomes expected.</p>
GG.	<p><u>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</u></p> <p>Yes</p>
HH.	<p><u>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?</u></p> <p>No comments</p>
II.	<p><u>Should any of the key aspects that we have listed above be removed? If so, why?</u></p> <p>No comments</p>
JJ.	<p><u>Are there any situations in which an advice process need not be followed?</u></p> <p>Instruction only engagements.</p>

Personalised suitability

KK.	<p><u>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</u></p> <p>The example, in our opinion is enabling the provider to push a product which may or may not be suitable for the client.</p>
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Organisational standards

LL.	<p><u>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?</u></p> <p>Further explanatory material may not be required from the Code, however there should be a set of standards and guidance from the regulator including how they will be assessing compliance and what they expect to see.</p>
MM.	<p><u>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</u></p> <p>As a QFE we are already subject to licensing and compliance requirements. Therefore the burden will likely hit smaller companies without QFE status. However, we consider this is a worthy cost to ensure the standards of the industry as a whole are improved.</p>

General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p><u>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</u></p> <p>Yes</p>
OO.	<p><u>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.</u></p> <p>No</p>
PP.	<p><u>What do you think are the advantages of this approach to general competence, knowledge and skills?</u></p> <p>It provides consistency and makes everyone accountable.</p>
QQ.	<p><u>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</u></p> <p>No comment</p>
RR.	<p><u>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)?</u></p> <p>No comment</p>
SS.	<p><u>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</u></p> <p>It will make people accountable and will ensure the client’s best interests are considered.</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	<p><u>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?</u></p> <p>An advantage is the clear definition of service levels and skill sets. It is unlikely to add to our compliance costs.</p>
UU.	<p><u>How should RFA's experience be recognised?</u></p> <p>They need to upskill to meet the minimum standards so all Financial Advisers/Nominated Representatives are of equal standing as to skills knowledge & competence.</p>
VV.	<p><u>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</u></p> <p>It recognises that a different skill set is required to provide product advice vs. financial planning. It also recognises the higher level of competence, knowledge and skill required to deliver financial planning services. This should continue to increase consumer confidence as it drives the shift from industry to profession and non AFA's will be required to upskill to meet the higher standards.</p>
WW.	<p><u>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</u></p> <p>No comment</p>
XX.	<p><u>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)?</u></p> <p>It may result in a reduced number of qualified Financial Advisers because experienced advisers may not be willing to invest the time to attain the level of education required. The increased compliance may also reduce the number of smaller players in the industry and result in less competition and consumer choice.</p>
YY.	<p><u>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?</u></p> <p>No comment.</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 comments