

# Code of Professional Conduct for Financial Advice Services

Peter Leitch, Financial Adviser, SHARE, Wellington

*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.                        | Peter Leitch, Financial Adviser with SHARE, Wellington.   |
| ii.                       | <b>S 9 (2) (a)</b>  |
| iii.                      | I have been providing advice to clients since 1994. I have an MA (Hons) from Victoria University (1992); I am an Authorised Financial Adviser (FSP # 107284) and was involved in my professional body (PAA) for a number of years as a board member and as Chair. |
| iv.                       | No information is confidential.   |

## Principles for drafting the Code

| <i>Share your views</i> |   |
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| A.                      | <p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>I like that the basis of the code remains principled. At its core should remain principles, rather than prescriptive or instructive. This should mean that the code can stand the test of time – which is very much what is needed – after all these years of change. All participants – consumers, clients, providers, and advisers need consistency and sound principles.</p> <p>Everyone wants a good advice outcome. A good advice outcome for the client is a good outcome for all.</p> |
| B.                      | <p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>I’m not sure if it is a new principle, but the requirements of the code should be fit for purpose – so that we are not making things too complicated – for all participants.</p> <p>We also need to make sure that the client is clear about what may be affecting the advice or service/s that they are receiving – but that limitations may be overcome by the standards and ethics that all participants are subject to.</p>  |

We need to make sure that we don't over complicate the provision of advice when clients ask for simple information and guidance. If, for example, a client is seeking renewal options on the price of health insurance – and how a higher excess may impact their premium (simple example) that the requirements for information and disclosure from the adviser, to the client should be able to be simple and easy, with minimal conduct and regulatory requirements.

## 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, agreed. And this applied to all participants.

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.

Ethical behaviour requires understanding from participants. Ethics are effectively an emotional response to specific circumstances. Some of the ethics displayed by all participants can be shown to be lacking. Whether it is a consumer being deceptive while completing a claim form, or an adviser stretching the likelihood of a negative return on an investment, or why an investment should be changed, or a provider declining claims, or a group encouraging advisers to write business with a certain provider due to enhanced commission terms.

A code of ethics is central to any professional body and it should also be part of every participants professional conduct. Ethical behaviour should be clear on honesty, integrity, conflict management, harm and also on areas such as use of personal information.

I don't think an additional position on reputational harm is required.

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?

It needs to be kept in perspective to the possible harm outcome. And a general basis of working on that all participants are honest and work with integrity.

## Manage and fully disclose conflicts of interest

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| F. | <p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p> <p>No, I think the code should remain principled. The principles of the code shine through. With additional emphasis on ethics and these ethical standards needing to be met by all participants, the conflict of interest aspects will be covered by this.</p> <p>Inherently, one could argue that there is a conflict of interest in a bank offering a mortgage at a rate that is any more than what they may be able to attract a deposit for. And over 30 years, can this really be in the client's best interest? But we live in an environment where money is the currency that we use to exchange goods and services – and I think there has been an overly pure focus on the client. When I buy a product or service, I know there is a margin for all those that have participated in the supply chain. Is there a conflict of interest because one person or entity generates revenue from the provision of a good or service? No. But every person needs to know that there are checks and balances to make sure that the good or service is fit for purpose. And that if that person has sought advice on that good or service, that the revenue generated does not overtly influence the advice being provided. And if it does, this should be clearly shown in a manner that is reflective of any harm that may be caused to the person.</p> |
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## Do no harm to the client or the profession

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| 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, but let's make sure we are all clear about what 'disrepute' may be. We don't need some participants trying to bring in different standards on the basis that others may be causing 'disrepute' (i.e., Is a product or service which generates a commission, causing 'disrepute'? Of course not, but if you are a platform or provider which perhaps manufactures the product, (so generates revenue through product design and placement) and they market their services as being 'commission free' and argue that due to this, they have a service which does not cause 'disrepute' – is that fair? Is that ethical? Hence why the ethics are so important – as they do directly affect the outcome for the consumer/client.</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>The challenge here is the moving feast that standards can become. When I first started 24 years ago a commission of 75% of first year premium on a savings contract was deemed to be no harm, as it was less than the 95% that had been paid on earlier contracts. And is this harm? No, if the client has had strong advice, support, encouragement over the years from an adviser, who has been paid then, and on an ongoing basis, the client is likely to be in a better position than they would have been if the adviser had not encouraged them to save for their retirement.</p> <p>Client harm is often based on outcomes. And outcomes may be judged with great accuracy with the benefit of hindsight.</p> <p>We need to ensure we don't create an environment where people, products, or processes are always judged with the 20/20 benefit of hindsight. All we can do is make sure that the processes in place are suitable and that there is a level playing field, where clients can choose who or what they want to deal with.</p> |
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## Keep your client's data confidential

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| I. | <p>In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?</p>   |
| J. | <p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p>   |
| K. | <p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Client data is critically important to an adviser's business. We get to know an awful lot about our client's health, financial position, family affairs. Advisers are very conscious of this and only use it for the purposes that it was intended.</p> <p>With the development of CRM systems, which are widely adopted throughout the NZ advice sector, there needs to be standards within an organisation (both at adviser and practice level) which ensures that the data remains protected. And that any sharing of this data to third parties for audit or regulatory requirements, have suitable guarantees and standards around data protection.</p> |

## Ethical processes in Financial Advice Provider entities

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| 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 let’s try and keep it simple.</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>The code of ethics should be client facing. It should be the same irrespective of the entity providing the service.</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>It needs to be workable. We need to make sure that the ability to provide advice to the client is simple and accessible. Yes, there needs to be standards – and these are principled and prescribed standards, but we also need to make sure that any additional information or standards needed do not impinge on the ability for the client to access advice and services. We must maintain awareness of unintended consequences.</p>  |
| O. | <p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>If the FAP is a manufacturer of products where there are alternative mechanisms for remuneration, or aspects which may impact on the advice or service being provided, then there needs to additional standards, unless these matters have been covered off in others areas of ethical behaviour of codes of conduct.</p> <p>As you will be aware, there has been considerable discussion and concerns raised about vertically integrated organisations – where the manufacturer of product does not necessarily advise its customer that there is a different product or service provided by a different FAP which may be more suitable.</p> <p>The new code does need to address this. But at the same time, not all models where there is an FAP that is a corporate entity, will this mean that they are a manufacturer. SHARE for example, is likely to become a FAP, but the advisers who operate within SHARE, are able to use multiple manufacturers and providers of products or services.</p> <p>It’s probably necessary to have a health warning if the structure of the FAP means that the staff are advising on products and services which that FAP manufactures. The current structure with unqualified staff being able to assist people on category one products has been a disaster and caused unnecessary anguish for so many. This can’t be repeated.</p> |

## Ethics training

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| 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. But again, make sure that there is not replication of training or regulatory compliance standards.</p> |
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| 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>If it is restricted to the appropriateness of their role and contribution. It is necessary to manage regulatory and compliance costs creep.</p>                             |
| R. | <p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No. If an organisation can show its ethics framework, process, and no issues have been identified through audit or usual reporting, a specific requirement is unnecessary. I would expect that a client facing adviser will have ethical CPD credits to achieve or maintain, as set by their professional body. This will be sufficient.</p> |

## Resolving ethical dilemmas

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| 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 don't create a framework for compliance sake when common sense and ethical behaviour would lead to the same outcomes, but without additional regulatory and compliance costs.</p> |
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## Compliance functions

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| 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>Authorised Financial Advisers do this already. They are acting in their client's best interests.</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>Yes, but again, I know that many businesses have these sorts of measures in place already.</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>See response to S. I see this question requiring a similar response.</p>  |

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| W. | <p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Yes. There are huge compliance costs for all of this. And whilst the large FAPs will talk about the cost of millions of dollars, the relative cost for a small FAP is much greater in real terms.</p> <p>For fire and general insurance brokers, who often deal with thousands of clients a year and transact many thousand renewals, the compliance costs are significant – and this group in particular I see being hard hit. However, I am sure IBANZ will submit on this.</p> <p>FAPs, big and small, have incurred significant costs in compliance in the last 10 years. This compliance cost is also borne by the client, and in many situations the compliance cost has been far greater than the value of the transaction.</p> |
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## Responsibility for the whole advice process

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| 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, but it needs to be suitable to the type of advice or service being offered.</p> |
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## Reinforcing good ethical behaviour

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| 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>The more suitable and realistic the code is to the realities of the day to day dealings with clients the better. No adviser and no client I believe wants to read and sign off a number of pre-written disclosure and ethical practice statements each time they meet – or re-engage in a service.</p> <p>It's essential that focus is given to the advice and services being provided and to ensure that they standards there are suitable to the type of service or product being provided.</p> |
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## Conduct and client care

### Advice situations

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| <b><i>Share your views</i></b> |   |
| Z.                             | Are there other delivery methods that should be considered when testing our thinking? |

## Advice-giving standards

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| 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. | <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>I agree with the findings you refer to in the document. If a person has contacted you and wants advice around a specific product (such as travel insurance) the requirements around disclosure, scope of service, advice, secondary disclosure become cumbersome for all participants. The requirements need to be suitable to the advice or service being recommended.</p> <p>KiwiSaver has created similar issues – where a client may seek advice on risk profiles, or product suitability – and with existing clients this really requires a limited scope of advice, to say that there is no advice being given on all other areas that they may engage with you on occasion in. They know that. You know that. But compliance requires additional documentation to show that. It does not lead to better outcomes for the client. It simply leads to frustration.</p> <p>Suitability is key.</p> |
| 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?   |

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| <p>EE.</p> | <p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Allow simple products to have simple mechanisms for advice. The basic principles of clients first, ethical behaviour and only working in areas where an adviser (entity) has the skill, knowledge, and competence, should provide the framework to minimise harm to the client. Indeed, it will enhance it, for they will be able to access simple advice without the burden of costly compliance.</p> <p>Its questionable if an adviser or entity should receive ongoing commission from a product that they are no longer able to give advice on. I think this should stop.</p> <p>I don't though favour a client needing to approve any payment of a trail or reoccurring revenue from a product or service. Many advisers in the last 5 to 10 years have increasingly focussed their business revenue to be paid on a reoccurring revenue model, rather than upfront commission. This leads to better advice outcomes to clients. It provides better sustainability for providers. I believe it leads to less replacement business.</p> |
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## Advice process

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| <p>FF.</p> | <p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>Suitability, Suitability, Suitability. I can't stress this enough. The process of providing advice to clients is multi-disciplinary and can change over time. With personalised advice the initial process of providing advice can take months and the nature of the engagement can change over years. The type of advice I provided to my clients in 1994 is different to that which I provide in 2018. Their needs have changed. The types of products and services have changed. Often the company which has manufactured the products has changed. The consistency (other than youthful looks from both parties) is the adviser and the client.</p> <p>Considerable trust is developed over the course of a client adviser relationship. The advice process should be able to adapt to the type of relationship that is in place. No one wants to be providing documents which are un-read.</p> <p>Complex advice situations require time and consideration.</p> <p>Adding a motor vehicle insurance policy on a new car, for example, does not require the same process. There needs to be sufficient flexibility for the code to respond to these situations – and that's where the principles are so important.</p> |
| <p>GG.</p> | <p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>I think this would be useful. In the past, the guidance provided by the FMA has been useful. Some consistency between FMA and Code Committee would be good too. And then you have MBIE too. It would be good if there could be some documentation that is</p>   |

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|     | provided by the three entities, so that there is some consistency of viewpoint – and in doing this, it would, I believe, lead to better understanding of every entities’ roles.   |
| 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?<br><br>That it remains suitable to the product or complexity of the advice/service/product being provided – and to whom the advice is being provided. |
| II. | Should any of the key aspects that we have listed above be removed? If so, why?<br><br>Not all advice situations with simple products require written advice. The principles, process and ethics should manage the risks well to minimise any harm.   |
| JJ. | Are there any situations in which an advice process need not be followed?<br><br>Suitability, suitability, suitability. Simple situations can be simple for the adviser and the client, and the product manufacturer.   |

### Personalised suitability

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| KK. | What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?<br><br>I agree with them. Sounds like the provision of common sense. |
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### Organisational standards

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| 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?<br><br>Again, sounds sensible. |
| MM. | Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.<br><br>No.  |

## General competence, knowledge and skills

| <i>Share your views</i> |  |
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| NN.                     | <p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes. Agree.</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>This is a tricky area. Artificial intelligence is not emotional intelligence. And with the nuances of financial advice and planning, we deal with people. And people require assistance with understanding their money emotions. How they feel about it, react to it, do they insure themselves, can they save, how much money do they need to retire at a certain age. Should they retire?</p> <p>Advisers deal with a great range of circumstances and whilst I know the matter of digital delivery of financial services is only going to grow, it’s really important that ‘combined expertise’ is not seen as some wonderful panacea to the current shortfalls of vertically integrated organisations.</p> |
| PP.                     | <p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>An organisation such as SHARE is well positioned, irrespective of which or both avenues are taken. There is individual competence, knowledge and skill, as well as the organisation being able to demonstrate ‘combined expertise’. Organisations may adopt both channels for delivery of services, products, and advice to clients. I think it’s important that one is not seen as better than the other. They are different and the consumer will feel comfortable likely dealing with one more than the other. Choice is good – but do make sure that there is a level playing field.</p>  |
| QQ.                     | <p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>See KiwiSaver switch rates and what proportion of these done by institutions, under the guise of the equivalent of ‘combined expertise’ were actually done in the client’s best interests, rather than those of the institution.</p> <p>Simple.</p> <p>Focus needs to be on the output, not the input.</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>It can reduce costs for large institutions, but it can also make a very bumpy playing field due to the costs involved in establishing and maintaining digital delivery. Individual advisers, or those who are nominated representatives for companies such as SHARE face a real hurdle in being able to access this technology without considerable capital investment.</p>  |

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| SS. | What factors should we consider in determining whether to make the proposed unit standard a renewing obligation? |
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## 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>I think its workable. As an AFA if I can do some advice on more simple products in a simpler manner, that would be useful.</p> <p>Category 5 has worked fine as an AFA – and for cases where there is complex advice being provided, the level of advice and degree of detail would exceed what may be expected.</p> |
| UU.                     | <p>How should RFA’s experience be recognised?</p> <p>That is for RFA’s to answer. But from my experience, there are many RFA’s who provide very sound and sensible advice. They could provide sounds and sensible advice on a broader range of products that they can now (KiwiSaver) if they are working in a FAP that will take responsibility for their advice. This is a good outcome.</p> <p>They should do level 5 though. It’s not onerous.</p>  |

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| VV. | <p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>I have a Masters degree. It is in politics. Like law, it has nothing to do with financial planning, financial advice, or insurance advice. But having a degree does illustrate cognitive thought and capacity. It shows an ability to apply knowledge and to learn.</p> <p>With technology I can bring in all sorts of modelling and utilise a broad range of planning tools to assist in providing personalised financial advice. I have wisdom from my 24 years of providing advice – and from learning from those who have been giving advice for over 40 years (but also those who have advising for 5 years).</p> <p>Having a degree in law does not make you a good lawyer. Good accountants have an accounting degree, but they also have other skills. A good doctor is often one who can communicate, has empathy, and engenders trust in the patient they are treating. For financial advisers is it is the same. People seek our advice and we gain their trust.</p> <p>I’m not particularly interested in doing a level 7 paper in finance. I rely on people who have suitable skills and resources in the areas of funds management, stock selection, quantitative and qualitative analysis, to do specific roles that I can’t do. Similarly, they rely on people like me to be able to communicate and advise to those people which they design products for. I provide a very necessary service to help people understand and most importantly, take action, to look after themselves, their families, their businesses, their staff.</p> <p>I’m interested in continuing to develop my professional skills and capability. I have done numerous courses since university to assist. Some courses have been exceptionally good. Others have been exceptionally poor. The standard of education in the financial services sectors varies greatly and</p> |
| WW. | <p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</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>It contributes. It reflects reality. Good advisers don’t all come with degrees. Common sense, ethics, experience, sound business and organisations structure all help. And in the current environment where there are not enough advisers, the proposals do provide a workable mechanism for advisers who may otherwise get out of the advice business, continue to give advice to New Zealanders. And as a society we need more people giving face to face sensible pragmatic advice, not less.</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>  |

## Other comments

| <i>Share your views</i> |   |
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| ZZ.                     | <p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>Happy to clarify my comments in person if necessary.</p> |