

Code of Professional Conduct for Financial Advice Services

Submission Template

Submissions close Monday 30 April 2018

Please send submissions to:

code.secretariat@mbie.govt.nz or

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

Information about you

<i>Share your details</i>	
i.	Please provide your name and (if relevant) the organisation you represent Mike Garner - PIC Insurance Brokers Limited
ii.	Please provide your contact details Tel: S 9 (2) (a) Mailing Address: PO Box 58842 Botany, Auckland 2163 Physical Address: Building 3, 15 Accent Drive, East Tamaki, Auckland 2013
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) PIC is a Fire & General and Life & Health insurance brokerage. It has been operating for 25 years having started as a one man business to currently employing almost 80 people. It employs over 30 brokers across life, health and F&G, all of whom are salaried (and more importantly have limited detailed knowledge of remuneration levels and structures that PIC operate with). Despite being a broker across the different insurance lines, PIC adopts a similar remuneration structure across its business. This means it largely follows the F&G model of remuneration across the life business.
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)

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? The overarching theme of good advice outcomes is sound however what exactly does a “good advice outcome” look like? A consumer may well understand that a good outcome means that everything will be fine which is not necessarily what is intended. It should be about the process and the experience that a consumer goes through.
B.	Are there any further principles that should be included, or existing principles that should be removed? No

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>Agree</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>Yes. Use the reasonable person test. Assume that a financial adviser is the expert therefore the onus is on him/her to ensure full understanding on the client's part. Put yourself in the client's shoes. Agree and fully understand expectations of both parties.</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>

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>Full Disclosure should be sufficient</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.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards? None
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper? Yes
K.	Are there other aspects of maintaining client confidentiality to consider? No.

Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its "ethical processes"? To a degree. The business model of an FAP should provide for a high level of appropriate ethical behaviour e.g. a salaried adviser/broker force but having a well-documented process may well be necessary for other models where ethics and morals may be conflicted or tested.
M.	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? As above, not necessarily as ethics may well be addressed within an FAP's disclosure document. A flexible and common-sense approach should be available for these scenarios.
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

Ethics training

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.
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Q.	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.
R.	Should there be a requirement for ongoing refresher training on ethics?

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>Surely the overarching principle of customer best interest would be the principal factor in the resolution of a dilemma. If this is well documented then the process should be straightforward.</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>Specifically for Robo-advice perhaps but not for advice provided by FAs or NRs.</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>Certainly there should be a process in place to investigate any concerns raised about business practices. Whether that is a compliance function is debatable.</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>This may again depend on the business model as some would benefit more from a higher level of auditing than others. If the model is inherent with greater risk of conflict of interest and unethical behaviours then possibly a mandatory internal audit process may be justified.</p>
W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Absolutely. Compliance, auditing and investigations all require resource and for many businesses and potential FAPs these will be onerous and costly to implement. A desired outcome into the review of the industry's regulations was not to make it too onerous for financial advisers to operate. This has to be taken into account when determining levels and standards of compliance.</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>Yes</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>Always putting client's best interest first and the removal, or at least the minimisation, of conflicts of interest. There could be a requirement to include words to this effect within disclosure statements.</p>
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Conduct and client care

Advice situations

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

Advice-giving standards

AA.	<p>How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore "scope of advice" (CS-8) and "suitability" (CS-9 and part of CS-10).</p>
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>
CC.	<p>Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?</p>

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? The treatment of replacement business/ instances where clients dictate the precise cover they are looking for or limited advice is sought

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? Yes – simple order taking.

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? Agreed - provided the minimum standard is not over-burdensome
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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?
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MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.
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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? Yes
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. No
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills? Consistent
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? Financial and time cost of this 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? Number of years' experience (?) – Hard to recognise and qualify
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? Why just the particular degrees listed? Why a degree at all?

Other comments

<i>Share your views</i>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>The business model of an FAP should be looked at. Where client's best interest and elimination of conflicts of interest are a natural outcome of the model backed by individual and organisational behaviour, this should be recognised. This model should also be promoted as an optimal model for FAPs, notwithstanding that this would not necessarily be achievable by all businesses. We welcome the opportunity to talk to you further about our business model and how it may be promoted.</p> <p>Lastly it's important to not let the actions of a few impact significantly on the majority. Whatever changes are made it is important to consider that the desired outcome may be achieved at a cost that will likely be eventually passed onto the consumer. Will the industry be viewed in the desired light as a result i.e. professional? Will consumers have more access to and confidence in the advice they receive than they do today? How will we know?</p>