

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 Plus4 Insurance Solutions
ii.	Please provide your contact details Peter Standish, S 9 (2) (a)
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) Organisation is a cooperative comprising of 45 independent Life, disability and health advisors, some of whom also offer other financial services including investment, mortgage, F&G advice and Financial Planning
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) No

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? We disagree with “good advice outcomes” as an overarching principle. The problem with it is how does one measure good advice outcomes? We believe it should be based around Advice and the advice process and the 6 Step process. Advice must always be accompanied with appropriate analysis.
B.	Are there any further principles that should be included, or existing principles that should be removed? A minimum standard of Advice level and Process.

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>Yes this is an absolute priority, but we would also add Transparency.</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>If one adheres to the principle for putting the interests of the clients first then no it would not be necessary.</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>The current code for FA should be retained and written into the licencing for FAP's. This should be evidenced by the FAP or Professional body.</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>Probably yes, and it should also include Undue Influence. (one such example could be bank employees who have quotas to reach, or the impression that certain insurance products would be required to get a mortgage)</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>Absolutely yes.</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>No it is covered under the principle of putting the clients interests first.</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>Do not see an issue for further 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> <p>It could be mentioned but in terms of referring to the Privacy Act 1993</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>This is well covered by the Privacy Act.</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>Yes.</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>No – should all be covered by the code.</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 additional standards over and above the code.</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>Only to the extent that CPD of it's advisors must include a defined number of hours relating to Ethics.</p>
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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. Yes, but only in relevance to their role.
R.	Should there be a requirement for ongoing refresher training on ethics? Yes this already forms part of the proposed membership of Financial Advice New Zealand and CFP CLU requirements. Could be covered in the code.

Resolving ethical dilemmas

S.	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. Yes.
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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? Yes – by an independent body, however there are very few organisations that can actually do this, and this is a problem. Also the cost must be taken into account. The process to be signed off not each individual client file.
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. Yes.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? No, a culture of ethical behaviour and sign offs of the advice process should be sufficient together with a process whereby any concerns raised by any other person in the organisation is welcomed and followed up with a defined process.
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Yes. There will be an additional costs and this may put a strain on the individual or small FAP's which may have the unintended consequence of consolidating the industry in a small number of large FAP's

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>NO. If the FAP adheres to points T,U,V, above then the final responsibility should rest with the Financial Advisor.</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>Putting the interests of the client first</p>
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Conduct and client care

Advice situations

Share your views	
Z.	<p>Are there other delivery methods that should be considered when testing our thinking?</p> <p>Yes – robo advice, and direct selling scenarios.</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> <p>The current code should be retained for financial advisers and written into the licensing for FAP’s</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? Costs will increase – difficult to put a quantum on this.
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others? No.

Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? No, the internationally recognised Six Step Process. <ol style="list-style-type: none"> 1. Establish client relationship 2. Gather data 3. Analyse and evaluate 4. Recommendation and presentation 5. Implementation 6. Monitor and review
GG.	Should the Code include guidance material to help Monitor and review determine what needs to be considered when designing an advice process? No
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? Once again the six step advice process.
II.	Should any of the key aspects that we have listed above be removed? If so, why? No.
JJ.	Are there any situations in which an advice process need not be followed? Product selling or product information.

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.	<p>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?</p> <p>Gives structure, process and standards that assist it's members.</p> <p>It could risk becoming too prescriptive and in turn limiting the advice process.</p>
MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p>Of course it all adds up to the cost with additional infrastructure and personnel required.</p>

General competence, knowledge and skills

<i>Share your views</i>	
NN.	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>Yes.</p>
OO.	<p>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.</p> <p>Depth of experience – time spent in the profession and the many hours of unrecognised but relevant learning and adviser undertakes via short courses and provider education.</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>In the transitioning phase it will help retain RFA’s who are skilled and competent but lack the required educational achievements/levels.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>In the long-term “in aggregate” does not work it will limit the incentive for advisers to attain appropriate qualifications. They will just sit under their FAP and work in aggregate, and this will have the unintended effect of locking in the adviser to that FAP.</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>
SS.	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>The changing advice environment around Banks, Robo and direct.</p>

Particular competence, knowledge and skills

<i>Share your views</i>	
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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?

It is fine that you identify two types of service. However you have completely missed the mark in your descriptions and this will mislead the general public.

Product advice is an oxymoron. Advice is always accompanied by suitable analysis. Without advice suitability, needs analysis, comparisons and written recommendations it is simply product selling or product information.

Once you have described your first level of service as product selling or product information it becomes easier to describe your next level of service.

You CANNOT group this second level of service under the term “Financial Planning”

Financial Planning is an internationally recognised discipline. It refers to a full financial plan taking into consideration all aspects of the client and includes to mention a few: the needs goals and aspirations of the client, risk, investment, retirement, estate planning et cetera.

Since the word advice has been taken out of your first level of service you could then use Advice as the descriptor of the next level of service which is what it is - ADVICE – which includes suitability, analysis, written recommendations and product recommendations.

This must be then further delineated into the specific areas of advice:

- Life, disability health risk advice
- Fire in general risk advice
- mortgage advice
- investment advice
- Financial Planning

OR if you continue to use the word “Planning’

- Life, disability health risk planning
- Fire in general risk planning
- mortgage planning
- investment planning
- comprehensive (or full) Financial Planning

UU.	<p>How should RFA’s experience be recognised?</p> <p>This is a very important aspect to the code. It must be recognised that there are many hundreds of RFA’s out there most of which have good level of skills and experience. Their experience must be recognised in some form. What we would propose is level Five OR to complete competency alternatives in the form of:</p> <ul style="list-style-type: none"> – recognised prior learning – the ability for their advice process (a portfolio of their work) to be assessed by appropriately recognised assessors – the ability to complete case studies and have them assessed. – The ability to undertake challenge tests and award those credits if a minimum 80% is obtained. – The ability to up skill through micro-credentials(short courses) or strands in areas where they have been found deficient.
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Very little with what you are proposing, as level 5 as it currently stands, is so superficial it is a waste of time and a graduate degree in a non-specific discipline is also a complete waste of time. I have a Bachelor of Economics and it has in no way prepared me as a Financial Planner specialising in life, disability and health risk advice.</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>The biggest disadvantage in what we have proposed in UU above is the lack of educational providers that can target specific areas of advice.</p> <p>Who will pay for this education structure that will be required?</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>YY.</p>	<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>You need to make it more pragmatic and as you go up the levels of complexity of advice and the higher qualification levels must be attained.</p> <p>As previously pointed out level 5, as it now stands, is so superficial it is a waste of time. You cannot dismiss relevant past learning or experience in the transitioning phase of this new regime. If you do you will have increased adviser attrition especially when we are trying to increase the number of competent advisers to address the chronic under insurance and lack of financial advice in New Zealand.</p> <p>Therefore, please refer to my comments under UU for the first tier level of advice.</p> <p>I am not referring to product selling or product information.</p> <p>As one jumps up the spectrum of complexity of advice you could use micro-credentials or strands covering and adviser’s specific areas of advice to up skill their knowledge and competency in their chosen area.</p> <p>Then when you get closer to financial planning, level 6, diploma level should be the standard going forward as long as it is aimed at that specific discipline.</p> <p>Your notion of requiring a graduate degree in commerce, accountancy or economics is completely flawed. A graduate degree in any one of these does not prepare an adviser to give advice or set them up to be competent in the six step process. A lawyer or an accountant has a specific degree targeted at their chosen vocation. Until there is a specific degree targeted at financial advice/financial planning you cannot impose this level of qualification.</p> <p>So the answer is specific and targeted up-skilling through micro-credentials of the various strands, through short courses and e-learning. BUT if you want this you will have to fund it. My biggest question is who will fund it? Who will fund the RPL program? Who will fund the level 6 diplomas and level 7 targeted degrees?</p>
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Other comments

<p><i>Share your views</i></p>	
<p>ZZ.</p>	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>No.</p>