

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.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Tony Dench – CEO – SHARE NZ Limited</p>
ii.	<p>Please provide your contact details</p> <p>S 9 (2) (a)</p>
iii.	<p>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)</p> <p>SHARE is a nationwide co-operative of 75 Financial Advisers giving advice on Insurance, Investment, Lending and Fire & General insurance. Over half of our Advisers are AFA, but many only give advice on Category 2 products, however KiwiSaver advice is also an important part of most SHARE advisers businesses.</p> <p>All SHARE advisers operate under the SHARE brand and SHARE currently provides policies, processes and procedures for advisers to follow, and requires advisers to be audited on a regular basis to ensure that those policies, processes and procedures are being adhered to.</p>
iv.	<p>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)</p> <p>There is nothing of a confidential nature and I am content for the information to be included in a summary of submissions.</p>

Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>I consider that the overarching theme and the underlying principles are aimed at guiding culture and conduct of how a Financial Advice Provider operates. This behavioural approach coupled with a client-centric focus is likely to be more effective than a prescriptive, rules based approach.</p> <p>It is right to emphasise that “good advice outcomes” relates to primarily to the advice process rather than the performance of the product being advised on.</p>

B.	Are there any further principles that should be included, or existing principles that should be removed? None
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Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning. Of course – I also agree with the intention of choosing the terms themselves to promote everyday meaning and ease of understanding for both adviser and client.

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. No, but a requirement to have a code of ethics and conduct at each organisation would help. There could be examples when acting with honesty, fairness and integrity would involve going further than strictly required by law. The interpretation of this will vary between organisations and I consider that this could be better captured in each organisation’s code of ethics and conduct.
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? This could be a short description of values using everyday language and readily understood terms.

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation? A legislative requirement already exists requiring advisers to ensure that conflicts don’t materially influence their advice. As above, I consider that the practical application of this could be better captured in each organisation’s code of ethics and conduct.
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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>This is a worthy principle that is drafted very widely and likely to be caught by other provisions. If it enhances trust in and respect for the profession it's useful.</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>The other areas of the code and legislation ought to ensure that this is met.</p>

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>None – if it's anonymised.</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Yes – it's foundational to maintaining trust and confidence in the profession.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>Interaction with other legislation.</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>I can think of no reason not to make an ethics statement publicly available</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>An organisation's values and ethics will be reflected in leadership and culture (and vice versa) however I can't see how a standard could be framed around either leadership or culture.</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.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning. Yes
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
R.	Should there be a requirement for ongoing refresher training on ethics? Yes

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 – although the “ethical processes” referred to above will most likely limit and or resolve dilemmas in the first place.
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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? –
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. Perhaps this could take the form of a policy rather than a function which could have a significant cost implication depending on the size of the FAP.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour? Yes
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Yes

Responsibility for the whole advice process

X.	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. Yes
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Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis? An acknowledgment statement at time of advice could work
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking? None that come to mind.

Advice-giving standards

AA.	How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10). Well
BB.	Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)
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?

EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?
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Advice process

FF.	Do you think there are any other components that should be included in the design considerations of an advice process? None that come to mind.
GG.	Should the Code include guidance material to help determine what needs to be considered when designing an advice process? That would be a useful step and would ensure a degree of consistency.
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?

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? Maintaining a degree of flexibility while retaining the requirement for suitability is a balancing act to ensure that advice remains affordable and available.
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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? A systemised approach ought to generate consistent, evidenced and predictable results.
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why. No – it may even enhance efficiencies within organisations.

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>-</p>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>Achieving the level 5 unit standard as a measurement of competence, knowledge and skill is an objective test however it is not particularly clear how an adviser could satisfying the minimum standard without that. If level 5 is a requirement, the code should say that.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>As above.</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>

Particular competence, knowledge and skills

<i>Share your views</i>	
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>This approach recognises the additional consideration required of many and varied factors in Financial Planning. Monitoring the boundary between this and product advice would add a level of compliance cost.</p>

UU.	<p>How should RFA's experience be recognised?</p> <p>This follows the same thinking as above. Many RFAs have decades of experience to offer however assessing this objectively is far from straightforward.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</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>
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>	
ZZ.	<p>Are there any other comments you would like to make to assist us in developing the Code?</p> <p>None</p>