

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.	Stephen Deverson (Steve Deverson & Associates Ltd)
ii.	S 9 (2) (a)
iii.	Life Risk Insurance Adviser (RFA) – National Certificate in Financial Services level 5
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.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>“good outcomes” wording leaves every financial Adviser potentially at risk under this wording. An “outcome” could be interpreted as bad by a consumer even though there was good advice by the Adviser that was fit for purpose i.e. A Trauma claim not paid as that condition not covered under the policy...or an Investment that temporarily loses value due to market forces. The general intent of every Adviser is to provide good advice to clients and do all they can to ensure good outcomes – however bad outcomes in the eyes of the client do not always solely relate to advice given by the Adviser. Also, customers don’t always follow the advice given by an Adviser due to their risk adversity / budget concerns etc. Good advice outcomes can in effect be sabotaged by the customer opting for reduced insurance to what was recommended – thereby no longer aligning to the customers original desired outcome when a risk plan was being designed by the Adviser.</p>
B.	<p>Are there any further principles that should be included, or existing principles that should be removed?</p> <p>Emphasis should be on providing advice on financial products that are “fit for purpose”, offer the best value for the client’s situation and that will in all fairness will achieve the customers desired outcomes.</p>

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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</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>We should be able to show we act in the best interests of our clients. I believe the level 5 certificate also has a section on ethics along with various Acts of parliament we are bound by as Financial Advisers i.e. Fair Trading Act, Consumers Guarantees Act, Financial Advisers Act etc. In other words, this subject is well represented in other areas of the code and cross over a lot – it is at the very core of what we do.</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>Not necessary as most Advisers who belong to a professional industry organisation like IFA / PAA already have our own code of ethics which we are held to. We are in a reputation-based profession – if we are not honest, open, and trustworthy operators we won't be able to stay in business for very long. Our whole value proposition is around ethical behaviour and being the trusted Adviser – to help our clients protect what matters to them most and then being there at claim time to deliver on our promise and provide that certainty our clients expect.</p>

Manage and fully disclose conflicts of interest

F.	Should the Code include a minimum standard on conflicts of interest in addition to the legislation?
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Do no harm to the client or the profession

G.	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.
H.	Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?

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?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?
K.	Are there other aspects of maintaining client confidentiality to consider?

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"?
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?
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.
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.	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.
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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.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

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.
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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?
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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?

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).
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?
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?

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.	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?
MM.	Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.

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>
PP.	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>The advantages of including “or has an understanding of” allows advisers who have been in the profession for some time to be able to demonstrate their understanding by peer assessment without the expense of passing exams which would, potentially, cause some advisers to leave the profession, thereby limiting the availability of advice.</p>
QQ.	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</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>Whether this is warranted at all considering the licencing process will need to satisfy competency of Adviser applying for the licence. Seems a renewing obligation means the Adviser having an annual cost of time and money to show competency when experience and qualifications would clearly show likelihood of competency i.e. 20 years?</p>

Particular competence, knowledge and skills

<i>Share your views</i>

<p>TT.</p>	<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>Fundamentally it seems the CWG is placing all financial plans including a <u>life insurance plan</u> under the “Financial planning” type of financial advice. So, I like many other Insurance Advisers who probe for information, asks questions and complete a needs analysis – then provide a written recommended insurance plan gets grouped in with this type of financial advice. I have been in this industry as an independent insurance Adviser role (Life risk only) for nearly 20 years – I have done any course available over the years to enhance my knowledge and understanding in my chosen field (often finding the tertiary institutions way out of date in their learning material) and to be told now I need a level 7 Degree to continue in my role is an insult. For a start there is no such qualification in my chosen field of Life risk insurance and planning. There is financial planning Diplomas which focus on investment and money management but not specifically insurance. The CWG saying I need a degree in any other discipline i.e. Accounting, Management etc will not mean I provide better advice in Insurance risk than what I do now. Simply ludicrous. I could have become an AFA five years ago but chose to be an RFA. I could become and AFA now if I wanted to.</p> <p>The choices therefor I have in front of me now – change to AFA as I already have level 5 Get a degree in some other discipline to satisfy the CWG.</p> <p>Provide product only advice to customers – with no recommendations on levels of cover required to achieve clients desired outcomes – how is this better for the consumer?</p> <p>Or sell my business and leave the industry and do something else – careful because a lot of Advisers will be thinking the same thing.</p>
<p>UU.</p>	<p>How should RFA’s experience be recognised?</p> <p>Comparative time in the financial services industry as an Adviser compared to comparative time at University. Let’s face it, if an Adviser lasts 5 years or more in this industry they must know a thing or two about their chosen field and be a survivor. The old saying of “If the business was easy, everyone would be doing it” springs to mind. The fact is the majority of people who start in this industry don’t last. An Adviser with 10+ years of experienced should be considered experienced and knowledgeable in their field. 20+ years or more experience should be considered mentor material in their chosen field. Financial providers also provide product training courses and provide certificates for product knowledge and competency tests.</p>

VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>Not sure at this stage until it has been cleared up on the interpretation of what exactly is “financial planning Advice” and what is “Product Advice”. If CWG get’s this wrong the potential consequences could be significant with many Financial Advisers leaving the industry – outcome for consumers – hardly anyone to provide advice. We already have a massive underinsurance problem in this country. Not exactly the outcome MBIE & CWG are looking for...unless it is to pave the way for Vertically Integrated Organisations (VIO) like banks to take over and have a captured market? I shudder to think</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>As above</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>I DO NOT agree with your assumption that Financial Planning should be extended to include a plan that is not an investment plan. There is, in my experience, no need for a life insurance plan to require degree level qualifications. There is no degree in this discipline in any case.</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> <p>Level 5 for life Insurance Plan advice, F&G Insurance advice, Mortgage advice. Level 5 in investment discipline and Dip Bus studies Financial planning for financial planning advice.</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>Please give consideration to the current and extra costs and the time sacrifice further regulation and compliance will impact on a small financial practice – sole trader. Currently I have annual compliance reviews with IDS (now Strategi) and the process used currently to be compliant reduces my capability of seeing 10 clients per week to 5 clients maximum. This is the reality of a sole adviser being able to document and manage all the compliance processes whilst trying to do right by clients.</p>