

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 Stewart Financial Group Ltd
ii.	Please provide your contact details Rory O'Neill 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) Financial Advisers (Financial Planning, Risk Advise, Kiwisaver)
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) N/A

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? ‘Outcomes’ is an issue. Good advice that is client centric is the goal
B.	Are there any further principles that should be included, or existing principles that should be removed?

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>Yes. Ethical standards/behaviour should always put the consumer first in any interaction.</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>A self-policed code of ethics would be framed around the standard of advice given in a Statement of Advice and the relevant financial planning given to ensure it was client centric and tailored around goals and values</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>Yes</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>Agree</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 additional standard required. If harm is done to a client, it will be dealt with through legislation</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>The industry need to be transparent. The sharing of data to the appropriate agency will gain insights into industry practice, funds flow, standards of advice and scale of the industry</p>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>Agree</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</p> <p>No</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>(a) Corporate code of ethics should not be publicly available (b) No</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>Disagree, leadership and culture should be underpinning any financial adviser's work practice, not just a Financial Advice Provider</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>In principle all Financial Advice Providers should be acting in accordance with the code of conduct which promotes ethical behaviour. Training modules need to be properly vetted. Ethics training is an additional cost.</p>
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>No issue with training for all, training does not make a person ethical. An ethical culture can be more effective than specific training</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>As above</p>

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>Agreed</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>Advice sign off should not be required. Advice should fall under properly a researched fiduciary guide. The advice that is given would be templated in conjunction with a client risk profile, empirical data and a client centric view through a CRM. The CRM content would be vetted by an investment committee and company directors</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>Agreed (or a designated compliance officer)</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>No. A compliance function can test the robustness of procedures</p>

W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Meeting the hurdle of a financial advice provider licence is going to add huge cost. It is above the reach of a small business. The result will be consolidation to achieve economies of scale</p>
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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>agreed</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>Transparent fees, tailored financial advice, meets the clients goals and objectives</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> <p>No</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>Current standards work well. If the advice process is documented within the organisations procedures this flows down to good advice for clients.</p>
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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>The current standards are fine. The word ‘complaint’ should be replaced with a definition drawn from the International Standards Organisation (ISO) ‘an expression of dissatisfaction relating to products or services where a response or resolution is explicitly or implicitly expected’</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> <p>No</p>
DD.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p>Meeting the hurdle of a financial advice provider licence is going to add huge cost. It is above the reach of a small business. The result will be consolidation to achieve economies of scale</p>
EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>No</p>

Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>No, once the advice is client centric and takes account of goals and objectives, plus the client understands this, then the advice process should be robust</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Guidance is always welcome</p>
HH.	<p>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?</p> <p>No</p>
II.	<p>Should any of the key aspects that we have listed above be removed? If so, why?</p> <p>No</p>
JJ.	<p>Are there any situations in which an advice process need not be followed?</p> <p>A specific request from a client for a limited scope of service</p>

Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>Agree with the proposed minimum standards. All advice should be personalised to a clients specific needs.</p>
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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>Organisational standards are advantageous to the organisation, the advice process and the client. Disadvantages would be minimal</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>They do not create a burden. There is a body of upfront work but once the framework is in place it creates a far superior environment</p>

General competence, knowledge and skills

<i>Share your views</i>	
<p>NN.</p>	<p>Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?</p> <p>The terms ‘combined experience’ and ‘in aggregate’ need to be removed entirely. The terms are ill conceived and create a back door or ready-made excuse for bad advice situations. An organisation/adviser either has the necessary competence, knowledge and skills or does not. This is determined in whether a licence is given or not</p>
<p>OO.</p>	<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>Combined experience needs to be removed as above. In aggregate is wholly wrong as a concept.</p>
<p>PP.</p>	<p>What do you think are the advantages of this approach to general competence, knowledge and skills?</p> <p>The advantage is that the organisation has a reputation for delivering the quality of service that a client expects</p>
<p>QQ.</p>	<p>What do you think are the disadvantages of this approach to general competence, knowledge and skills?</p> <p>As above, combined experience and in aggregate are confusing to organisations, the industry and clients. They should be removed.</p>
<p>RR.</p>	<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>Badly conceived terms such as combined experience and in aggregate cannot be legislated for. They are an opportunity for excuses that create ambiguous situations resulting in litigation. The result is legislative precedent being set will effectively remove the terms. Better to do it from the start and save the courts time.</p>
<p>SS.</p>	<p>What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?</p> <p>Documented competence, knowledge and skills can be tested through site visits. If an organisation has a Board and an Investment Committee along with a documented advice process, then the robustness can be tested.</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>Two types of advice is wrong. The industry needs to take heed of the mistakes that were made in the Financial Advice Act whereby a divide was made between RFA and AFA. Two types of advice create confusion for clients. If a person does not have the relevant competence, knowledge and skills to give advice then refer them to someone that does and not hide behind organisational structures</p>
UU.	<p>How should RFA's experience be recognised?</p> <p>They can become a nominated representative. If they want to do further study they can then become an adviser. Grandfathering RFA's or a lowering of the educational requirement to entry should not be offered. This will only see public confidence in financial advisers decline and is genuinely unfair to existing participants who have already achieved the full educational requirements ahead of the new regime.</p>
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p> <p>It lifts the standards and professionalism of the industry</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</p> <p>Two tiers are confusing. A person is either a financial adviser or is not</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>Lifting the requirements to becoming an adviser can only have a positive impact on the industry</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>For the benefit of the industry the standard should be set at level 6 for all. Two tier does not work. The standard for new entrants can increase over time just as Australia has done over a 7 year transition period, but the key is not to have two tiers of advice.</p>

Other comments

Share your views

- ZZ. Are there any other comments you would like to make to assist us in developing the Code?
- Any educational requirements should be general in scope, the CWG scope is too narrow. For example a degree in business as opposed to financial planning. The current system requires a potential financial adviser to study and pass AFA exams. This should continue. The key is requiring persons to have a level of study behind them before entering the industry and beginning AFA exams. The new generation of financial planning qualifications at degree level has only recently been released therefore making any narrow focus punitive on those educated prior to the regulatory date.**
- We firmly believe that nominated representatives should be called 'agents' which is a better reflection of their role in selling the products and services of their employer. The present term of nominated representative is disingenuous.**