

14 November 2018

Ministry of Business, Innovation and Employment  
By email: [code.secretariat@mbie.govt.nz](mailto:code.secretariat@mbie.govt.nz).

Dear Code Secretariat

### **Submission on the Code of Professional Conduct for Financial Advice Services**

Thank you for the opportunity to make a submission on the draft Code of Professional Conduct for Financial Advice Services (the Code). We have set out our feedback on the specific standards below using the numbering set out in the consultation document.

#### ***Standard 1: Treat clients fairly and act in their interests***

**Question 1:** We agree with the first aspect of this standard – always treat clients fairly.

**Question 2:** We consider a higher standard should be enforced in relation to the second aspect of the standard - act in their interests.

We endorse a consumer-centric approach and submit that those covered by the Code should act in their clients' 'best' interests. The difference is important. To meet the standard of 'acting in a client's interests' may only require acting in a manner that benefits the client.

Acting in the client's 'best interests' would require a higher standard of care. A person who gives financial advice would then be required to act in good faith, by evaluating and balancing all of the options and acting in the manner that brings the most benefit to the client.

The commentary should emphasise that standard 1 applies not just at the outset (of giving financial advice), but throughout the entire process, or the duration of the product lifecycle. The commentary also explains what 'fairness' looks like in practice but it does not provide sufficient guidance on the ethical obligation to act in a client's best interests.



**Standard 4: Reasonable steps taken to ensure client understands the advice**

**Question 7:** We agree with the standard.

**Question 8:** The example provided in the commentary is unclear. It is not clear whether Beth's conduct meets the standard, and why.

Given that the client would be taking on new risks and only retaining the same benefits, it, it does not seem appropriate for Beth to be recommending the change in policy. The process Beth follows is also not best practice. Ideally Beth would have conducted a comparison between the two policies and explained the risks and benefits to the client both verbally and in writing. There is also no detail about how Beth satisfies herself that the client understands the advice.

It would be useful to include an example which clearly sets out conduct that would be considered appropriate under this standard.

**Standard 5: Give financial advice that is suitable for the client**

**Question 9:** We agree with the principle underpinning the standard but suggest a higher standard of conduct.

**Question 10:** The standard of care is expressed as whether a peer would consider the advice to be 'adequate'. In our view, this sets the threshold too low. The standard of care should be whether the advice provided was 'appropriate' taking into account all of the circumstances.

**Standard 7: Resolve complaints**

**Question 13:** We agree with the principle underpinning the standard but suggest a higher standard of conduct.

**Question 14:** Section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 requires all financial service providers to be a member of an approved dispute resolution scheme. Standard seven is a reiteration of this legislative requirement.

Rather than limiting the standard to having to 'provide' arrangements for resolving complaints, we would like to see a positive obligation to 'publish and promote' such arrangements. An example of this may be requiring any final statement to a client to

include information about the client's right to raise a complaint with an independent dispute resolution scheme. This higher standard of conduct is an important aspect of raising consumer awareness about their right to complain and providing easy access to complaints resolution services.

### **General questions**

**Question 28:** We support the draft Code and are pleased to see that most of the comments from our prior submission have been incorporated.

We endorse the principles-based approach that has been adopted in the Code. This allows the Code to remain flexible over time so it covers a wide variety of situations, including issues that are not necessarily envisaged now. A code that is too detailed and prescriptive can be difficult for consumers to understand and easier for providers to circumvent.

**Question 29:** Banking Ombudsman Scheme

**Question 30:** an independent dispute resolution scheme, approved under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**Question 31:** On behalf of an organisation

Our jurisdiction is defined by our Terms of Reference. Clause 9 states:

In making any decision, the scheme must be fair in all the circumstances, having regard to the law, any relevant code of practice, and principles of good banking practice. (The scheme must consult the banking industry in determining these principles.)

We will apply the Code of Professional Conduct for Financial Advice Services as a relevant legal and professional standard under clause 9.

Thank you again for the opportunity to comment on the draft Code. We would welcome the opportunity to discuss any specific proposals further.

Yours sincerely

s 9(2)(a)

**Nicola Sladden**

Banking Ombudsman