

Code Working Group  
c/o Code Secretariat  
Ministry of Business, Innovation and Employment  
[code.secretariat@mbie.govt.nz](mailto:code.secretariat@mbie.govt.nz)

9 November 2018

Dear Code Working Group,

Thank you for the opportunity to submit on the draft Code of Professional Conduct for Financial Advice Services (Code). We support the Code and appreciate the commitment and energy you bring to ensuring good client outcomes.

Partners Life is a New Zealand life insurance company that distributes life and medical insurance products through non-aligned financial advisers. This submission has been informed by our engagement with financial advisers, with industry groups and across our business. Partners Life are committed to driving best practice across the industry.

Partners Life supports a principles-based approach to setting minimum standards. Lifting the Code above detailed process has left some gaps. For example, record keeping is a critical part of the current Code of Professional Conduct for Authorised Financial Advisers. We look forward to the release of draft licencing proposals and finalised disclosure regulations to ensure that all important areas of process are covered by the new regime.

We make suggestions to improve the likely outcomes of the Code. Our four most important points are:

1. The “prudent person” test should be elevated to apply to the entire Code.
2. The overarching code standard (CS1) should be to treat clients fairly.
3. Level 5 education outcomes are insufficient to provide competent financial advice, because the qualification does not cover advice about particular products. Competence includes understanding the details of the financial advice products about which a person advises, and this should be reflected in CPD requirements.
4. Because the range of clients and business models is so diverse, it is not possible for the Code Examples to be relevant to every entity. Our view is that each entity must commit to understanding how the Code can deliver best practice to the clients they service. All Examples should be removed from the Code.

I am available to discuss our response further, if you have any questions.

Yours sincerely

s 9(2)(a)

**Naomi Ballantyne, ONZM**  
**Managing Director**

## CS1 – agree

We support the intention of this Code standard. Our comments are:

1. The language should be consistent with the language in the proposed legislation.
2. The standard should be limited to the scope of service agreed with the client.
3. All standards in the Code standard should include a prudent person test to determine whether standards are met.
4. Remove the requirement to act in the “spirit and intent” of legal obligations.

### 1.1 The language should be consistent with the language in the proposed legislation.

We agree with the concept of an overarching code standard.

We are concerned that the requirement to “act in their interests” differs from the requirement to “give priority to client’s interests” in the proposed s431J of the Financial Markets Conduct Act. This difference can create confusion and uncertainty in the market, increasing costs and decreasing effectiveness for clients.

We submit that the words “and act in their interests” be removed. The duty in s431J of the proposed legislation is sufficient.

### 1.2 The standard should be limited to the scope of service agreed with the client.

We also submit that this standard is not intended to require providers of financial advice to consider the universe of products in their financial advice.

We suggest that the commentary for this standard should include a paragraph clearly stating that this standard does not require a provider of financial advice to consider products that are outside their expertise, or beyond the scope of service agreed with the client.

### 1.3 The overarching standard should include a prudent person test to determine whether standards are met

All code standards would benefit from having an overarching test to determine whether the standard is met. We support the test used in code standard 5:

“that a prudent person engaged in the profession of giving financial advice would consider to be adequate in the same circumstances”.

This overarching test would be used, for example, to determine when CPD requirements are met, and when circumstances meet the standard to act with integrity.

### 1.4 Remove the requirement to act in the “spirit and intent” of legal obligations.

The final bullet point (to act in the “spirit and intent” of legal obligations) is vague and will increase the compliance burden for market participants and costs for clients. We recommend that this bullet point be removed.

## CS2 – agree

No comment.

## CS3 – agree

We support the intention of this Code standard. Our comments are:

- The Code standard could state “address conflicts of interest”.
- The bullets should be reordered to identify, avoid, manage, disclose.
- The “avoid” bullet point should be clarified.

### 3.1 The code standard could state “address conflicts of interest”

The four bullet points in the explanation broadly align with the general literature about addressing conflicts of interest: identify, avoid, manage and disclose. However, “manage” is used in the standard wording, and the third point is changed to “control”.

We submit that the code standard would be more effective if it aligned with best practice on conflicts of interest.

### 3.2 The bullets should be reordered to identify, avoid, manage, disclose

We submit that the bullet points should be reordered to match the general literature on conflicts of interest, which match the order in which steps are taken:

1. Start by identifying potential conflicts of interest;
2. Once identified, avoid any conflicts that are reasonable and practicable to avoid;
3. If conflicts cannot be effectively avoided, manage them;
4. Conflicts that are not avoided must be disclosed to the client.

### 3.3 The “avoid” bullet point should be clarified

The new regime does not ban commission, because to do so would reduce access to financial advice. We submit that this bullet should be modified:

“where reasonable and practicable, avoid conflicts of interest”

It should also include commentary to explain what is reasonable and practicable. For example, it is reasonable for a life insurance adviser to be remunerated by commission from insurers. That financial adviser should have policies and processes to manage the impacts of this conflict, that meet the requirements of the proposed s431J of the Financial Markets Conduct Act.

## CS4 – agree

We agree with the intention of this code standard. Further consideration should be given to replacement business.

### 4.2 Expectations around replacement business should be increased

We submit that there are significant risks for consumers in replacing one financial advice product with another. In these situations, a provider of financial advice should not be permitted to

recommend a replacement financial advice product to a retail client unless the provider of financial advice compares the risks and benefits of the existing financial product to those of the new financial advice product, relative to the client's personal circumstances. An exception should be allowed if the retail client proactively and expressly refuses advice.

This will address the risk that financial advice products are often similar, but with important differences that are difficult to detect. Unless product documentation is compared by an expert, there is a risk that retail clients will not make fully informed decisions and be in a worse position with a substitute product.

There is a significant risk of this occurring in cases of life and health insurance. For example, replacing one trauma policy for another, may mean the complete loss of cover if the client suffers a trauma condition not covered by the new policy. This is particularly relevant for cancer, where definitions of what qualifies for a claim benefit differs dramatically between policies. These differences can only be determined by analysis and comparison. (Cancer is the most likely condition to be claimed on, at around 50% of trauma claims).

Lost benefits are not the only significant risk. Pre-existing conditions are not covered under most new policies. As an example, a client has a medical policy which does not exclude 'genetic pre-disposition'. She is recommended a new medical policy which includes such an exclusion. Because the policies are not compared, she and the adviser are unaware of the difference in cover. A few years later she is diagnosed with breast cancer and BRACA gene mutation which pre-disposes her to breast cancer. Her surgery and treatment are not covered under the new policy. It would have been covered under the previous policy.

The Code should cover the risks to consumers of replacing financial products without financial advice. We propose the following additional Code standard:

#### **Advise on replacement business**

A person who makes a recommendation or gives an opinion to a client to dispose of an existing financial advice product and acquire a new financial advice product that effectively replaces an equivalent client need – whether explicitly or implicitly – must compare the benefits and risks of the existing financial advice product to the recommended financial advice product.

This standard does not apply if the client explicitly requests help to replace the existing financial advice product. In those cases, the person giving financial advice may compare the two products, or alternatively, may ensure the client understands the general risks of replacing their existing financial advice product with a new financial advice product, without comparing the specific benefits and risks of the two products.

#### CS5 – agree

No comment.

#### CS6 – disagree

We submit that this code standard should be removed. As this standard is inconsistent with the current Privacy Act regime, it introduces inefficiency and costs for market participants and clients. Moreover, the commentary requires client consent for the provider of financial advice to use anonymised client data. This significantly extends current privacy law.

We submit that clients benefit when providers of financial advice can use anonymised and aggregated client data to understand consumer behaviour and improve their services. Requiring consent to use anonymised data reduces the effectiveness of these benefits for consumers.

If the Code Working Group want to signpost important legislation to draw it to the attention of those who must meet the Code standards, these signposts could be placed in the commentary for Code standard 1, or in the opening commentary of the Code.

## CS7 – agree

We agree with this Code standard. Our comments are:

- This code standard could be improved by being more principles-based.

### 7.1 This code standard could be improved by being more principles-based.

This Code Standard is more process-oriented than the other Code Standards. We wonder whether it would be possible to be more principles-based. For example, the FSC Code of Conduct focusses more on seeking and acting on client feedback.

“4. Members must seek and consider customer feedback.”

Customer complaints are an excellent source of learning opportunities for a business, and the Code Standard could be drafted more to this effect.

#### “Seek and consider customer feedback

“A person who gives financial advice must seek feedback and seek to resolve customer complaints effectively.

“A complaint is an expression of dissatisfaction made to or about a person, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.”

“Commentary

“Customer feedback and complaints are a source of learning opportunities for those who give financial advice. A person who gives financial advice should review customer feedback and complaints for ways to improve the financial advice service.”

## CS8 – agree

No comment.

## CS9 – agree

We support this code standard. Our comments are:

1. Level 5 certificate is insufficient to understand products sufficiently.
2. It is unclear whether the new level 5 will replace or add to the existing.

### 9.1 Level 5 certificate is insufficient to understand products sufficiently

To advise a client about financial advice products effectively, the person giving financial advice must understand the benefits and risks of the product, and the key ways it is similar to and differs from other similar products.

The level 5 certificate does not teach the content of financial advice products. A person who has a level 5 certificate only does not have sufficient knowledge to provide competently financial advice about specific financial advice products.

We submit that code standard 9 should also require a person giving financial advice to be competent in the financial advice products about which they give financial advice.

We suggest an objective standard to determine what “competence” means in this context. We support the test used in code standard 5:

“that a prudent person engaged in the profession of giving financial advice would consider to be adequate in the same circumstances”.

### 9.2 It is unclear whether the new level 5 will replace or add to the existing

The consultation note at the bottom of page 7 says the Code Working Group intends to specify the latest version of the level 5 certificate in the code, if it satisfies requirements. It is unclear whether the updated level 5 will replace the National Certificate and NZ Certificate in the code, or be added to the list of qualifications.

We expect that the Code Working Group intends to add the new certificate to the list of qualifications. Please clarify the consultation note to avoid confusion.

## CS10 – agree

We support this code standard. Our comments are:

- We support the approach not to define a quantity of hours.
- We submit that the code provide a prudent person test to determine adequate CPD.

### 10.1 We support the approach not to define a quantity of hours.

We support the approach not to define a certain quantity of hours of CPD over a defined time period. What is sufficient for one person is insufficient for another person, because of factors including:

- The complexity of financial advice products on which each advises,
- The number of product types on which each person advises,
- The academic aptitude of each person,
- The length and breadth experience of each person, and
- The frequency with which each person draws on particular knowledge and expertise.

### 10.2 We submit that the code provide a prudent person test to determine adequate CPD.

We submit that this code standard should specify a test to guide financial advice providers to determine how much CPD is appropriate. We suggest extending the test proposed in code standard 5:

“that a prudent person engaged in the profession of giving financial advice would consider to be adequate in the same circumstances”.

To advise a client about financial advice products effectively, the person giving financial advice must understand the benefits and risks of the product, and the key ways it is similar to and differs from other similar products.

The level 5 certificate does not teach the content of financial advice products. A person who has a level 5 certificate only does not have sufficient knowledge to provide competently financial advice about specific financial advice products.

We submit that code standard 10 should also require a person giving financial advice to be competent in the financial advice products about which they give financial advice.

### CS11 – agree

We reiterate our comments on code standard 9, because they are equally relevant here.

### CS12 – agree

We reiterate our comments on code standard 10, because they are equally relevant here.

### Question 25

Yes.

### Question 26

Replacement business

We submit that there are significant risks for consumers in replacing one financial advice product with another. In these situations, a provider of financial advice should not be permitted to recommend a replacement financial advice product to a retail client unless the provider of financial advice compares the risks and benefits of the existing financial product to those of the new financial advice product, relative to the client’s personal circumstances. An exception should be allowed if the retail client proactively and expressly refuses advice.

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#### Question 27

We submit that examples should be removed from the Code.

Examples are likely to constrain thinking, rather than provide clarity. We submit industry participants and industry bodies should work together to establish best practice. The Code Committee itself may also decide to issue guidance notes to help market participants understand and implement the Code.

Separating examples from the Code also keeps the Code concise and easy to read.



## Question 28

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