

27 April 2018

Code Working Group
Code.secretariat@mbie.govt.nz

Dear Sir / Madam

My name is Chris MacKay.

I am the Managing Director of a financial advisory firm trading as MacKay Financial Advice and Solutions.

We have four AFAs working within the company – three contractor advisers plus me. We have two administration staff who are Registered Financial Advisers plus another three full-time and one part-time administration staff. Total of 10.

I have been giving financial advice for 41 years after graduating with a Commerce degree majoring in Accounting in 1976. I completed my New Zealand Diploma in Life Assurance in 1980 and was the first New Zealander to hold both the CFP and CLU designations.

Our other AFAs have 36 years', 30 years' and 12 years' experience in financial services.

Initially I held a sole agency with National Mutual. For the past 25 years, we have extended that so that now we have arrangements with the major Life and Medical insurers, five KiwiSaver providers and six Fund Managers in order that we can provide holistic financial solutions when requested. One of our AFAs also advises on mortgages and deals with a number of lenders.

As a company, we do not tend to produce full financial plans for clients. Our experience has been that few Kiwis are prepared to pay the fee required to compensate AFAs or CFPs adequately for their time.

Typically, our clients are wanting advice on their KiwiSavers, their insurance or on their lump sums to invest, in order to generate cash flow for their retirement, but not always wanting advice on all these areas at the same time.

Obviously, the flow on from the advice results in financial solution/s being recommended with an appropriate mix of products.

Thank you for the opportunity to make some comments and submissions to the Code Working Group (CWG). So, in order:

- A. In #52 you note that 'a good advice outcome does not necessarily mean the product being advised on performs well'. Furthermore, 'the actual performance ... must be in the range of performance that reasonably could be expected by the adviser at the outset, or if it's not within that range, the adviser did not know – and reasonably ought not to have known – that the product would not perform as represented by the product provider'.

As relates to insurance products, this seems a 'cop-out'.

This suggests that ignorance is OK. For example, if a bank adviser did not know that an insurance product they are replacing with an inferior bank insurance product, is indeed inferior and has more restrictive conditions and less 'bells and whistles', then the CWG seems to believe that this activity is quite acceptable.

Your last point in #53 is well made. So how indeed do you control an uninformed and narrowly trained bank adviser replacing a quality insurance product with a cheaper but non-appropriate policy?

C. Agree

F. Potential conflicts of interest should of course be disclosed, just as AFAs are required to, at present. What is not being disclosed at present and which needs to be incorporated in the new Code for all advisers, is bank advisers' or Vertically Integrated Organisations' (VIO's) QFE advisers' conflicts of interests.

At present, many bank advisers have certain minimum production quotas. Failure to meet them not only means no bonus but also possible termination. Anecdotally, I understand that in the banks' tearooms, there will be a whiteboard with the number of KiwiSaver sales for the week or month for each bank teller / adviser highlighted. Insurance sales, mortgages and credit card sales are also included. But these conflicts are not disclosed at present. The Bank adviser should be required to say that they will lose a bonus or their job if they don't sell so many 'widgets'. And it shouldn't be hidden in a generic disclosure cleverly formulated by the banks' or VIOs' legal and marketing teams.

G. Agree.

H. Not necessary.

J. Under #100, fourth bullet point, I'm sure you would agree that other family members (eg a spouse) are often taken into account when providing advice for the other spouse.

Under #100, last bullet point, how long is "as long as it is required?" Who will define this? You haven't through this through enough.

P. Agree.

Q. Agree.

R. Agree.

S. Agree.

T. Agree.

U. Agree.

V. Don't agree that this is necessary in SMEs. However recent activity in Australian VIOs would indicate that it is required in large organisations.

W. If V was yes, this would increase SME compliance costs. For VIOs, it wouldn't be a large cost.

X. Agree.

Z. #121 – all good.

#122 Agree

#123 Agree

#124 Agree

#128 You are correct in saying that the existing AFA Code doesn't accommodate ongoing client relationships, review / renewal or 'limited' advice situations very well. There is far too much unnecessary potential process and paperwork required for existing client reviews and 'limited' advice situations.

#129 At the moment, RFAs and banks hide behind 'class advice' with regard to new KiwiSaver sales and switching existing KiwiSavers to their company's product. KiwiSaver balances will increasingly become more significant and as important as a house purchase. For a switch to a new provider taking five minutes and being based on a bank teller's question "Would you like to see your KiwiSaver balance on your internet banking?" is a very serious issue that the CWG needs to address. Likewise, one provider I'm aware of in their risk profile questionnaire ask just two questions in order to determine a long-term asset allocation strategy. There's no education provided, no fact finding, no needs analysis – they are simply flogging a product, and the regulations allow it. It's scandalous.

'Class' type advice for switches to a new provider is not what is required. Personal Financial Adviser involvement with a minimum face to face or interaction time of at least 30 to 60 minutes should be mandatory. That's how long I spend with a new KiwiSaver client in order to do a proper job and in order to give good advice.

BB Agree that the definition of 'Complaint' could be improved.

Is a client calling to say they can't or don't want to afford their increasing insurance premiums on a 20-year-old policy a complaint? Some say yes. But is this really a complaint against an adviser?

DD Compliance costs need to be considered for small Financial Advice Providers. If you want to drive the small companies out of business, be mindful of this.

GG Agree that the Code should include guidance material to help determine what needs to be considered when designing an advice process.

HH) You seem to be pandering to the VIOs here by talking about a 'reference document
II) to assist with client decision making' and this 'standardised document prepared and
JJ) retained by the Financial Advice Provider (FAP)'. What does this mean? Then you
talk about verbal advice recorded by the FAP being OK. My UK colleague tells me
that in the UK, if advice is not written and given to the client, it's not been said.

You know that it's hard for clients to grasp concepts, ideas and definitions verbally and so it appears that your thinking is simply pandering to the VIOs and their call centres.

Here's another scenario – a bank adviser verbally suggests replacement of a superior insurance policy. The conversation is recorded. The bank adviser says "There may be some conditions that are not covered in the new one, but it's cheaper, and so this will help with your mortgage payments. Are you OK with this?"

The unsophisticated client of course answers "Yes". It's recorded. The bank is off the hook when the claim turns sour.

You also need to incorporate the term 'Record of Advice' into the Code along with 'Statement of Advice'.

Advice may be given verbally as I've indicated above, and I'm happy with that (I do it too), as long as it's put in writing and subsequently, in a timely manner, given to the client as a Record of Advice.

- KK This section on minimum standards is simply a general cop-out, pandering to the banks and condoning their current unethical practice of switching of KiwiSavers and their replacing of quality insurance products.
- LL An organisation culture focussed on delivering good advice outcomes should be fundamental.

However, as the Royal Commission in Australia is discovering, it's all just waffle and unlikely to be possible when you have VIOs requiring their employees to sell so many KiwiSavers, investments and insurance policies to avoid losing their jobs. Not requiring detailed paperwork with each individual client will not ensure good advice outcomes. You will simply encourage the continuation of the existing poor practices and non-existent advice provided by the VIOs

MM No problem here.

#152 Again, you are pandering to the banks. You say "The client may be a particular client or a generic group of clients with similar characteristics to which it is reasonable to associate the particular client given the nature and scope of the advice."

This is the old 'class' advice business. A medical analogy would be a doctor saying "You're 50 so here's an aspirin to take every day because you're in the heart attack age group."

If you are wanting to dumb it all down, this is a good way.

NN Agree with your interpretation of knowledge, competence and skill.

SS } I think that once a Financial Adviser has passed something along the lines of the current
#156 } Level 5 Unit Standard 26360, then all they should be required to do is complete a certain
#162 } number of CPD hours every three years relating to general level, Code and consumer
#167 } protection obligations relevant to giving financial advice. A three year (possibly statutory)
declaration would be completely adequate. Having to complete an external examination
every three years is over the top, once it's been completed initially.

#176 Makes sense to regard existing AFAs as having sufficient experience.

#181 I don't agree.

You can't be serious in having one rule for the 'big end of town' – banks / VIOs and another for small FAPs.

If the VIOs want to be in this space, then they should encourage their employees to get the requisite qualifications.

#183 Agree. If you are an AFA now, that should meet the minimum standard going forward.

#184 I suppose it is good to lift the educational bar, but we still want to encourage new advisers into the financial services profession. So, don't make it too tough.

Perhaps you promote a progressive qualification regime.

For example, a new adviser holding Level 5 but with no experience, would be a Provisional Financial Adviser, and would progress to a (full) Financial Adviser after three years on the job experience, with appropriate supervision etc.

I believe that demonstrating ability as well as knowledge of the advice process is required in order to qualify for Level 5. My comments in the previous paragraph could allow you to accommodate a lesser emphasis on demonstrating ability in qualifying for Level 5; demonstrating ability would come after the on-the-job experience was gained.

#185 I think you need to define 'Financial Planning'.

There are a number of very competent AFAs who also hold the CFP designation, who don't hold a Commerce or equivalent degree, but who have completed the existing Graduate Diploma in Financial Planning in order to become a CFP practitioner.

Your suggestions don't allow for potential advisers in the above camp to become 'Financial Planning' Advisers, unless they have a Bachelor's degree in designated majors.

What about a History major, who goes on to do a Graduate Diploma?

#189 For the record, I think that the current IFA requirement for 60 hours of CPD Credits over two years is adequate.

ZZ If you want to avoid Potential Financial Advice monopolies currently epitomised by offshore owned banks, then you need to be supportive of small independently run New Zealand owned Financial Advisory companies.

You possibly need to be recommending along with some thinking emanating from the current Royal Commission activities in Australia, that banks should not be involved in financial advisory activities – period!

You need to ensure that Nominated Representatives have the same educational Level 5 requirements as Financial Advisers.

You need to ensure that the new Code provides a level playing field in documentation and compliance required from both Financial Advisers and Nominated representatives.

You need to have a complaints procedure that doesn't rely on a client making a complaint. At the moment, many clients do not understand that they have had sub-standard and non-compliant advice. However, another Financial Adviser should be able to justifiably complain on a client's behalf.

Many thanks for the opportunity to make a submission.

Yours faithfully

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CHRIS MacKAY

AFA, BCA, CLU, CFP^{CM}, Fellow IFA, FNZFAA, JP
Authorised Financial Adviser – FSP No: 26122