

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 Porus Kateli
ii.	Please provide your contact details 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) I am an RFA and deal with Life, Disability and Medical Insurance.
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 advice outcomes can be achieved with ONE STROKE in the areas of insurance I deal with – Life, Disability and Health.</p> <p>Currently we have a system of ‘good faith’ when applying for insurance of these types, with the onus of correctly declaring the relevant information to the insurer on the client. The insurer only checks whatever info is supplied by the client at application time (so if the client has forgotten to mention something or has made an error in the information provided, it will most probably NOT be picked up). However at claim time the insurer goes and checks everything and any such mistake backfires on the client, in the way of declined claims.</p> <p>This is the sole reason for 90% of issues (incomplete disclosure or non disclosure, especially around pre-existing conditions) that arise, because EVERYONE forgets or mis-reports some information in their Applications. It is a natural human tendency / weakness as no one can answer everything correctly to the various insurance questions that are asked, and this can be used against clients.</p> <p>It suits the insurers very well indeed.</p> <p>With ONE STROKE this problem can be eliminated by shifting the onus of checking all relevant info to the insurer AT APPLICATION TIME. The insurer can easily do this (because</p>

	<p>they do exactly that at claim time) and it will save 90% of all non-payment of claims. In fact the process of Application for the client can be much faster. The client should not have to fill in all the long winded questions on the application form but simply sign an authority for the insurer to check all their medical info. In today's technological world this is very easy.</p> <p>It will eliminate ALL claims not being paid due to non disclosure or incomplete disclosure. This shifting of onus will greatly reduce this whole exercise of trying to define and determine how Advisers act as the Advisers are in no position to determine the accuracy of what is being mentioned or omitted by the client unless it is pretty obvious and in front of their noses.</p> <p>In most such instances Advisers are the meat in the sandwich.</p> <p>THIS IS THE ELEPHANT IN THE ROOM THAT IS NOT BEING DISCUSSED.</p> <p>This ONE CHANGE will also prevent, to a great extent, any 'wrong' business trying to be put in by an unscrupulous Adviser or client.</p> <p>The insurers will argue against this change till they are hoarse stating increased costs. Yes, the costs will increase, but the benefits in dollar terms to the client/consumer will far, far, far outweigh these costs in the way of eliminating or greatly reducing declined claims due to incomplete or non disclosure.</p> <p>With this ONE CHANGE our industry WILL become 90% more efficient, honest and professional.</p>
<p>B.</p>	<p>Are there any further principles that should be included, or existing principles that should be removed?</p>

Ethical behaviour

Act with honesty, fairness and integrity

Share your views

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, absolutely, and that will also be achieved in a much easier way by forcing the onus on the insurer to access all relevant info for underwriting upfront at Application time, not at claim time.</p>
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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>By making the suggested change above, the scope for unethical behaviour is vastly reduced automatically.</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>

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>Again, all this won't be necessary if the root cause is tackled as stated above.</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>The client will be protected from harm (even from themselves) by making this ONE CHANGE.</p>
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, if this ONE CHANGE is incorporated.</p>

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>
J.	<p>Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?</p> <p>The more complex any aspect becomes the more problematic in its implementation so I would caution in over stating the obvious.</p>
K.	<p>Are there other aspects of maintaining client confidentiality to consider?</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>No, all this is over the top.</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>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>No</p>

O.	<p>Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?</p> <p>No</p>
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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>Yes, for ethic standards to be maintained but don't see how these can be achieved by training. A person is either ethical or is not.</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>If a person requires ethical training then that person should not be doing this job.</p>
R.	<p>Should there be a requirement for ongoing refresher training on ethics?</p> <p>No, due to the reasons explained 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>No, all this is becoming too complicated and bureaucratic.</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>Sign off from whom? Yes, if you mean the sign off from the client.</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>No. Too much red tape.</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. I repeat that ethics are being looked at in the wrong place. Make that ONE CHANGE explained before and see how all these problems disappear.</p>

W.	<p>Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?</p> <p><i>Yes, compliance costs for Advisors should be very carefully considered by the CWG before burdening Advisors with any additional obligations.</i></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>
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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><i>By making the ONE CHANGE recommended earlier, almost all claim decline reasons will evaporate benefitting the consumer immensely.</i></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>

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>
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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)? Client interests will automatically be taken care of by making this ONE CHANGE.
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered? Keeping costs to a minimum is absolutely necessary for the Adviser industry to function.
EE.	Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?

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.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?
OO.	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.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
RR.	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)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

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><i>By defining Advisers according to what they do is the best for all concerned.</i></p> <p><i>Insurance Advisor – for insurance advice</i></p> <p><i>Mortgage Advisor – for mortgage advice</i></p> <p><i>Investment adviser – for investments advice.</i></p>

UU.	<p>How should RFA's experience be recognised?</p> <ul style="list-style-type: none"> • By the number of years in business. • By the number of clients on the books. • By the lack of disputes.
VV.	<p>What do you think are the advantages of this approach to particular competence, knowledge, and skill?</p>
WW.	<p>What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?</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>
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>

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>