

SUBMISSION ON CODE WORKING GROUP (CWG)

Code of Professional Conduct for Financial Advice
Services Consultation Paper 12th March 2018

ABOUT FINANCIAL ADVICE NEW ZEALAND

Financial Advice New Zealand is the new professional association for financial advisers and has been established by three founding bodies: The Institute of Financial Advisers, the Professional Advisers Association and New Zealand Financial Advisers Association. Collectively, Financial Advice New Zealand represents approximately 1,800 advisers across these three bodies.

The objectives of Financial Advice New Zealand are threefold:

- 1. Standards** – To encourage, promote and recognise high standards of advice, service, professional practice and conduct by Members.
- 2. Advocacy** – To provide professional leadership that represents the Members' interests particularly in relation to the promotion of the value of advice, and advice standards and public advocacy and to work with regulators to achieve collaborative regulation that builds **public**
- 3. Promotion** – To build public awareness and trust in the value of financial advice.

CONTACTS

FRED DODDS
CEO, INSTITUTE OF FINANCIAL ADVISERS, INC
021 998 906
FREDD@FINANCIALADVICE.NZ

SUE BROWN
CHAIR, FINANCIAL ADVICE NEW ZEALAND INC.
027 215 9094
SUE@SUEBROWNSLUTIONS.CO.NZ

INTRODUCTION

IFA, PAA and NZFAA welcome the opportunity to present this submission on behalf of Financial Advice New Zealand. This submission represents input from membership and executive of all three bodies and represents the combined voice of over 1,800 RFAs and AFAs who provide risk insurance, mortgage, investment and financial planning advice and services to their clients. We estimate this represents advisers to more than 600,000 New Zealanders.

In compiling this submission, we have taken the approach of focussing on key themes and issues raised in the paper as opposed to answering each of the questions individually. Where specific comment on a particular question is warranted, our responses are presented in the last section of our submission: “Specific Views and Recommendations.”

The paper is structured into three main sections:

OVERARCHING CONCERNS AND RECOMMENDATIONS. This section highlights what we perceive as critically important issues and concerns and which, unless addressed by the CWG in the development of the code could seriously impact on the overarching goal of ‘good advice’.

GENERAL VIEWS AND RECOMMENDATIONS focusses on the major themes of the consultation, presents our overall view on the theme and makes recommendations on how they should be addressed in the code.

SPECIFIC VIEWS AND RECOMMENDATIONS. We finish with comments/views and recommendations on some of the specific questions raised in the paper which we believe are not covered in other sections of our submission.

We welcome the opportunity to work with the code working group and contribute to the development of a new code which achieves the goal of good advice for New Zealanders.

OVERARCHING CONCERNS AND RECOMMENDATIONS

We understand that the Code Working Group has been given the task of developing a new code to address a substantially broader scope than the current code for AFAs in conjunction with proposed legislative changes currently before parliament. We acknowledge the complexity and challenge this entails and believe that a number of elements contained the proposed framework will work to ensure that the overarching theme of 'good advice outcomes' are achieved.

However, we are also concerned that current proposals are likely to create a fundamental restructuring of the financial advice sector in New Zealand to the detriment of access to good advice. This restructuring will likely result in the elimination of large sections of the independent (we use the term here to describe 'non-aligned' practitioner) self-employed advice practitioner and a 'dumbing-down' or even elimination of advice in many engagements. This will result in reduced competition and choice for the public of NZ, lower standards of customer care and compromise the ability of New Zealanders to access good advice.

These impacts arise predominantly from three proposals outlined in the consultation paper, notably:

1. to broaden the generally accepted definition of financial planning and materially extend competence obligations for those deemed to be providing 'financial planning' advice. Many current life, disability and health insurance and mortgage advisers would be deemed financial planners under the proposed new definition. This will force many practitioners towards what is being described by the consultation paper as "product advice".
2. The introduction of 'in-aggregate' competence alternative which will further erode availability of quality personalised advice by allowing unqualified representatives to deliver 'advice' and, .
3. the introduction of the term 'Product Advice' the likely outcome of which will be to conflate what is effectively a sales process with an advice process.

This is exacerbated by two particular themes which are apparent on reading through the consultation paper:

1. The apparent shift away from a principles-based system which has operated effectively for AFAs. A number of the proposals contained in the consultation paper seem to suggest that a more prescriptive approach is being considered. Examples include suggestions for a specific approach to ensuring ethical standards are being adhered to or a requirement for sign-off on the soundness of the financial advice.
2. Increasing the compliance burden across the industry by adopting a 'one-size-fits-all' approach. While we accept this is the result of a significantly expanded scope for the code, we are of the opinion that this has also resulted from the apparent shift away from a principles-based system which allows for market participants to ensure compliance in a manner suited to the nature of their business and mechanism of advice delivery.

OUR RECOMMENDATIONS

We believe that the fundamental systemic issues arising from the CWG proposals can be addressed as follows:

Establish a clear delineation between product sale and financial advice. If the nature of the engagement is to recommend and implement a product – this is a product sale (not “product advice”). Where the engagement entails a needs analysis, evaluation of alternatives which may culminate in the recommendation of acquisition, disposal or restructuring of a product then this is clearly financial advice (not “product advice” or financial planning as described by the consultation paper)

Individual Competence. Where a financial advice process is involved, the client should expect that the individual adviser delivering the advice should be competent (in their own right) to deliver that advice. In this context, our view is that a level 5 certificate (or equivalent) should be considered as a minimum standard for every adviser. We discuss our ‘equivalent’ recommendations in the ‘General Views and Recommendations’ section later in this submission.

Financial Planning Definition. We do not agree with the proposed expansion of the definition of Financial Planning to include insurance planning or mortgage planning etc. For advice involving a single area of personal finance, we believe that level 5 (or equivalent) is an appropriate competence standard. There are generally accepted international standards and definitions of what is meant by Financial Planning which, in our view should be adopted and recognised in New Zealand. Using this internationally recognised standard, we are supportive of a higher educational standard (level 6 or 7) for Financial Planners. This would only apply where the advice covers the multiple and complex interrelationships of cash, debt, wealth, risk and estate planning generally covered by financial planning.

Principles-based approach. Ensuring that the proposed code is developed from a principles-based methodology to ensure that compliance burden is proportional to the nature of the business.

GENERAL VIEWS AND RECOMMENDATIONS

1. GOOD ADVICE OUTCOMES

Paragraphs 46 – 71

SHARING OUR VIEWS

The Code concentrates on good advice outcomes for a retail client

*Clause 56. The Code applies only to regulated **advice** given to retail clients, and therefore we regard retail clients as being at the heart of the Code*

We agree with this focus as it underpins previous focussed comments in the Exposure Draft which had two key objectives in this regard:

More informed and confident consumers, and

Advice improves consumer financial outcomes and makes them better off.

We strongly disagree with the logic (clause 182, page 50) that this CWG focus on ‘outcomes’ means that system ‘inputs’, such as advisers and nominated representatives giving advice, do not necessarily need to be qualified or evidence their competence.

Your focus in Clause 52 is worth noting:

*It is important to emphasise that a good advice outcome does not necessarily mean the product being advised on performs well. Our focus is the outcome from the **advice process**, not from the overall financial decision. There is nevertheless a point of intersection: for there to be a good advice outcome:*

The working group is reported as saying:

“measuring good advice outcomes was difficult because they were not easily quantifiable.”

“With investment products, the lowest fees or highest expected return may not be appropriate when accounting for a client’s individual circumstances or preferences. With insurance products, the lowest premium or highest level of cover may not be appropriate if the policy has some significant exclusions.”

The Role of a Financial Adviser in this area is vital.

Financial advisers assist their clients with making financial decisions. Specifically, they help their clients plan for the future, protect themselves from risks, manage debt, gain financial literacy, manage their daily finances and importantly, counsel clients in times of change and market volatility. It also includes the personal assistance an adviser provides in times illness and death.

Benefits to Clients

The financial needs of clients are diverse and, in many cases, unique to an individual's circumstances. Finding appropriate products and services to match these circumstances is a complex task, given the wide variety of financial products.

Maintaining a comprehensive understanding of financial advice disciplines, tools and processes enable financial advisers to provide key benefits to a wide range of consumers throughout the customer lifecycle, resulting in the development of long term relationships.

Peace of Mind

Many clients do not have the necessary time, inclination or ability to fully inform themselves of options in the complex and rapidly changing financial environment. Hiring a professional financial adviser to navigate them through the complicated financial landscape can give them peace of mind and make their financial plan more easily understood and maintained.

We refer you to the key objective from the Exposure Draft that: "Advice improves consumer financial outcomes and makes them better off"

Our view is that no-one can control outcomes, and refer again to the CWG earlier comment - "*measuring good advice outcomes was difficult because they were not easily quantifiable.*" and consequently we propose different wording.

RECOMMENDATION – GOOD ADVICE OUTCOMES

That good **advice and the advice process** ought to be the 'overarching theme'.

2. ETHICAL BEHAVIOUR

Paragraphs 72 – 116

OUR VIEWS

ETHICS ARE THE FOUNDATION OF ADVICE.

The legislation should require anyone who gives personal financial advice to comply with an approved code of ethics. Such legislation should require both Financial Advice providers and financial advisers and Nominated Representatives to adhere to a Code of Ethics which requires;

- recognition of the priority of the client's interests over those of the adviser, Financial Advice Provider or institution
- duties respecting conflicts of interest, including disclosure to the client of all real and apparent conflicts and management of conflicts of interest;
- the duty to provide competent service, performed with honesty and integrity;
- the duty to respect client confidentiality; and
- an enforcement mechanism for misconduct

It is most important to have those who provide financial advice to focus on more than just rules "you impose rules you get compliance, but not commitment".

UPHOLDING ETHICAL RESPONSIBILITIES

- Acting ethically is the most important attribute of a financial adviser and therefore should be ingrained throughout their business and advice process.
- Ethics are the foundation of a profession. Without the ability to maintain high ethical standards you have a job. That's all you have. You don't have a profession.
- Advisers will derive significant benefits when they operate as a profession, including community trust, increased accountability, and professional pride and esteem.
- An important piece in the professionalism jigsaw is the ability of professional bodies to have a mandated code of professional conduct and ethics.
- All financial advisers should be required to comply with a Code of Ethics as set either by their Financial Advice Provider and/or their Professional Adviser Association. When the industry becomes a profession it will enjoy community, professional and personal credibility. That will engender advisers – and the broader profession itself – with both purpose and belonging.
- One specific area of business ethics and behaviour that could be improved to the benefit of the consumer is the disclosure and management of conflicts of interest, especially as they relate to Code Standard 1.

DISCLOSURE & MANAGEMENT OF CONFLICTS

When providing financial advice a financial adviser (and nominated representative) must make full disclosure of all material conflicts of interest that could affect the client-adviser relationship. This obligation requires the adviser to provide sufficient specific facts so that the client is able to understand the adviser's conflicts of interest

and the business practices that give rise to the conflicts, so the client can provide informed consent to such conflicts or reject them. A sincere belief held by the adviser with a material conflict of interest that he or she is acting in the best interests of the clients is insufficient to excuse failure to make full disclosure. An adviser must adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the adviser's ability to act in the client's best interest.

ETHICAL COMPLIANCE.

A publically-published code of ethics would be an important step up from current requirements. It would be a clear benefit to the public to know all FAPs, their advisers and nominated representatives, are held to an ethical code of behaviour. The Institute of Business Ethics (IBE) November 2017 Report "Setting the Tone: a New Zealand perspective on ethical business leadership" provides a deeper understanding of these issues. It also challenges some of the assumptions regarding current practices in regard to code of ethics referred to in the Consultation Paper. We would strongly support the IBE statement from that Report.

"Leadership commitment is strengthened by articulating a set of core ethical values, developing a code of business ethics and introducing a formalised ethics programme" page 8

OUR RECOMMENDATION

We would hold it is highly beneficial to the consumer to know that the adviser and FAP they are dealing with adhere to a publicly available Code of Ethics. **This could be evidenced by either;** the FAP publishing their own Code of Ethics, or the advisers and nominated representatives adhering to a Code of Ethics as required by their Professional Association.

We support the requirement for a formalised ethics programme, but to prescribe that in detail as per questions S (frameworks), U (compliance function) , V (internal audit), Y (mechanisms) all seems highly inconsistent with the CWG's Principle 3 for developing the Code 'a principles-based approach that allows for flexible application'.

3. CONDUCT AND CLIENT CARE

Clauses 117 – 152

OUR VIEW

ADVICE-GIVING STANDARDS

Clause 125 – *“In our view, advice giving conduct and client care standards should apply to all advice interactions between a Financial Advice provider – including its financial advisers and nominated representatives- and the client”*

And:

Clause 138 – *“in our view, that more “personalised” suitability analysis is justified where consideration of the client’s personal situation and goals (rather than the generic situation of a typical client) is necessary to achieve a good advice outcome. That means it is likely to be needed for financial planning, and for product advice situations which involve consideration of the clients particular financial situation (or a material part of it)”*

Our view is that each advice situation requires a process which typically includes the following elements (which are not necessarily sequential):

1. Establishes and defines the client/adviser relationship
2. Gathers client data, include goals
3. Includes Analysis and Research
4. Develops recommendations and options
5. Implements the recommendations
6. Monitors the recommendations.

THIS ADVICE PROCESS IS THE BASIS OF SOUND ADVICE AND WILL LEAD TO ‘GOOD ADVICE OUTCOMES’

The financial needs of clients are diverse and, in many cases, unique to an individual’s circumstances. Finding appropriate products and services to match these circumstances can be a complex task.

Maintaining a comprehensive understanding of financial advice disciplines, tools and processes enable financial advisers to provide key benefits to a wide range of consumers throughout the customer lifecycle, resulting in the development of long term relationships.

BENEFITS TO CLIENTS

The process by which financial advisers provide advice, products and services to their clients can be considered to be a cycle. While the financial advice process described here is often applied in a financial planning context, a similar cycle can apply to the full spectrum of products and services offered by advisers.

Your Clause 140 is noted:

“However, we want to find a way to ensure that this approach does not get applied in all advice situations because that would impair the availability of affordable advice. So, to minimise the risk of

over compliance, we propose that the standard would explicitly not apply where the Financial Advice provider could demonstrate how a good advice outcome is achieved without a personalised suitability analysis”

Financial advice must always be accompanied by a personalised suitability analysis and clause 140 would only apply in a ‘sales only’ situation with a clear disclosure to the consumer that no advice has been given.

OUR RECOMMENDATION

We agree that the current AFA Code of Professional Conduct be retained for individuals providing financial advice and that in the licencing process these rules are also required of Financial Advice Providers and should form part of the licencing process

4. GENERAL COMPETENCE, KNOWLEDGE AND SKILL

Clauses 153 - 188

OUR VIEW

We agree that all types of financial advice require strict minimum standards to ensure that the adviser evidences the competence, knowledge and skill, however the spectrum of advice that is defined from 'product advice' to 'financial planning' is problematic and like the term 'registered' and 'authorised' adviser are confusing and unhelpful. We are of the view that, to achieve the aims of 'good advice' it is important to distinguish financial advice from product sale. This differentiation of sales and advice will provide greater clarity for the public of New Zealand.

TERMINOLOGY

PRODUCT ADVICE

As noted at the start of this submission, we have a fundamental concern with using the term 'advice' in relation to product. For example; if a customer is being recommended an advice product (e.g. an insurance policy) without advice as to its suitability for their needs and further, or without comparison to products in the market within the product category then the word 'advice' should be excluded from the description of the service. The process is a product sale so the more appropriate description is Product Selling or Product Information.

The competence of the person providing product information could then be quite limited to knowledge and application of consumer, contract and sales regulation.

FINANCIAL PLANNING

Referring to the Financial Planning Standards Board description of Financial Planning (FP) – it defines FP as a process involving consideration of all aspects of a client's financial situation when formulating strategies and plans. We think it is fair to say that the definition of Financial Planning is well established globally with all market participants as meaning the practice as described above and would always include advice related to wealth accumulation and investment other than when the Financial Planner has agreed to a lesser scope of service for a particular reason.

The CWG paper indicates that practitioners with a more limited scope of service – say those advisers providing risk management & insurance advice e.g. the transfer (insurance) of financial risks they face as a consequence of death, disablement or a health event, are defined as conducting 'Financial Planning'. Advisers whose sole discipline is say advice on the financial risks from the events of Death, Disability and Ill Health, would rarely be perceived by market participants as Financial Planners or conducting Financial Planning even if they were applying the six step advice process to their specialist area. This service is more appropriately recognised and referred to as financial advice.

We would hold that terminology proposed is confusing to the sector and public and appears contrary to the CWG principle 2 and 3.

OUR RECOMMENDATIONS.

We recommend the adoption of the following terminology:

Product sale – this relates to the process of recommending and implementing a product where a personalised needs analysis and assessment of alternatives has not been undertaken.

Financial Advice. This relates to an engagement which includes a personalised needs analysis, assessment of alternatives

5. PARTICULAR COMPETENCE, KNOWLEDGE AND SKILL

Clauses 169- 189

OUR VIEW

IMPORTANT: For this section please note:

As noted earlier in this submission, we do not accept the definitions of ‘product advice’ and ‘financial planning’. These terms as used are confusing and inconsistent to both normal industry use and definitions under international standards. Further, such arbitrary definitions are likely to cause confusion amongst both advisers and consumers.

EQUITY APPROACH

We think there ought to be equity in regard to adviser’s competence, knowledge and skill. Such an approach would make the distinction between product ‘advice’ and ‘financial planning’ irrelevant.

We fully agree with Massey University submission to the MBIE “Issues Paper”, we quote:

“True professionals are marked by high education standards and clear ethical guidelines. For financial advice to be viewed as a profession, regulatory policies should aim to set the same rules of conduct for all who hold the title of ‘adviser’” (page 1)

MBIE’s prior papers clearly outlined the systemic issue that advisers did not think there was ‘an even playing field’ for everyone giving advice or an even playing field in regard to the attained minimum qualification standards across the sector that are relevant to the advice area.

ACCESS TO ADVICE

MBIE’s prior paper highlighted to need for New Zealanders to have access to quality financial advice as a long term aim for the country. To have therefore, a sub-set of advisers by dint of their employment arrangement, not being required to be qualified would put the New Zealand public at serious risk of not attaining, in the CWG’s own words, ‘good advice outcomes’.

We see this “in aggregate/combined expertise” suggestion as merely continuing the current QFE structure. In essence it allows personnel in the larger organisations not to have qualifications whereas advisers in the smaller and one person adviser businesses will have to have them.

This does seem to run counter to MBIE’s view of creating a “level playing field”

An ‘in-aggregate’ model, would severely limit the number of advice-givers within large organisations from attaining for themselves a portable, fit-for-purpose, vocational qualification, further exacerbating and constricting the future supply of qualified advisers and contrary to the aims of the Industry Training Act.

We fundamentally disagree with this point, and fail to see the logic in the CWG’s mechanistic approach in paragraph 182, quote

“182 Our focus is on the outcome not the input: the client experience must be equivalent to that given by a person holding Level 5, not that each person giving the advice has that qualification”

The consumer may reasonably expect that both the system 'inputs' and 'outputs' be fit for purpose. That is, both the person giving them advice has the knowledge and skills attained by a qualified person, combined with the advice processes and controls leading to good advice outcomes.

SYSTEM RISK

Financial advisers and nominated representatives who have not attained the minimum level of the NZ Certificate in Financial Services Level 5 would constitute serious, ongoing, systemic risk to the advice system. The consumer ought to have a reasonable expectation that a human adviser, ought to have attained the same minimum level of qualification if they hold the same role as described under the Act, namely financial adviser and nominated representative. The financial services sector in New Zealand needs to mature. In most service sectors, especially professional services, a lack of a minimum qualification standard is no longer tolerated.

Our sector is not the first to face the challenge of regulators requiring knowledge, competency and skill standards to be lifted and so there are many examples we can look to within NZ to gain understanding of how they transitioned through the process to bring incumbents up to the higher standards using Recognised Prior Learning processes and bring new entrants into the regime.

RECOGNITION OF PRIOR LEARNING

For the purposes of the membership of our Association we are making comments as they relate to current RFA's as per the request in the discussion document. The RFA advisers we refer to are - Life, Disability and Health Risk Advisers (LDHR) and mortgage advisers.

"We ask how RFA experience could be recognized in a measurable, quantifiable way" Clause 172, page 47

There is one robust way an RFA's prior experience could be recognised. Recognised Prior Learning (RPL) is a well-established protocol and the NZQA website provides good insight into how RPL can be used within the NZ qualification framework.

"RPL is where existing skills and knowledge, usually gained through work, independent study, informal learning and life experience, are recognised as being equivalent to those taught in a formal education setting for the purposes of awarding credit toward a qualification." NZQA website

RPL can be achieved using a range of processes such as:

- Submission of a portfolio of work to provide evidence of the knowledge, skills and competence at the required standard. This is assessed by an approved NZQA assessor. Challenge tests – the adviser opts to complete the tests/examinations of the qualification without undertaking the study. Typically, an 80% pass mark is required
- Client attestations

Where gaps are identified through the RPL, education must be undertaken to meet the standards.

This could be done through a series of short courses potentially using a range of mediums such as e-learning, webinars, case studies, micro-credentials, workshops.

RPL has been used by some New Zealand sectors to enable very experienced practitioners to achieve the industry-recognised qualification. RPL appears to be a pragmatic process that would enable advisers to gain

recognition of their experience and therefore meet the current competence, knowledge and skill standards and to be assured that the financial advice they provide is to the minimum standard expected of an individual who has attained the qualification.

However, the process for designing and developing the RPL approach would be significant as would the process of executing it. Notwithstanding the costs, we would recommend the use of RPL to recognize the experience and prior learning of advisers. We do not hold the view that this should only apply to advisers with certain duration of experience e.g. 10 years.

NON-HUMAN, DIGITAL ADVICE

The growth and access to digital advice systems are growing rapidly and these will have to be closely monitored to ensure consumer 'good advice outcomes'. It will require the human programmers and controllers to have a high level of competence, knowledge and skills to ensure consistent compliance to the Code of Conduct.

OUR RECOMMENDATIONS

We hold that if a person is giving **financial advice**, whether nominated representative or financial adviser, they must be able to **evidence their competence, knowledge and skills** equivalent to the current minimum qualification in their scope of service.

'Evidence' – in this context means any (but not limited to) of the following :

- i) attain the NZ Certificate in Financial Services Level 5 with the core component and the financial advice strand and any strand specific to their advice, or
- ii) Enter and complete an NZQA Recognition of Prior Learning (RPL) process so to as achieve such parts of the NZ Certificate in Financial Services Level 5 by way of assessment and Portfolio of Evidence or
- iii) Attain a relevant tertiary qualification at a higher level to the NZ Certificate of Financial Service level 5 e.g. the Massey Graduate Diploma in Business studies (endorsed in Personal Financial Planning) or Ara Institute Bachelor of Applied Management (major Personal Financial Planning), or
- iv) Competency alternatives as set by the Code of Professional Conduct
- v) Overseas qualifications recognised as equivalent to or at a higher level than level 5 certificate. This option may require supplementation with specific papers evidencing NZ Specific knowledge prior to licensing.

In the case of digital or 'robo' advice where there is no human giving advice we believe that an alternative model designed to evidence 'competence, knowledge and skill' is required. This should include:

1. Engagement of a qualified financial adviser (or advisers) to consult and test the advice process inherent in the robo-advice model.
2. Engagement of a third-party systems audit to verify the advice efficacy of algorithms and advice outputs from the robo-advice.
3. Ongoing independent annual audits to confirm the continued efficacy of the advice model and
4. The establishment of an independent review authority to assess complaints raised by users of the robo-advice service. This could be an extension of the services provided by current DRS schemes.

SPECIFIC VIEWS AND RECOMMENDATIONS

In this section we outline our views and recommendations on some of the specific questions raised in the consultation paper.

Question F: Should the Code include a minimum standard on conflicts management? Should it focus on any particular situations?

Our Response: We are of the opinion that there are situations which are not covered specifically by legislation and which warrant consideration in the code. In this regard we refer to two situations:

Where the balance of power/influence favours the advice provider. A particular example here is where a client is asked to consider the acquisition of another product whilst negotiating a mortgage. Other examples include favourable terms on a product where the client also acquires another product by the same provider.

Replacement business.

Generally: clients mostly rely on the integrity of their adviser when product recommendations include replacement of an existing product. We are of the opinion that the code should explicitly reference replacement business as a situation warranting careful attention by the adviser or nominated representative.

Identification of existing product. In all situations where a new product is being recommended, the FAP should be required to make reasonable inquiries to ascertain whether the client has existing products of the same type already in place and steps taken to ensure that the client is fully informed of the implications of replacement.

Question I: In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?

There are situations where the nature and/or quantum of data involved has the potential to allow the recipient of that data to identify individuals or groups represented by the data. We would encourage the introduction of particular standard which ensures that bulk data is truly 'anonymised' and restrictions on how the data can be used or shared.

Question J: Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?

In light of recent media investigations and increasing concerns about privacy and data security, we are of the opinion that the code should include specific provisions for the protection of client confidentiality.

Question K: Are there any compliance costs or other aspects of maintaining client confidentiality to consider?

Yes. Most client data is now stored in cloud-based systems with servers which can be located anywhere in the world. This presents two particular issues:

Legal jurisdiction; data located on servers located in other countries is likely to be subject to international legal jurisdiction as well as the New Zealand legislative framework.

Data security risk; There are many aspects to this particular issue including understanding how client data is stored (in transit and at rest), sensitivity of data being stored, understanding who has access to the data, types of access protection, etc.

We are of the view that the code should include specific provisions to ensure that data management risk is understood and mitigated, where necessary.