

READY
SET
GO



PRACTICAL KNOWLEDGE FOR THE NEW REGIME

Webinar Series - Workbook 1



Priority to clients interests

Disclaimer

The information provided in today's webinar is for general information only and is not legal advice.

Please refer to the regulations and seek legal advice in relation to how the regulations apply to you and your Financial Advice Provider.

The source of the information referred to in this webinar:

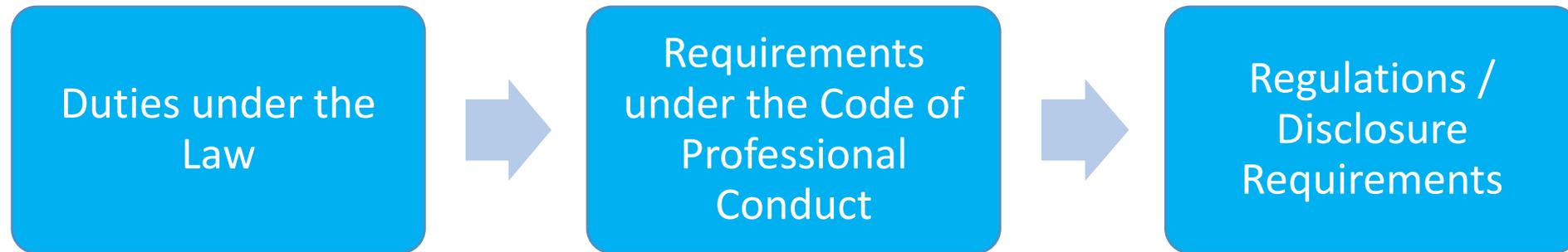
- Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
- The Financial Service Legislation Amendment Act (FSLAA) has significantly revised the current Financial Markets Conduct Act (FMC Act).
- The Code of Professional Conduct for Financial Advice Services.
- New disclosure requirements – members guide Financial Advice New Zealand.
- Case study and insights provided by Susan Taylor from FSCL for this webinar.

Agenda

- Duties under the legislation
- Applicable code standards
- Regulations
- Case study 1
- Process to manage conflicts of interest – why this is important
- Fairness is in the eyes of the beholder
- Actions: policies, procedures and controls
- Questions



3 Levels of obligations



Level 1 – 8 new Duties under the law

The Financial Service Legislation Amendment Act (FSLAA) has significantly revised the current Financial Markets Conduct Act (FMC Act).

The duties of persons who give regulated financial advice, as per new subpart 5a, are in summary:

- 431I Duty to meet standards of competence, knowledge, and skill
- 431J Duty to ensure client understands nature and scope of advice
- 431K Duty to give priority to client's interests
- 431L Duty to exercise care, diligence, and skill
- 431M Duty to comply with code of conduct
- 431N Duty relating to offer that contravenes Act or regulations
- 431O Duty to make prescribed information available
- 431P False or misleading statements and omissions



Level 1 - Duties under the law

Subpart 5A 431A-431T of FSLAA 2019.

431K - Duty to give priority to clients interest

431K Duty to give priority to clients interest

- **Duty 431K** deals with a very common adviser situation. It is when the adviser knows (or reasonably ought to know) they have a conflict between their own interests and their clients interests.
- The Act is clear – you must give **priority** to your client’s interests over your own.
- Further, the law instructs the adviser how to give priority to their client’s interests; by **requiring you to take all reasonable steps to ensure that the advice is not materially influenced by your own interests** or a person connected with the giving of the advice.

Level 2 – The Code of Professional Conduct for Financial Advice Services - Part 1

Part 1 - Ethical behaviour, conduct & client care

Standard 1 – Treat clients fairly

Standard 2 – Act with integrity

Standard 3 – Give financial advice that is suitable

Standard 4 – Ensure that the client understands the financial advice

Standard 5 – Protect client information



Level 2 – The Code – Part 2

Part 2 – Competence, knowledge and skill



Standard 6 – Have general competence, knowledge and skill

Standard 7 – Have particular competence, knowledge and skill for designing an investment plan

Standard 8 – Have particular competence, knowledge and skill for product advice

Standard 9 – Keep competence, knowledge and skill up-to-date

Level 2 – The Code – our focus today

Part 1 - Ethical behaviour, conduct & client care

Standard 1 – Treat clients fairly – treating clients with respect, listening to clients, considering their views and responding to their concerns and preferences.

Communicating in a timely, clear and effective manner. Not taking advantage of their lack of financial literacy or other vulnerabilities. Not applying pressure on clients.

Standard 2 – Act with integrity

Avoiding or appropriately managing any conflicts of interest.

Not doing anything that would, or would be likely to bring the financial advice industry into disrepute.

Level 3 – Regulations under the Act

- The Financial Markets Conduct(Regulated Advice Disclosure) Amendment Regulations
- Stages of disclosure from 15 March 2021.



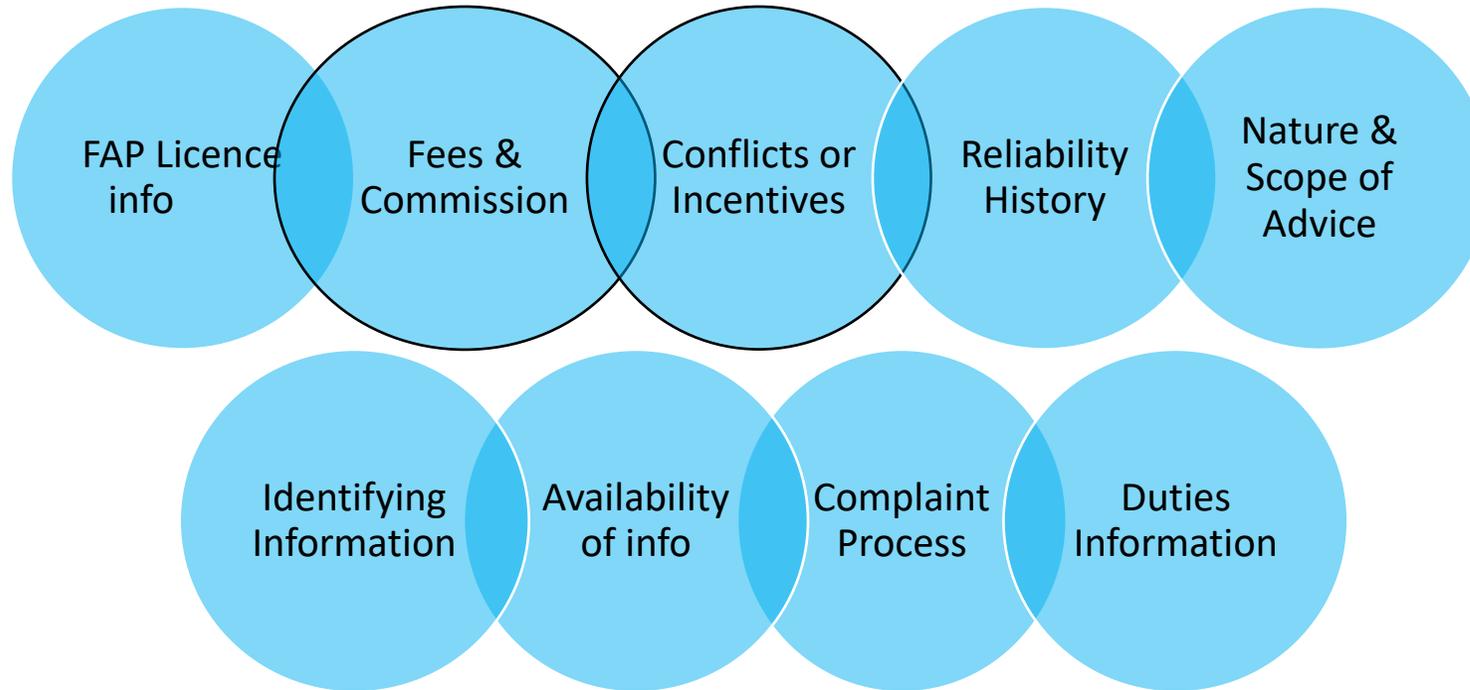
Purpose of the new disclosure regulations

- Provide consumers with the right information at the **right time**.
- Provide information that is **accessible** for consumers.
- Provide consumers with **effective disclosure**, regardless of how they choose to access advice.



*Reference - New Disclosure Requirements Member Guide Financial Advice NZ.

What information needs to be disclosed



Conflicts of interest

Conflicts of interest are simply situations where parties have competing interests or loyalties. If they are 'competing', or perceived to be competing there is a 'conflict'.

A Conflict of interest in relation to advice it means any interest of the client and FAP, with the giving of advice that a reasonable person would expect to, or be likely to **materially influence the advice given.**

Including commissions and other incentives.

Actual conflict - a known conflict that exists

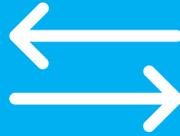
Potential conflict - that might be about to happen or could happen

Perceived conflict - where other people may reasonably think that a person is compromised.

Case Study – refer FSCL document

An insurance policy switch

Snapshot:



Elizabeth moves her life, trauma and income protection policies to another insurer, on her advisers recommendation. The new insurer then cancels Elizabeth's policies for non-disclosure.

Case study : FSCL Insights



From 15 March 2021, there will be a new duty on financial advisers under the Financial Markets Conduct Act 2013 (**431K**) to give priority to the client's interests and to ensure the advice they give is not materially influenced by the adviser's interests.

If this case had been about advice provided after 15 March 2021, we may have said that the adviser had breached that duty. This is because he could not prove that his recommendation to change insurers was not, in part, influenced by his own interests.

Susan Taylor CEO



Case study : shortfalls with other obligations:

Code standard 2 – Act with Integrity

- Failure to appropriately manage or avoid a conflict of interest.

Code standard 3 - Give advice that is suitable

- Failure to fully analyze the clients current circumstances and give suitable advice.
- Particularly care needs to be taken when switching from one provide to another.
- Who's interest is this?

Be able to demonstrate and evidence your process.

Case study : shortfalls with other obligations

Disclosure requirements – Conflicts of interest, fees, Commissions and how you manage them.

- From 15 March a full disclosure of the commissions paid upfront and any ongoing commissions for placing business with a new product provider will be required.
- To manage this conflict – follow the 6 step advice process consistently, along with thorough research and product comparisons, to evidence why the provider and the product meets the clients needs and is suitable.
- Clearly disclose that commission is payable by the product provider, including the amount, how that is calculated (% of annual premium and % of annual renewal premium) and how you are paid.
- Include any other conflicts of interest or fees that might come into play such as a ‘clawback’ if a policy is cancelled within 2 years. How you explain this it is important for the client to understand and in what circumstances this might be charged and how it is payable.

Fairness is in the eyes of the beholder

There is a quote *“fairness like beauty is in the eye of the beholder.”* *



Treating clients fairly does require self-reflection and professional objectivity – to look at the situation as if you were in the client’s shoes.

Treating clients fairly is about; how you treat the client, how you decided the action you took and what was decided.

Policies, procedures and controls can provide the adviser with a ‘fairness infrastructure’, which we will discuss in the next section and you can reference is Section C of the workbook.

*Note – quote from Lord Nicholls of Birkenhead in White and White [2000]

Evidence that you are meeting your obligations



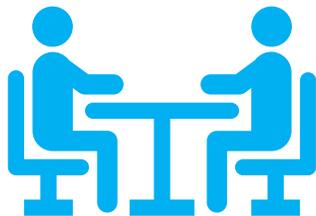
*Refer to workbook 1 - Section 3 page 18

Example actions to take 1

Action 1 - Provide advice and recommendations that meet the client's needs & objectives with a clear and easy to understand rationale.

1. Develop Policy statement - Promise to our clients.

“We will provide you recommendations and advice with a clear rationale for that advice based on your personal circumstances, goals, aspirations needs and provides to you the client the benefits and risks of that advice.”



Example actions to take 1



2. Develop Processes and Procedures (tasks)

- Review each Statement of Advice (SOA) or Record of Advice (ROA) before it goes to the client against the 'executive summary' checklist.
- Ensure the benefits and risks regarding your advice are specific to the client's circumstances.
- All replacement advice must be checked to the replacement business checklist.
- Supporting documentation must be kept to evidence recommendations in the SOA.

Example actions to take 1



3. Develop Controls (check it is working)

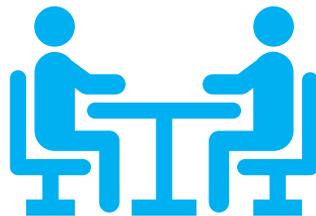
- Compliance check of SOA (ROA) before final proposal to client.
- Advice review of 10 client files per year by an internal review panel or a peer review for a one adviser business.
- External client-file review and compliance check every 12 months or as required by your FAP agreements.

Example actions to take 2

Action 2- Identify vulnerable clients and implement a policy and practices to meet their needs.

1. Develop Policy statement - Promise to our clients

“We will work with you - our client - to identify any need, vulnerability or support you require to ensure you feel safe, valued and respected.”



Example actions to take 2



2. Develop Processes and Procedures (tasks)

- Assess clients (e.g. at review time or post claim) using a needs matrix: physical needs (hearing, eyesight, mobility etc), mental and social needs (communication proficiency, comprehension level, memory loss, confidence loss, social support).
- Discuss with clients any specific requirements involving support mechanisms, interventions, communication styles and record this in the CRM.
- Check in with any client support people if unsure about a client vulnerability.
- Build this needs assessment into your client fact-find procedure.
- Identify training to help all employees and advisers in the business understand and manage client vulnerabilities.

Example actions to take 2



3. Develop Controls (check it is working)

- Review five random client files for assessment of client vulnerabilities and their needs plan: e.g. support mechanisms, interventions, and communication preferences.
- Incorporate a question on client fairness and safety in your online client survey.
- Include a question on support of client vulnerabilities to measure if special needs are being met.

Next steps



Questions?



Webinar 2 – Wednesday 3rd February

Workbook 2 - Competence Knowledge & Skill