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PRACTICAL KNOWLEDGE FOR THE NEW REGIME

Webinar 4- Workbook 4



Exercise Care, Diligence and Skill



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:

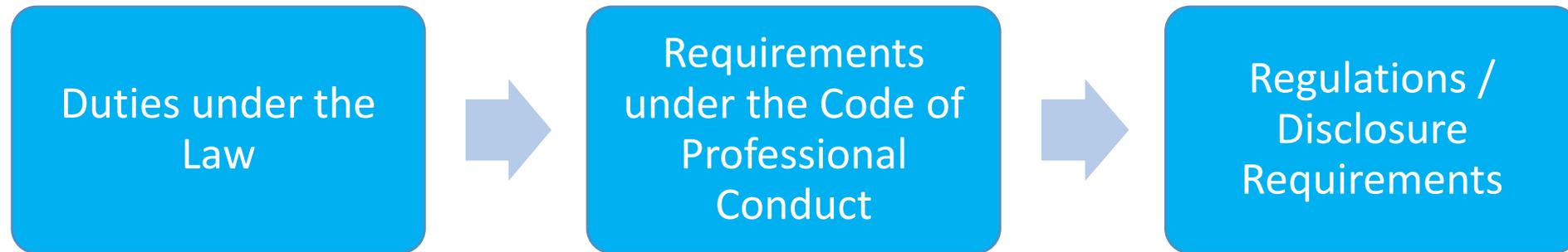
- Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
- The Financial Service Legislation Amendment Act (FSLAA) has significantly revised the current Financial Markets Conduct Act (FMC Act).
- The Code of Professional Conduct for Financial Advice Services.
-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

Agenda

- Duties under the legislation
- Applicable code standards
- Regulations
- Case Study - FSCL
- 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



431L – Duty to exercise care, diligence and skill.

“A person who gives regulated financial advice to a client must exercise the care, diligence and skill that a prudent person engaged in the occupation of giving regulated financial advice would exercise in the same circumstances.”

The definition of prudent is “acting with, or showing care and thought for the future”.

Reference - Oxford dictionary

Code of Professional Conduct for Financial Advice Services (The Code)

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

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

All the Code Standards are relevant to Duty 431L

Code Standards – relevant to Care, Diligence and Skill.

Prudent (acting with care and thought)

A prudent person, acts with care and thought for the future and awareness of the implications and impacts of advice on the client.

Code standard 4 requires the adviser to **consider the risks and consequences of the advice.**

Code standard 3 requires that the **client's circumstance is taken into account in regard to product suitability.**

However, all the standards are directly relevant:

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



Code Standards – relevant to Care, Diligence and Skill

Care



Clients enter into a **professional relationship** with you as their financial adviser. You require from them extensive personal and confidential information.

As their **trusted adviser** you have a **duty of care** to help them achieve their financial goals, and be **mindful and responsive** to their particular requirements and circumstances.

The **fact-find process** is a **key** step in your advice process.

The deeper your investigation of their needs and requirements the more likely you can demonstrate the **suitability of your advice and the care taken in your recommendations**.

Code Standards – relevant to Care, Diligence and Skill

Care

Later in the advice process comes the **product and service recommendations**.

This includes **explaining** not only the benefits but also the **risks of your recommendations**.

Care also allows for their level of financial literacy; to check **they understand your advice**.

Your Record or Statement of Advice is where you demonstrate (and importantly, document) **how you are acting with care**.

But your response to client queries, feedback and concerns is **often in conversations** which **needs to be documented** in confirmation emails to the client and in your client file notes.



Code Standards – relevant to Care, Diligence and Skill

Diligence (timely and thoroughness of effort)



“Diligence requires fulfilling professional commitments in a timely and thorough manner, and taking due care in planning, supervising and delivering professional service.”

Thoroughness in advice is often demonstrated through **reference to the analytical tools** (such as risk profiles, financial metrics and analysis) and product and market research data underlying your recommendations.

To achieve **consistent, repeatable, and quality client outcomes** your personal work effort, or diligence, needs to be supported by **business systems and work processes**.



Code Standards – relevant to Care, Diligence and Skill

Skill - means tailoring your solutions for each client.

New information, new regulations and laws also can directly impact clients and change their circumstances. (Trustee Law changes for example)

It is important that you demonstrate how you keep up to date with your advice-relevant topics and regulations through a CPD log and Plan. (See Code Standards 6-9)

Typically these include changes to ACC and taxation, AML/CFT compliance, overseas investment and pension rules, reserve banking regulations, privacy and other consumer laws.

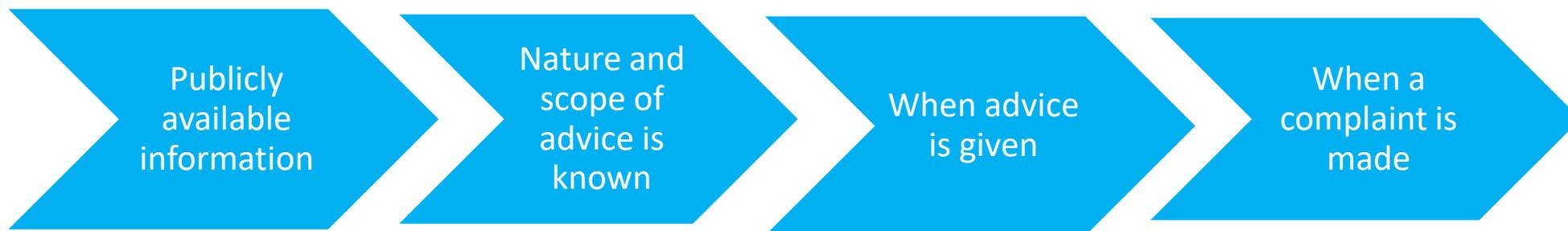
Skill is **applying your knowledge and expertise, to provide the right advice** in each client situation.



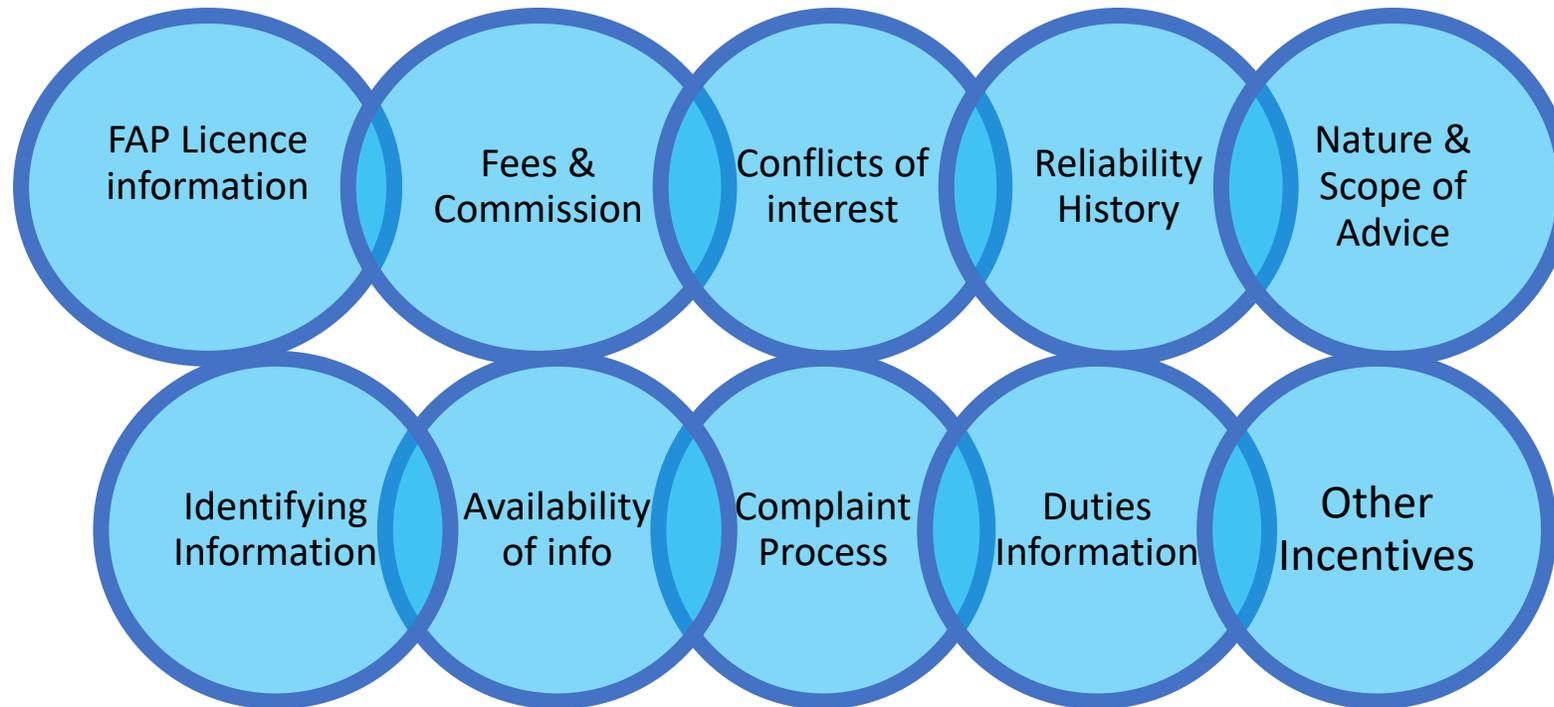
Regulations under the Act - Disclosure

- The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.
- **The purpose of disclosure is to help consumers make an informed decision on whether to seek, obtain or act on advice from a person or provider.**

Stages of disclosure from 15 March 2021.



Information that needs to be disclosed.



*Refer to New Disclosure Requirements - Members Guide.

**More Disclosure discussions in webinar 6 – 3rd March 2021.

Disclosure relating to Care, Diligence and Skill:

The purpose of disclosure is to help consumers make an informed decision on whether to seek, obtain or act on the a Advice from a person or provider. All requirements are relevant!

- Nature and Scope of advice including the types of advice being provided and providers including any limitations or restrictions on the advice being provided.
- Fees or expenses that a client may have to pay for the advice given.
- Commissions or other incentives that you are paid or receive from providers.
- Conflicts of interest- that may materially influence a clients decision to seek advice from the FAP or FA, and how you manage these.
- Duties information – confirming that you are bound by your duties, code of conduct and to exercise care, diligence and skill. You also put your clients interest ahead of your own.

Disclosure relating to Care, Diligence and Skill:

The purpose of disclosure is to help consumers make an informed decision on whether to seek, obtain or act on the a Advice from a person or provider.

- Complaints handling process – in case they are unhappy with the service you provide.
- Reliability history – stating any information about your past that might materially influence a clients decision to get advice from you about the FAP or FA (bankruptcy, insolvency, convictions or civil proceedings).
- Availability of information – insure you can provide your details via email on request.
- FAP details – any conditions or restrictions on the Licence that limits advice given by from the FAP.

Case Study (FSCL) - Clawbacks and clarity

Snapshot

After **refinancing his home** loan, Zac **received a \$2,500 invoice** from his old mortgage adviser, and he was told that he had incurred a **clawback fee** by repaying his original loan within 2 years. **Was this fair?**

Dispute

A \$2,500 clawback fee was charged to the client **without being provided with a detailed breakdown of what an early repayment fee was**. He had no idea it could be that much.



Review

We spoke to the mortgage adviser and raised some concerns. We said that the mortgage adviser was **entitled to charge a clawback fee**, but we had concerns that the clause of **her terms of engagement regarding clawback fees was too vague** to be **enforceable**.

Case Study (FSCL) - Clawbacks and clarity

Resolution

The mortgage adviser **took our comments to heart** and **agreed to waive the fee** for Zac.

She said she would use this complaint as a learning opportunity and make some **changes to her terms of engagement** to ensure they were clear for other clients.

Zac was very happy with this outcome. He was glad to have the fee waived and was encouraged to see the adviser was making changes to her terms.



Refer to the case study document provided for today's webinar.

Case Study – FSCL - Clawbacks and clarity

Insights for participants

- **Financial advisers are entitled to be paid for their work.** When a loan is refinanced within the first two years, the bank will usually claw back their commission, and this is a substantial cost to the adviser.
- **An adviser can recover this cost from their client,** but they need to be able to show that the **clients agreed to the fee before they engaged the adviser’s services.**
- An adviser’s right to charge a clawback fee will always come from their **contract with their clients** – which needs to be covered of in their **Disclosure process.**
- Because this contract is the basis for the adviser’s right to charge a fee, the contract needs to be very **clear about how the fee will be calculated, and when the fee might be incurred.**



Nature and Scope of Advice - disclosure example

Commissions or other incentives

I am paid commissions by [Product Provider] when a policy goes into force and at the annual renewal of a policy. This may range between 100-250% of the first year premium upfront and 10% annually.

Conflicts of interest

I ensure that I prioritise your interests by following an advice process that considers your circumstances and goals. A thorough comparison of suitable products and services available to meet your needs is completed during this process to support our recommendations.

I also undergo annual training on how to manage any conflicts of interest.

Nature and Scope of Advice - disclosure example

Fees and expenses

[Insurance Provider] will pay us a commission if you decide to take up our advice. I may/will charge you for the financial advice that I provide if you cancel your health or life insurance policy within the first two years of its inception.

We will use the following formula to calculate the fee:

Cancellation fee = X number of hours of worked X \$150 per hour.

The cancellation fee is estimated to be \$xxx.

We will invoice you for this fee and it will be payable on the 20th of the month following the cancellation of your policies. Details of how to make payment will be included on the invoice.

Evidence that you have acted with care, diligence & skill.



PPC – policy procedure control.

Evidence that you have acted with Care, Diligence and Skill – examples of PPC's.

1. Formulate the key 'care' deliveries to my clients
2. Outline the key 'diligence' deliveries for my advice and my clients
3. Set the key 'skill' levels and abilities for my advice business

PPC - Example 1 – Act with Care Diligence and Skill.

Action 1 – Formulate the key care deliveries to my clients.

1. Develop Policy statement - Promise to your clients.

“Our aim is to take the greatest professional care of our clients”

Refer to Section C of your workbook.

PPC - Example 1 – Act with Care Diligence and Skill.

2. Develop Processes and Procedures (tasks) how you make this happen.



Show care by:

- Planning enough time at initial meetings to establish what is important to the client and gain feedback, check and confirm it's correct with client.
- Checking in with the client they understand my advice at recommendation time and that this is documented
- Having client- reviews regularly to check the advice is still appropriate or identify if any changes are required
- Securely storing client records and keeping information safe from unauthorized access or use

PPC - Example 1 – Act with Care Diligence and Skill.

3. Develop Controls (check it is working)

Review five random client files and assess the demonstration of care metric on a scale of 1-10

- a) Strength and completeness of fact find
- b) File notes to provide evidence of client feedback & understanding
- c) Client reviews are done on time and at the appropriate level
- d) Check password and access controls on files, or get an expert to test security



PPC - Example 2 – Act with Care Diligence and Skill.

Action 2 - Outline the key diligence deliveries for my advice and my clients

1. Develop Policy statement - Promise to your clients.

“We will work hard to deliver timely solutions that meet your financial needs”

PPC - Example 2 – Act with Care Diligence and Skill.

2. Develop Processes and Procedures (tasks)



Show diligence by:

- Build/ensure the appropriate research and analysis tools to support advice recommendations
- Document the relevance of these tools in the rationale behind recommendations
- Allow more time for more complex client situations
- Prepare a timeline of deliverables for each client and keep to it
- Explain delays in timeline to the client
- Write complete file-notes for each client at each step of the advice process

PPC - Example 1 – Act with Care Diligence and Skill.

3. Develop Controls (check it is working)

- Review five random client files and assess the demonstration of the diligence metric on a scale of 1-10
- Assessment of research and analysis tools
- Strength of rationale behind advice
- Achievement of timelines
- Strength of supporting file notes to the advice process



PPC - Example 3 – Act with Care Diligence and Skill.

Actions 3 - Set my key skill and ability levels

1. Develop Policy statement - Promise to your clients.

“I seek to apply and continually improve my skills as your adviser.”

PPC - Example 3 – Act with Care Diligence and Skill.

2. Develop Processes and Procedures (tasks)

Show diligence by:

- Identify learning to strengthen my personal advice skill(s) for this year
- Identify gaps in knowledge or skill for professional development
- Assess my contextual skills – assess what skills are required by me as an XXX adviser given the current (or expected) economic/political/business environment.
- Identify any personal skills required for different client groups I service



PPC - Example 3 – Act with Care Diligence and Skill.

3. Develop Controls (check it is working)

Review five random client files and assess the demonstration of skill metric on a scale of 1-10

To strengthen my core advice area of expertise:

Improve my skills and learn new skills

Assist skills needed in current climate (or expected climate)

Ability to service various client groups appropriately

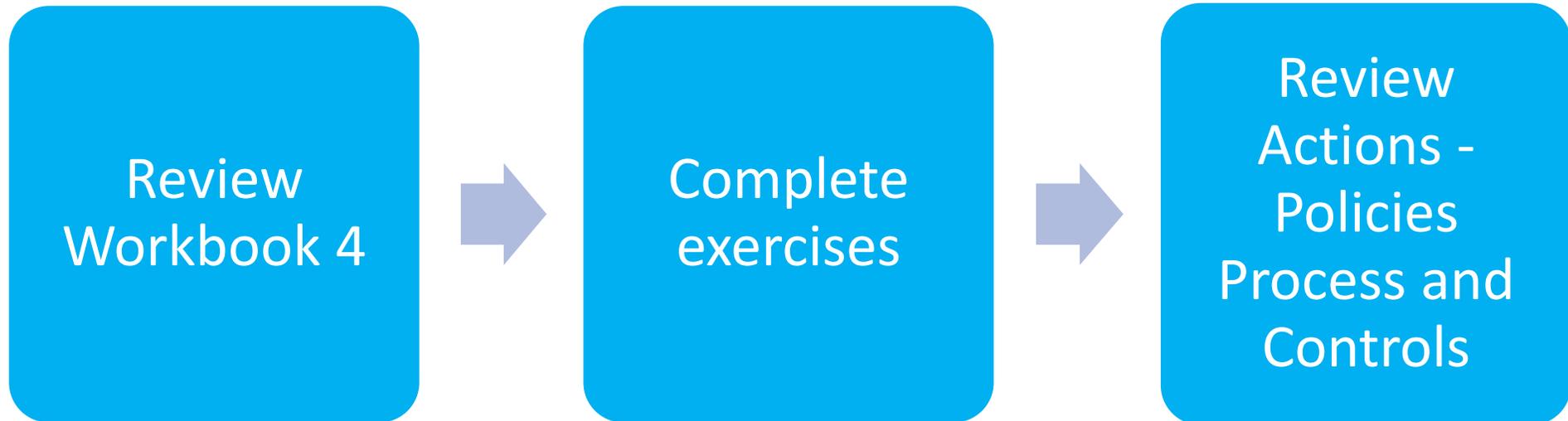


Review 3 client files and assess the demonstration of the skill metric on a scale of 1-10

- **Collection skills** (ability to summarise to their client goals and needs)
- **Communication skills** (use of language in a way clients understand)
- **Analytical skills** (use of data and analysis to support a conclusion)
- **Synthesis skills** (technical solutions that are the best fit for the client)

(Refer back to Workbook 2 – Competence, knowledge and skill for skills details)

Next steps



Questions?



Webinar 5 – Wednesday 24th February

Workbook 5

- Comply with the Code of Professional Conduct
- Make information available
- Offers that contravene the Act
- False and misleading statements