

Summary of submissions

May 2025

Introduction

The Committee is established under the Financial Markets Conduct Act 2013 (**FMC Act**)¹ to produce the Code of Professional Conduct for Financial Advice Services (Code). The Code was approved by the Minister of Commerce and Consumer Affairs on 7 May 2019.

The functions of the Committee include to review the Code from time to time and to recommend to the Minister changes to the Code as the Committee thinks fit².

The Committee now proposes to recommend to the Minister changes to the Code. The FMC Act requires that the Committee consult with the FMA and others on the proposed changes, and to allow an opportunity for any person affected by the Code to make submissions³.

The Committee published a paper (**consultation document**)⁴ on 21 June 2024 inviting submissions on the proposed changes. This document contains a summary of the submissions received, and a brief response to them⁵. The Committee Chair discussed the proposed changes at public webinar, and at meetings hosted by a financial advice industry association in Dunedin, Christchurch, Palmerston North, Wellington, Cambridge, and Auckland, where various Committee members were in attendance.

¹ FMC Act Schedule 5, clause 24.

² FMC Act Schedule 5, clause 25.

³ FMC Act Schedule 5, clause 40(2).

⁴ <https://financialadvicecode.govt.nz/2024/06/21/update-21-june-2024-consultation-on-financial-advice-competence-knowledge-and-skill/>

⁵ As required by FMC Act Schedule 5, clause 40(2). The Committee also has prepared an impact analysis document.

Submissions received

The Committee received 21 submissions:

- Dispute resolution scheme (1)
- Educator (1)
- Financial advice providers (8), including:
 - Banks (3)
 - Life insurer (1)
 - Fund manager (1)
- Financial advisers (3)
- Individuals (2)
- Industry associations (5)*
- Law firm (1)

* The submission from one financial advice industry association included the results of a survey conducted of its members relating to changes proposed by the Committee. It contains anonymised, individual responses from 387 financial advisers.

Proposal 1

Proposal 1 is to amend the Code to recognise version 3 of the New Zealand Certificate in Financial Services (Level 5) (Level 5 Certificate).

Submitters overwhelmingly supported this proposal. It is made as a consequence of the publication of version 3 of the Level 5 Certificate, the qualification outcomes of which are—for the purposes of the Code—materially equivalent to those of version 2. The proposed amendments are worded in a manner designed to ensure that the standard itself recognises both versions 2 and 3.

Submitters welcomed the Committee’s intention to not require re-qualification or “bridging” to version 3 from earlier versions of the Level 5 Certificate or from other ways of demonstrating the current standard.

Proposal 2

Proposal 2 is to retain the Level 5 Certificate qualification outcomes as the minimum standard of particular competence, knowledge, and skill for designing an investment plan, and remove the interim status of Standard 7.

15 submitters supported the proposal, 1 conditionally supported it, 2 did not support it, and 3 did not comment on it. Both submitters who did not support the proposal argued that a higher minimum standard should apply. Within the survey of the financial advice industry association's members, 30% of respondents said that a higher level of qualification should be required to provide investment advice to clients⁶.

Submission	Committee's response
<p>One submitter who did not support the proposal strongly disagreed with the Committee's view that:</p> <p>"In general, there is a lack of evidence that a higher minimum standard of competence, knowledge, and skill will enhance the quality of financial advice. It is challenging to establish a causal link between examples of unsuitable advice, and competence, knowledge and skill in isolation from other factors, such as ethics or inadequate process and controls."</p> <p>That submitter cited three overseas academic articles which they said were examples of empirical evidence that quantifies the impact of increased education standards on the quality of advice.</p>	<p>Having reviewed those articles, the Committee remains unpersuaded that they evidence a demonstrable causal connection between fewer instances of unsuitable advice and advisers with educational qualifications higher than the Level 5 Certificate outcomes, in isolation from other factors such as ethics, processes and controls, and the regulatory environment, including enforcement.</p>

⁶ The Committee notes that the survey question does not exactly mirror Proposal 2. It is, however, directionally relevant.

Submission	Committee's response
<p>The same submitter argued also that consumer confidence and the perception of a profession may well benefit from higher educational standards.</p> <p>Along similar lines, another submitter, while supporting the proposal, said that the Code should nevertheless signal that Level 7 outcomes would be required at a future date because “Financial Advisers are professionals and should therefore expect to meet minimum standards similar to other professionals. Accordingly, a Level 7 qualification would appear a suitable standard.”.</p>	<p>The Committee agrees that consumer confidence and perceptions of the financial advice sector's professionalism may benefit over time from higher educational standards. The Committee, however, is charged with establishing appropriate minimum standards of general and particular competence, knowledge and skill, having regard to the main and additional purposes of the FMC Act, including the quality and availability of financial advice, and in the context of the other rules and safeguards in the regulatory regime.</p> <p>In addition to the role played by the Code, education providers, financial advice industry associations, and financial advice providers all can contribute to consumer confidence and perceptions of the financial advice sector's professionalism.</p> <p>The consultation document notes that requiring a higher minimum standard of competence, knowledge, and skill could adversely affect the availability of financial advice. The Committee believes that the current settings appropriately balance the purposes of the FMC Act, including the quality and availability of financial advice. The Committee will continue to monitor and review the Code standards against the purposes of the FMC Act.</p>

<p>One submitter supported Level 5 Certificate outcomes as the minimum standard of competence, knowledge, and skill only for what they termed “single-element” advice.</p> <p>The Committee understands “single-element” advice to be a reference to individual disciplines of financial advice and/or categories of financial products, such as investments, general insurance, life and disability insurance, mortgages etc.</p> <p>That submission argued that some general insurance advisers and personal risk advisers are “masquerading as Financial Planners” which is misleading the public and can only be remedied by restricting the use of that and similar terms and requiring “a higher level of competency evidenced by greater educational achievement.”.</p>	<p>The Committee notes that the fair dealing provisions of the FMC Act⁷ will apply where a financial advice provider or financial adviser misrepresents the nature of the services they provide, their level of competence, knowledge, and skill, or their experience. The Committee also notes that Code Standard 2 applies to how a financial advice provider or financial adviser describes their business.</p> <p>The Committee believes that the “single-element” approach does not reflect the reality of many advice situations or adequately consider how the availability of financial advice would be affected by imposition of a higher minimum standard for multi-discipline advice situations. For example, adding KiwiSaver advice to mortgage advice does not necessarily result in the financial advice situation becoming “complex”. Conversely, imposing a higher minimum standard of competence, knowledge, and skill in multi-discipline situations could result in a client not receiving useful ancillary advice.</p> <p>The Committee notes also that, independently of the minimum standards of competence, knowledge, and skill required by the Code, in every advice situation persons who give regulated financial advice must comply with Code Standard 3 (Give financial advice that is suitable) and section 431L of the FMC Act (Duty to exercise care, diligence, and skill). As discussed in the consultation document and below, in some advice situations, the competence, knowledge, and skill needed to ensure that the financial advice is suitable may exceed the minimum standards specified in Part 2 of the Code.</p>
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In connection with Proposal 2, the Committee also proposed that the commentary to Code Standard 3 be revised to highlight that, in some advice situations, the competence, knowledge, and skill needed to ensure that the financial advice is suitable may exceed the minimum standard of competence, knowledge, and skill provided for in Code Standards 6, 7 and 8.

Submission	Committee's response
<p>One submitter queried the need for the proposed supplementary wording in the commentary to Code Standard 3 or, alternatively, recommended that the Committee consult further on it.</p>	<p>The Committee acknowledges that the principle of having the requisite competence, knowledge and skill for the work you do is a cornerstone of any occupation, and that, for many stakeholders, the proposed supplementary wording already goes without saying. The Committee, however, believes that there is value in setting out that cornerstone principle in the commentary to Code Standard 3, for the avoidance of doubt and also as a reminder that the standards of competence, knowledge, and skill in the Code are minimum requirements.</p> <p>The Committee considers that further consultation on the supplementary wording is not required as it is consistent with and similar to the explanation and analysis set out in the consultation document.</p>
<p>One submitter requested that the Code provide guidance on the circumstances when higher-than-minimum competence, knowledge, and skill is needed to meet other obligations of the financial advice regime.</p>	<p>The Committee expects that such circumstances will be dependent on the particular advice situation. In that context, a prescriptive approach to when additional competence, knowledge, and skill is needed is neither practical nor consistent with a principles-based Code. The Committee notes also that the additional competence, knowledge, and skill needed in some</p>

⁷ FMC Act, Part 2.

Submission	Committee's response
	<p>advice situations may not be a higher level of education for a general discipline, such as investment planning, but, for example, knowledge in a specialised discipline, or a specific skill, relevant to the particular advice situation (e.g. knowledge in relation to a specific asset, legacy product, or foreign regulatory regime, or skills reasonably necessary to understand the client's circumstances). Focussing on higher qualification outcomes may result in advisers under-weighting the importance in relevant circumstances of non-qualification-derived competence, knowledge and skill. Financial advice providers are best placed to determine both when and what additional competence, knowledge, and skill is needed to meet their financial advice regime obligations in any particular advice situation. The Committee has taken into account these observations when preparing the supplementary commentary to Code Standard 3.</p>

Proposal 3

Proposal 3 is to clarify the requirements for continuing professional development in Code Standard 9, including the adoption of a more principles-based standard and supplementing the commentary.

There was broad support for the intent of the proposal and several submitters commented on the detail. The Committee has taken into account those comments when drafting the revised commentary to Code Standard 9. In particular:

Submission	Committee's response
<p>Several submitters—and many individual member comments in the financial advice industry association survey—supported mentoring, especially (but not only) for new financial advisers, as an effective way of supplementing theoretical abilities with practical on-the-job learning.</p>	<p>In line with the Code's principles-based approach, the Committee has not prescribed mentoring but has included it in the commentary to Code Standard 9 as an example of a CPD activity.</p>
<p>Submitters generally supported the move from “maintain” to “continually develop” competence, knowledge, and skill.</p> <p>However, some submitters expressed reservations about that change, including because they considered it to be ambiguous and “will add to the existing compliance burden placed on FAPs”.</p> <p>In a similar vein, some submitters were concerned that the revised Standard 9 wording would apply broadly to “giving financial advice” and would no longer be restricted to CPD relevant to advice the person actually gives.</p>	<p>A key objective of the Committee in making this proposal is to ensure that the standard is not read in a literal rather than purposive manner, to require only a static level of competence, knowledge, and skill. CPD should dynamically reflect and support the nature of the person's practice, their experience, and the environment in which they operate.</p> <p>The commentary to Code Standard 9 recognises that refreshing or deepening existing competence, knowledge, and skill may be appropriate CPD.</p> <p>Whether CPD activity meets the Code standard will depend on the person's circumstances. In planning for, and carrying out, their CPD activities, advisers should have regard to their current competence, knowledge, and skill, their experience, their current and any intended area of practice, and the operating environment, including any relevant regulatory changes.</p>

Submission	Committee's response
Two submitters opposed removing references to maintaining an up-to-date understanding of the regulatory framework, which the Committee had suggested in line with the Code's principles-based approach.	The Committee has kept the standard principles-based. The commentary to Code Standard 9 notes that each person's CPD activities will depend on their circumstances, including any relevant regulatory changes. The commentary also includes, as an example of CPD activity, "an update on the regulatory framework for giving financial advice".
One submitter queried what hours of CPD are required.	<p>The Code is deliberately principles-based, leaving it to financial advice providers (and, if applicable, financial advice industry associations) to determine whether particular numbers of hours should be required.</p> <p>The revised commentary to Code Standard 9 makes clear that CPD may be obtained from a wide variety of formal or informal learning activities. Therefore CPD is not limited to attending courses for a certain number of hours, and an hours-based approach may not make sense in some situations or for some activities.</p>
One submitter said it would be useful to give examples of "structured" and "informal" activities.	The Committee agrees that this would be helpful and has done so in the commentary to Code Standard 9.

Submission	Committee's response
<p>One submitter suggested that the final paragraph of the proposed new Code Standard 9 should be expressed to apply to entities only to the extent that they give advice otherwise than through an individual e.g. robo advice.</p>	<p>The Committee disagrees, and notes that financial advice providers that give advice through individuals are concurrently also giving that advice. Entities, as well as individuals, should be expected to continually develop their competence, knowledge, and skill for giving financial advice. That may entail, for example, the entity reviewing and taking shared responsibility for upskilling the individuals through which it gives advice. The same submitter questioned whether it was possible for an entity to have “competence, knowledge, and skill”, noting that the current Code Standard 9 uses the term “capabilities”. The Committee believes that, in this context, “capabilities” is synonymous with “competence, knowledge, and skill”, and the proposed change to the final paragraph of Code Standard 9 better aligns the language to that of the FMC Act and Code Standards 6 to 8. An entity’s competence, knowledge, and skill is demonstrated by its procedures, systems and expertise, including the totality of the expertise of its employees and agents.</p>
<p>One submitter said “we need to find a way to tell all advisers that it’s NOT okay just to do the minimum in the hope that they decide themselves to take further study and/or get a good mentor”.</p>	<p>The Committee notes that the amendment to the commentary to Code Standard 3 discussed earlier emphasises the financial advice provider’s obligations under section 431Q of the FMC Act to take all reasonable steps to ensure compliance with those standards by their financial advisers.</p>

Question 4

Question 4 asks for any other comments about the consultation.

Other comments	Committee's response
<p>One submitter recommended there should be a robo advice “safe harbour” for competence, knowledge, and skill: namely that the “methodology” be signed off by individuals with the requisite minimum standard of competence, knowledge, and skill, and that there is an “undesirable level of uncertainty” with respect to how the Code applies to robo advice.</p>	<p>The Committee prefers to keep the Code principles-based, noting in particular that whether such a sign off may be appropriate would depend on the particular circumstances of each relevant financial advice provider. For example, while a financial adviser might be able to assure the business specifications for the platform, they will not necessarily have the competence, knowledge, and skill to assure the algorithms and coding. The Committee does not agree that there is currently an “undesirable level of uncertainty”. The current standard requires providers to demonstrate that their procedures, systems and expertise are consistent with the Level 5 Certificate outcomes. How they do so can vary based on their business models.</p>
<p>One submitter recommended that Code Standard 1 should be expanded to give greater prominence to dispute resolution arrangements.</p>	<p>This consultation was limited to matters relating to competence, knowledge, and skill. The Committee will, however, add this submission to its list of matters for possible consideration and consultation in the future.</p>