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Guide

Introduction

In February 2017, the Commonwealth Parliament amended the Corporations Act (2001) (the Act) to provide for improved standards of education, training, ethical behaviour and professionalism for relevant providers (financial planners and financial advisers) providing advice to retail clients in relation to relevant financial products.

Among those changes, section 921E of the Act requires all relevant providers (as defined in Section 910A of the Act) to comply with a Code of Ethics made by FASEA under paragraph 921U(2)(b) of the Act.

On 8 February 2019, by legislative instrument, FASEA made the Financial Planners and Advisers Code of Ethics 2019 (the “Code”). Compliance with the Code became mandatory for relevant providers providing advice to retail clients in relation to relevant financial products on 1 January 2020.¹

In making the Code, FASEA was guided by the Commonwealth Parliament’s explanatory memorandum that accompanied the February 2017 Corporations Act amendments which stated:

The Code sets out the ethical obligations that apply to relevant providers. These ethical obligations go above the legal requirements in the law and are designed to encourage higher standards of behaviour and professionalism in the financial services industry.

The Code is a legislative instrument and as such forms part of the law. Consistent with Parliament’s intent for the Code, it extends the minimum legal obligations that would otherwise apply to relevant providers under the Corporations Act. Relevant providers must act in accordance with both the Act and the Code.

Importantly, the Code is principles based rather than a checklist. The Code requires relevant providers to exercise their professional judgement in the best interests of their client guided by the values and standards of the Code.

The Code brings together and gives effect to the expectations of the Australian community for the provision of professional financial advice.

As illustrated below it comprises five (5) values and twelve (12) standards informed by a preamble that sets the context for the Code.

Relevant providers should not consider each of the values and standards in the Code in isolation. They are intended to operate in combination to strengthen and inspire good practice. As such, the Code should be read and applied as a whole.

Who is this guide for?

This guide is intended to assist understanding of the Code. The Code is principles based and is intended to apply to a wide range of situations that require the exercise of professional judgement. The Code is intended to ensure that the circumstances of clients are considered by relevant providers when acting ethically and prioritising each client’s best interests. This guide is illustrative rather than conclusive regarding application of the Code.

Relevant terms are explained in the glossary to this guide.  

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2 The Corporations Act 2001, defines a number of words and expressions used in or that are relevant to this guide such as ASIC, financial product advice, financial services, financial services licensee, provisional relevant provider, relevant financial products, relevant provider, retail client and supervisor.
This guide is primarily directed to financial advisers (‘you’). It will help you to understand your ethical obligations as established in the Code of Ethics if you are:

- **A relevant provider**
  That is, if you are an individual who is:
  - a financial services licensee;
  - an authorised representative, an employee or a director of a financial services licensee; or
  - an employee or director of a related body corporate of a financial services licensee;

and you are listed on ASIC’s Financial Adviser Register as authorised to provide personal advice to retail clients, as the licensee or on behalf of the licensee, in relation to relevant financial products.

- **A provisional relevant provider**
  That is, you are a relevant provider who is undertaking work and training in your professional year.

- **A supervisor of a provisional relevant provider**
  That is, if you are an individual and you:
  - have supervisory responsibility for a provisional relevant provider;
  - are a relevant provider;
  - are not a provisional relevant provider; and
  - you are not a limited service time sharing adviser.

This guide will also serve as a point of reference for:

- financial services licensees, who authorise relevant providers to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products;
- regulators including the Australian Securities and Investments Commission (ASIC); and
- consumers seeking to understand the ethical obligations of advisers.

### Application

The Code is a compulsory code of ethics for all relevant providers who provide personal advice to retail clients in relation to relevant financial products. The Code also applies to provisional relevant providers, once authorised and registered by their licensee on the Register of Relevant Providers under section 922Q of the Act.\(^3\) As is the case with all other professions, ultimate responsibility for applying the tenets of the Code falls on individual advisers. Each must be ready to give an account of how they have interpreted and applied the Code in specific situations.

\(^3\) Section 921E of the *Corporations Act 2001*, provides: ‘A relevant provider must comply with the Code of Ethics.’ Section 910A defines provisional relevant provider to mean a relevant provider who is undertaking work and training in accordance with subsection 921B(4) i.e. the ‘professional year’. Note, however; a person does not become a relevant provider until they are authorised to provide personal advice to retail clients, as the licensee or on behalf of the licensee, in relation to relevant financial products.
This guide provides an explanation of the intent and application of the Code’s values and standards. It uses fundamental questions to help illustrate requirements in the Code.

The illustrations are not intended to provide definitive guidance. Individual circumstances will differ in practice and, as with every profession, there is allowance for differences of professional opinion on how the ethical rules of the profession should apply in a particular case. Doing what is right will depend on the circumstances and requires you to exercise your professional judgement in the best interests of each of your clients. As such, you should always be prepared to give an account of the ethical reasoning that has informed your conduct in general or, in particular cases, if called upon to do so.

You may demonstrate engagement with the Code by discussing the intent and application of the values and standards and your own experience with your professional peers and being willing to be challenged on your judgement. Discussion of the standards within the profession and with the public is encouraged and assists to demonstrate a willingness to meet the public’s expectations for the profession.

You should not consider each of the values and standards in the Code in isolation. They are intended to operate in combination to strengthen and inspire good practice. You should be aware that the same conduct may breach multiple standards of the Code.

**Conflicts of interest and duty**
The Code relates to actual conflicts of interest. You should also be alert to the challenges posed to your professional integrity by potential and perceived conflicts of interest and duty.

As a professional you owe your clients duties that cannot be subverted by your personal interests and that take precedence over duties you owe to other clients, or to third parties. The only exception to this principle is when one (or more) of the duties owed to a client is overridden by an express obligation arising under statute or the general law. It is important to note that the mere fact that a conflict is permitted under another part of the law does not offset your duty to act in the best interests of your client free from any conflict of interest or duty. Your duty so to act may only be modified or set aside if you are compelled to do so by Law.

**Personal responsibility, compliance and enforcement**
You have the primary obligation to regulate your own behaviour to comply with the Code. You have a fundamental, personal, professional obligation to understand and to adhere to your ethical obligations under the Code. You cannot outsource this responsibility to your employer, or your licensee, or any other person.

You will need to keep appropriate records to demonstrate, if called upon, your compliance with your obligations under the Code.

Your compliance contributes to building public trust in your profession.

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4 The Corporations Act does not formally allow for conflicts of interest, it merely sets a minimum standard for the management of conflicts of interest – *should they arise*. The Code extends these obligations.
Your financial services licensee also has a role under the Act in monitoring and enforcing your compliance with the Code.

Your licensee has a role to play in seeking to structure their business operations in a manner that facilitates you being able to operate ethically under the Code.
Part 2: Practical guidance

Code Preamble

The code consists of an introductory preamble. 5 values and 12 standards that are to be read and applied as a whole.

The introductory preamble provides background to the code and its intended outcomes. The preamble states:

“In 2017 the Commonwealth Parliament amended the Corporations Act 2001 to raise the education, training and ethical standards of financial advisers and financial planners, promote enhanced consumer trust and confidence in financial planners and financial advisers and refocus them from providing commercial services to acting as professionals.

While the ethos of “the market” legitimises the pursuit of self-interest through the satisfaction of others’ wants, the ethos of “the professions” aims to secure the public good through the subordination of self-interest in favour of serving the interests of others.

In return for renouncing the pursuit of self-interest, society often provides members of the professions with a range of formal and informal privileges (such as a “monopoly” right to undertake certain types of work).

Appropriate financial advice can significantly improve people’s financial well-being. In a time of increasing volatility, it is in the public interest that the profession enjoy the trust and confidence of its clients and the wider community. In turn, this requires that members of the profession develop the knowledge, skills and dispositions required to earn that trust.

Collectively, financial planners and advisers are members of Australia’s newest profession. As such, while they formerly provided a commercial service, they should be committed to offering a professional service—informed by a code of ethics intended to shape every aspect of their professional conduct.

This Code imposes ethical duties that go above the requirements in the law. It is designed to encourage higher standards of behaviour and professionalism in the financial services industry.”
The five values
The Code requires financial advisers to act in a way that demonstrates, realises and promotes the following five values:

1. Trustworthiness;
2. Competence;
3. Honesty;
4. Fairness; and
5. Diligence.

The Code stipulates that these values are paramount and that all provisions of the Code (which includes the Standards) must be read and applied in a way that promotes the values.

Trustworthiness
Acting to demonstrate, realise and promote the value of trustworthiness requires that you act in good faith in your relationships with other people. Trust is earned by good conduct. It is easily broken by unethical conduct.

You earn trust by being reliable in your relationships with others, and by doing what you say you’ll do. Trust requires having the courage to do what is right, even though you may suffer personal detriment by doing so. It requires that you are loyal to each of your clients, and that you keep client personal information entrusted to you private and confidential. It requires that you should not subordinate your duty to your client, or your client’s lawful interests, to your own interests and any obligation you may owe to a third party, including an employer or a financial services licensee.

Trust requires you to act with integrity and honesty in all your professional dealings, and these values are interrelated.

Acting ethically, with trustworthiness, promotes trust, by consumers, in the profession of financial advisers, promoting community confidence in accessing and utilising professional financial services.

Competence
Acting to demonstrate, realise and promote the value of competence requires you to have regard to the knowledge, skills and experience necessary to perform your professional obligations to each of your clients. It requires you to assess the professional services required by each client with regard to their individual needs, priorities, circumstances and preferences, expressed or implicitly identified as the subject matter of the financial advisory engagement. Although it may be possible to supplement your professional competence by accessing the expertise of others, the duty of competence is ultimately personal and cannot be outsourced to others. If you don’t possess the particular competencies required to assist your client, in accordance with other ethical requirements in the Code, you must refer your client to another professional.

The value of competence requires your commitment to developing and maintaining knowledge, skills and expertise at a level of currency required to benefit your clients in particular engagements, and in anticipation of other client engagements in the course of your professional career.
It requires your regular self-reflection and the exercise of professional judgement to determine when to augment your knowledge, skills and experience with assistance from other professional financial advisers, or indeed other professionals with specialist expertise in the service of the client’s best interests.

**Honesty**
Acting to demonstrate, realise and promote the value of honesty requires that you conduct yourself with integrity in all your professional dealings with your clients and with all others that you engage with in the professional setting. It requires transparency, frankness and fairness to each of your clients even where this may cause your personal detriment. Being honest means more than just technically telling the truth, it may require you not to withhold information from your client that your client would want to know. Honesty also requires you to respect the rights (including personal and property rights) of others – especially when acting as their agent or managing their assets.

**Fairness**
Acting to demonstrate, realise and promote the value of fairness requires that you bring professional objectivity to the task of engaging clients professionally, and when recommending financial products and professional services. It requires you to properly investigate, evaluate and diagnose a client’s need for professional services, to self-reflect on the limits of your professional competency and on your capacity to deliver or access the necessary professional services required in the engagement in a manner that benefits your client.

It requires your objective assessment of your own services (or your firm’s) and whether you can bring value to your client. It requires understanding your personal biases, and it may require you to act to mitigate the threat of your own, or your client’s unconscious biases to your client’s decision making. Being fair requires that you look beyond your own interests and consider how others may judge or perceive your actions. Would your conduct stand public scrutiny by your professional peers and by the community?

**Diligence**
Acting to demonstrate, realise and promote the value of diligence requires that you perform all professional engagements with due care and skill. It requires you to manage your time and resources to deliver professional services in a timely, efficient and cost-effective way to each client.

It is about the way you go about your professional work, the commitment you bring, and the values you espouse and demonstrate in all your professional interactions with your clients and with others.

It requires that you exercise due care and skill in the way you:

- engage each client;
- understand each client;
- diagnose each client’s needs and issues;
- scope or limit the professional services you will provide each client;
- develop strategy solutions and recommendations for each client;
• develop product and service solutions and recommendations for each client;
• ensure the strategy and product solutions you provide to each client are fit for purpose and are intended to improve your client's financial well-being;
• make required disclosures to each client in your Financial Services Guide, Statement of Advice and Record of Advice and in providing Product Disclosure Statements and Investment Memoranda;
• implement agreed recommendations;
• engage each client to deliver on-going services (including reviews) if appropriate;
• undertake record-keeping in respect of the professional services you provide each client; and
• meet your obligations in the law in respect of the advice you provide to each client including:
  • best interests’ duty;
  • appropriateness of advice;
  • prioritisation of client’s interests;
  • additional requirements for product replacement recommendations; and
  • Australian Taxation laws.
• it requires that you keep abreast of developments and options for clients.
Standards
The Code contains twelve standards which operate as a whole to support you in demonstrating the Code’s values. The standards are grouped under four ethical competencies:

- Ethical Behaviour (Standards 1-3).
- Client Care (Standards 4-6).
- Quality Process (Standards 7-9).
- Professional Commitment (Standards 10-12).

The standards contain ethical principles. You will need to exercise your professional judgement against the principles contained in the standards when assessing whether you are prioritising the interests of your client in each particular circumstance. The standards are not a compliance checklist.

Standard 1
You must act in accordance with all applicable laws, including this Code, and not try to avoid or circumvent their intent.

Intent
The intent of Standard 1 is to require advisers to not only comply with the letter of the law in meeting their legal obligations (including the Code of Ethics), but also to comply with the intent of those laws and not seek to avoid or circumvent them. This is a minimum ethical obligation.

It is intended advisers will take personal responsibility to understand their legal obligations including the Code. Advisers must ensure the advice they provide is not intended to circumvent the intent of financial services laws that mandate certain disclosures and provide certain protections to consumers receiving personal financial advice as retail clients, including requirements to act in the best interests of clients.

In addition, advisers must not knowingly circumvent the intent of the laws designed to protect investors who may lack competency in financial matters.

Standard 1 discourages advisers from setting up business structures merely to circumvent ethical obligations that would otherwise apply to them as individuals.

The standard encourages advisers to consider not only whether they can legally take a course of action but also whether ethically acting in the best interests of the client they should take that action.

Values demonstrated
- Honesty
- Trustworthiness
- Competence
- Diligence
- Fairness
Applying the standard

In applying Standard 1, it is important that you understand your ethical obligations in complying with the Code and where these ethical obligations extend legal obligations contained in the Corporations Act, such as:

1. The Corporations Act permits referral fees to be paid directly to an adviser, however the Code prohibits an adviser from receiving referral fees.
2. The Corporations Act defines a wholesale client based on their assets; however, the Code encourages the adviser to exercise professional judgement in considering the client’s level of financial literacy and whether they would be more appropriately treated as a retail client.
3. The Corporations Act permits the management of conflicts of interest between you and your client (including by disclosure), however the Code requires that you must not act if there is an actual conflict.

Fundamental Questions

1. As an Adviser, I have been referred a client from an accountant with an accountant’s certificate indicating the client is a wholesale client for the purposes of s.761G(7)(c) of the Corporations Act based on the value of their assets. Should I treat this client as a wholesale client, knowing that they have no experience with money matters, demonstrate little understanding of risk and have never before made an investment in more complex financial products?

   Answer: Treating the client as a wholesale client in this instance based solely on the accounting certificate may ignore the client’s lack of competency in financial matters. In acting ethically, it may be appropriate to consider whether you should treat them as a retail client afforded the protection of laws designed to protect unsophisticated investors like this client.

2. As an adviser, is it compliant with the Code to set up or continue business structures (eg. Joint ventures, Corporate Authorised Representatives (CAR)) to receive referral fees through the business rather than receiving the fees directly?

   Answer: If the sole purpose of setting up a new business structure or continuing an existing one is to receive referral fees that the adviser otherwise would not be entitled to receive and passing these referral fees onto the adviser through their remuneration, this may be considered as circumventing the intent of the Code. If the new or existing business structure negatively impacts on the ability of an adviser to meet their obligations under the Code, FASEA would expect that they be reviewed and amended to facilitate compliance with the Code by the adviser.
3. As an adviser I become aware of a new product which is equivalent in terms of benefits and features to an existing product on which I receive ‘grandfathered’ commissions. The new product has a different and cheaper fee structure which would benefit one or more of my clients. Am I required to upgrade the clients to the new product?

**Answer:** The adviser would be acting with integrity, in the best interests of the clients and within the intent of the law in recommending a product upgrade and forfeiting the grandfathered commission in this particular circumstance.

**Standard 2**

**You must act with integrity and in the best interests of each of your clients.**

**Intent**

The intent of Standard 2 is to ensure that financial advisers act with integrity and in the best interests of each client.

Considering each client individually is an ethical duty. Acting with integrity requires openness, honesty and frankness in all dealings with clients. These qualities underpin the trust that clients should have in their financial adviser as a professional who prioritises client interest over their own or others. It also requires financial advisers to keep their promises (explicit and implied) and honour the commitments made to their clients.

Each of the duties to act with integrity and in each client’s best interests is fundamental.

The standard links closely to Standards 3 and 5.

**Values Demonstrated**

- Trustworthiness
- Honesty
- Competence
- Fairness
- Diligence
Applying the Standard

To act in a client’s best interests requires you to ensure that the advice, products and services you recommend are appropriate to meet the client’s objectives, financial situation and needs, taking into account the client's broader, long-term interests and likely future circumstances.

Section 961B of the Act imposes an obligation on persons who provide personal advice to a retail client to act in the best interests of the client in connection with the advice. That section, together with sections 961C, 961D and 961E, have the effect that the person satisfies the section 961B duty if the person:

- identifies the retail client's objectives, financial situation and needs, as disclosed to the person;
- identifies and completes any reasonably apparent gaps in the information;
- conducts a reasonable investigation of potential financial products; and
- bases his or her judgements on the client's relevant circumstances.

The ethical duty in Standard 2 to act with integrity is a broader ethical obligation. It is based on a more professional relationship between your and the client, where you have a duty to look more widely at what the client’s interests are.

This means that you will need to work out, and, if necessary, help the client to work out what the client’s objectives, financial situation, needs, interests (including long-term interests), current circumstances and likely future circumstances are.

To comply with the ethical duty, it will not be enough for you to limit your inquiries to the information provided by the client. You will need to make reasonable steps to inquire more widely into the client’s circumstances. You are not relieved of the ethical duty merely because the client does not provide enough information, even when asked.

You should take into account your client’s express wishes, but these do not override your duty to give advice that is in the client’s best interests.

In assessing whether you have considered the requirements of Standard 2, you may consider the following:

- Have I been honest and frank in all interactions with the client?
- Have I inquired effectively to understand client needs and circumstance?
- Is my advice consistent with the client’s purpose in seeking advice?
- Does it appear that the client has withheld any information?
- Will the advice and recommendations improve the client’s financial well-being?
- Is my advice in the best interests of the client rather than merely what the client wants?
- In the event a client declines to accept your advice and insists on pursuing a course of action not in their best interests, are you willing to decline to service the client?
Fundamental Questions

1. My client has sought my advice on investing a sum of money on their behalf. After a detailed fact find I have determined to recommend a portfolio of investments that I consider is in their best interests given their particular circumstance. The client, however, insists they wish to invest in a product that their friend is invested in. After review of the product I am able to demonstrate that it is demonstrably poorer than the portfolio recommendation I have made and would not be in the client’s best interests. My client insists that they wish to make the investment and requests that I progress. Should I?

**Answer:** Your ethical duty is to act in the client’s best interests. You will need to assist the client to understand the advice and the implications of investing in the demonstrably poorer product that they have requested. If the client will not accept your advice, it may be appropriate to not act for the client in this circumstance.

**Standard 3**

**You must not advise, refer or act in any other manner where you have a conflict of interest or duty.**

**Intent**

The intent of Standard 3 is that advisers must not advise, refer or act in any other manner where they have a conflict of interest or duty that is contrary to the client’s best interests.

Standard 3 of the Code is concerned with an actual conflict between duties advisers owe their client and any personal interest they have or an actual conflict between duties they owe their client and duties they owe another individual or organisation. This requires advisers to make a professional assessment as to whether their personal interests or other personal duties/relationships are incompatible or at variance with the interests of, and duties owed to their client.

The Code requires advisers making an assessment of conflict to ensure that, before giving advice, they have met the ethical values and standards contained in the Code and to confirm that their client’s interests are given priority and are not in conflict with any personal interest or other interests. The adviser must remain alert to changes in facts and circumstance that could affect this assessment and continue to assess conflicts during their advice relationship on an ongoing basis.

The reliance on the professional judgement of advisers in interpreting the Code is in line with modern best practice in many professions and FASEA considers this approach to be realistic, practical and in line with community expectations.

The Code does not seek to ban particular forms of remuneration, nor does it determine that particular forms of remuneration will always give rise to an actual conflict of interest or duty. That said, you should remain open to the possibility that certain forms of remuneration will always fail to meet the requirements of the Code of Ethics.

Advisers will not breach Standard 3 merely by being a duly remunerated employee of an entity that lawfully provides retail financial advice and services, provided the provision of that advice
and services is in the best interests of the client and complies with the other provisions of the Code.

Standard 3 links closely with Standards 2.5 and 7.

**Values Demonstrated**

- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence

**Applying the standard**

In assessing whether you have an actual conflict, in the first instance, you need to consider the context of the whole of the Code and satisfy yourself that your relationships and arrangements (including remuneration) meet the provisions of the Code including that:

- the advice will be in the best interests of the client;
- the fees and charges (regardless of type) will be fair and reasonable and represent value for the client and are fully understood by the client;
- the client will understand the benefits, costs and risks of the recommendations made; and
- the advice and fee structure will be appropriate for the client.

In order to aid you in assessing whether you have a conflict of interest or duty, FASEA has developed a ‘standard for judgement’ that is familiar in law and is consistent with that applied in other professions.

The ‘standard for judgement’ for determining if an arrangement is conflicted and therefore prohibited is that if:

1. A disinterested person (an unbiased third party with nothing to gain or lose from how the question of conflicts is resolved),
2. who knows all of the facts, 
3. would reasonably conclude (that is, has good reasons that other reasonable people would find convincing),
4. that the arrangement could induce the adviser to act other than in the best interests of the client then, that arrangement gives rise to a conflict and is prohibited.

In making this assessment the adviser is to imagine standing in the shoes of an ordinary person - *not* the client, *not* a consumer advocate, *not* another adviser, *not* a regulator, just an ordinary person in the street with ordinary intelligence and good judgement.

Second, this imagined, ordinary person has to be unbiased – with nothing to gain or lose from what is decided about whether or not a conflict exists.
Third, this unbiased (disinterested person) should be imagined having at hand (and to understand) all of the relevant facts about what has to be decided.

Finally, whatever this person decides - it has to be reasonable. That is, it has to be based on the information before them, capable of withstanding public scrutiny and of attracting the agreement of other reasonable people.

**Fundamental Questions**

1. As an adviser, I receive remuneration (such as insurance or timeshare commission, brokerage fee, asset-based fee, flat fee for service etc.). By receiving this remuneration do I breach the provisions of the Code of Ethics?

   **Answer:** Standard 3 does not ban any form of remuneration, nor does it condone it. In the context of a specific client scenario, before you advise, refer or act you should exercise your professional judgement to determine whether the remuneration gives rise to a conflict. You should satisfy yourself that the remuneration allows you to meet the provisions of the Code including that:
   - the advice and product recommendation will be in the best interests of the client;
   - the remuneration received will be fair and reasonable and represent value to the client and be fully understood by the client;
   - the client will understand the benefits, costs and risks of the advice;
   - the advice and fee structure will be appropriate for the client; and in making this assessment you should consider whether a disinterested person, in possession of all the facts, would reasonably conclude that the remuneration could lead you to prefer the interests of someone (including your own) over the client’s best interests.

2. I am the existing adviser of a couple who have advised they are going through a separation or divorce. Is it appropriate for me to continue to advise both clients in this circumstance?

   **Answer:** At all times, you should be able to show that you have acted in the best interests of the individual clients. This may be difficult in separation or divorce where there is an increase in the likelihood that the clients will have competing priorities.

   In the case of clients undergoing a separation, during a divorce or following the settlement of the divorce, you will need to exercise your professional judgement to determine whether you are able to act without conflict and provide advice that is in the best interests of each client satisfying the values and standards of the Code. To satisfy yourself you do not have an actual conflict you may consider the following:
   - Does the circumstance of the separation or divorce, including any competing priorities in the relationship with either client, make it difficult for you to fairly consider the clients as independent individuals?
   - Can advice and product recommendations be made in the best interests of each client as independent individuals or do competing priorities prevent this?
**Standard 4**

You may act for a client only with the client's free, prior and informed consent. If required in the case of an existing client, the consent should be obtained as soon as practicable after this Code commences.

**Intent**

The intent of Standard 4 is to ensure the adviser takes reasonable steps to confirm that clients are well informed and freely consent to personal financial advice before they act. Advisers should confirm that the client freely consents to the ongoing service offering, fees payable and payments for any additional services offered.

In receiving free, prior and informed consent, the adviser will likely avoid client dissatisfaction where advice and services do not meet client expectations and clients will be less likely to dispute the fees they are required to pay, irrespective of the fee structure.

The adviser is required to use their professional judgement to satisfy themselves that they have reasonable grounds to be satisfied that the client has provided free, prior and informed consent.

Free consent requires reaching a mutual understanding between the client and the adviser free from, amongst other things, any form of coercion, undue influence, fraud or pressure either from the adviser or another party.

**Values Demonstrated**

- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence

**Applying the standard**

You will need to consider a clients informed consent as part of your initial engagement and ensure the client understands the scope of the personal financial advice you are able to offer, any ongoing service offered and an estimate of the fees. You must not proceed to engage the client until you are satisfied you have received informed consent from the client. Following the presentation of advice recommendations, you should not proceed to implement the advice until you are satisfied the client provides informed consent. You may need to use a range of techniques to be satisfied depending on the financial literacy of the client.

For new advice engagements (i.e. for new and/or existing clients), before acting for the client you should consider explaining clearly and simply and ensure the client understands and consents to:

- what services will be provided;
- the terms on which they will be provided;
- the records that will be made of the services; and
- the privacy and confidentiality arrangements applicable to them.
For ongoing advice to existing clients, there are two components to this Standard. The first part is “if required”. If you have already received the client’s free, prior and informed consent, Standard 4 has been met. If you haven't, you will need to work out a practicable timeframe for doing so. This will be influenced by a number of business factors including the number of clients you are required to contact and the next scheduled contact for each client.

In assessing whether you have received informed consent from an existing client, you may consider the following:

- The timeframe and approach in receiving informed consent
- The service offering i.e. How often do you contact the client as part of agreed service requirements and fee structure?
- Does the client clearly understand and consent to the service they are receiving, and the fees they are paying?

In assessing when is the appropriate time to contact an existing client to seek informed consent, you may consider whether:

- you have an upcoming engagement with the client
- you have an upcoming review meeting with the client as part of your service offering

For existing clients who do not have a scheduled upcoming engagement or review, you should develop a plan and schedule to gain informed consent.

**Fundamental Questions**

1. How do I determine which existing clients I need to contact to obtain consent?

   **Answer:** You need to obtain consent from any retail client who you have provided and implemented a personal advice recommendation, which includes retail financial products, and you continue to receive an ongoing fee (including commissions) from whom you have not received free, prior and informed consent.

2. I have a number of existing insurance only clients who I have irregular contact with. These clients received an advice document and signed an authority when I presented the original advice a number of years ago. Do I need to contact them to obtain consent?

   **Answer:** If an adviser is receiving an ongoing fee (including insurance commissions) which is directly related to the financial product advice recommendation for their client and has not contacted that client for a number of years, it would be appropriate to do so to confirm there are no changes in their personal circumstances which would impact the financial product advice recommendation and to confirm the clients ongoing consent to act.

3. Does the Code of Ethics require advisers to seek annual renewal of the consent for all clients?

   **Answer:** The Code of Ethics does not require advisers to seek annual review of the consent of all clients. An adviser needs to use their professional judgement to determine the appropriate engagement for each client. The adviser is required to ensure that the client understands and consents to the renewal approach. Advisers must also comply with the requirements of the Corporations Act.
4. If I contact a client to seek consent and after multiple attempts they do not respond, do I need to cease receiving the fees?

**Answer:** An adviser should take all reasonable steps to contact the client. If they are not able to confirm that the client provides informed consent, they should cease receiving the fees.

5. As an adviser, I have, over the course of 2018 and 2019, contacted my existing clients as the renewal of their Ongoing Service Agreement was required. Do I need to re-contact these clients after 1 January 2020 to seek their consent again?

**Answer:** An adviser who has recently received consent from an existing client for the service and fees they will be paying, does not need to re-contact the client to receive consent post 1 January 2020. The next renewal period is sufficient.

6. Do I need to obtain consent from clients where I receive grandfathered commissions given they will be switched off/removed as imposed by the government through new regulation due to the Royal Commission recommendations expected to be implemented by end 2020?

**Answer:** An adviser would need to assess the timing based on the plan they have developed in seeking informed consent from the clients that meet this requirement.

7. What format is required when obtaining consent from my clients?

**Answer:** An adviser will need to ensure they receive signed consent from their clients. This may be using existing forms e.g. engagement letter, Ongoing Service Agreement, Initial Service Agreement, Authority to Proceed with Advice, etc. For clients that do not have an ongoing service arrangement, eg. Insurance only client the adviser may consider a simple format detailing the conversation and signed by the client.
Standard 5

All advice and financial product recommendations that you give to a client must be in the best interests of the client and appropriate to the client's individual circumstances.

You must be satisfied that the client understands your advice, and the benefits, costs and risks of the financial products that you recommend, and you must have reasonable grounds to be satisfied.

Intent

The intent of Standard 5 is to emphasise the need for advisers to ensure that advice and product recommendations are appropriate to each client's individual circumstances. Advisers have a duty to be aware of available products in the market and it may be necessary for product recommendations to go beyond what is currently on a Licensees' approved product list (APL) if the adviser is aware of a product that would be in the client's best interests.

Standard 5 elaborates on the "best interests of the client" duty in Standard 2 and ensures that financial advisers satisfy themselves that the client understands the advice they have received and the products and services the adviser has recommended.

Standard 5 requires the adviser to be satisfied that the client understands:

1. the advice and recommendations;
2. the benefits of the recommended products;
3. the costs involved in acquiring, holding and disposing of the recommended products; and
4. the risks involved in acquiring, holding and disposing of the products, and how they will be managed.

This means that the advice must be clear and understandable by the person for whom the advice has been prepared. The adviser may need to consider different ways to communicate to individual clients – and to be able to demonstrate the basis on which they have established reasonable grounds for believing that the client understands the advice.

Values Demonstrated

- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence
Applying the standard

Standard 5 requires you to determine what is appropriate for each client based on the client’s individual circumstances rather than applying a one size fits all approach to advice. To do so, during the fact finding process you need to gain a clear understanding of the client’s purpose in seeking advice and an understanding of each client’s personal circumstances (including whether they are able to understand the advice being given) and their risk appetite.

You may need to discuss and confirm the client’s circumstance with your Licensee if it is more appropriate to recommend a product that is not on your Licensees APL.

You may wish to apply a reasonable/disinterested person test (similar to that documented for standard 3) in determining whether you have reasonable grounds to be satisfied that the client understands the advice given and the benefits, costs and risks of the financial products recommended.

In assessing whether you have considered the requirements of Standard 5, you may consider the following:

- Have I asked all relevant questions leading to a detailed understanding of the client’s circumstances?
- Have I been made aware of any new products (may or may not be on my Licensees APL) that I need to consider in forming my advice?
- What is the best way to communicate with this client, to satisfy myself that they have understood the advice?
- How am I satisfied the advice is in the best interests of the client?

Fundamental Questions

1. Can I rely only on my Licensee’s APL for the products that I consider in my advice recommendations?

   **Answer:** It would be reasonable to assume that the Licensee has undertaken due process to ensure the products on their APL meet quality standards. However, as an advice professional, it would be reasonable to expect that you have a good understanding of not only the products on the APL but a general understanding of other well rated products (may be visible in the modelling tools that you use in formulating your advice) that may be suitable to the client circumstance. It would be expected that if you are aware of a product that is not on your Licensee’s APL and is a demonstrably more appropriate product to meet the client’s best interests, that you seek Licensee approval to recommend that product.

   If the Licensee doesn’t approve the demonstrably more appropriate product, the adviser should not recommend the product on the Licensee APL and may need to refer the client to another adviser.

2. If the client has signed the authority to proceed, can I assume that they understand the advice?

   **Answer:** It would not be appropriate in assessing the clients understanding to only rely on the signed authority. As an adviser, you have a duty to ensure you take reasonable steps to
explain your advice simply and clearly to your client and be satisfied they understand the advice before they sign the authority to proceed.

**Standard 6**
You must take into account the broad effects arising from the client acting on your advice and actively consider the client’s broader, long-term interests and likely circumstances.

**Intent**
The intent of Standard 6 is to ensure that, before giving advice, advisers have determined whether or not the advice is consistent with the client’s broader long term interests and likely circumstances.

The requirement to actively consider client interests and circumstances applies regardless of whether the advice is intra-fund, scoped, limited, single issue and/or comprehensive advice. However, the depth and detail of the enquiry and determination should reflect the scope of the advice sought.

**Values Demonstrated**
- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence

**Applying the standard**
This Standard expressly requires you to actively consider the broader, long-term interests and likely circumstances of your client, reflecting section 961B of the Act.

The standard requires you to consider the long-term interests of the client rather than simply their short term want. Such consideration should be based on likely circumstances. Likely circumstances include reasonably foreseeable events that are likely to impinge on the interests of the client – given their current and likely circumstances. Absolute certainty of the client’s future prospect is neither possible nor required. However, an absence of certainty does not excuse to develop as informed a position as is possible.

You must make an independent, professional assessment as to whether scoping the advice is in the best interests of the client (and not just in accordance with their preference or instruction) and it is important that you consider the longer-term requirements and/or any broader considerations for the client within the scope of the advice provided.

Limited scope engagement and/or scaled advice can be highly effective in meeting a client’s immediate needs. Such limited advice scenarios may include: SMSF, insurance, stockbroking, investment and intra-fund advice. The Code is not seeking to prohibit this type of advice – only to ensure that it is only provided where appropriate.
You are not expected to complete a holistic risk assessment or fact find for limited scope advice but would be expected to conduct sufficient information gathering to be satisfied the advice is in the client’s best interests as it relates to that scope.

Fundamental Questions

1. I have been approached by a client to provide limited advice (for example: insurance only, intra-fund, superannuation only, stock purchase, timeshare purchase). In considering the broader client circumstances, do I need to undertake a full fact-find and holistic risk assessment?

Answer: You must make an assessment whether scoping the advice is in the best interests of the client. It is important you consider the longer-term requirements for the client appropriate to the scope of the advice provided. You are not expected to complete a holistic risk assessment or fact find for limited scope advice but would be expected to conduct sufficient information gathering to be satisfied the advice is in the client’s best interests as it relates to that scope.

Standard 7

The client must give free, prior and informed consent to all benefits you and your principal will receive in connection with acting for the client, including any fees for services that may be charged. If required in the case of an existing client, the consent should be obtained as soon as practicable after this code commences.

Except where expressly permitted by the Corporations Act 2001, you may not receive any benefits, in connection with acting for a client, that derive from a third party other than your principal.

You must satisfy yourself that any fees and charges that the client must pay to you or your principal, and any benefits that you or your principal receive, in connection with acting for the client are fair and reasonable, and represent value for money for the client.

Intent

The intent of Standard 7 is to ensure that clients freely give informed consent to benefits the adviser will receive, and that this consent is obtained before they receive advice. Benefits may cover more than fees and charges.

The standard provides protection to the client by requiring the adviser to be able to demonstrate that fees and charges are fair and reasonable and represent value for money to the client. The requirement to limit the benefits an adviser may derive from a third party is intended to reduce the likelihood of third party influence on the advice given.

Standard 7 is closely linked to Standard 3 and 4.
Values Demonstrated

- Trustworthiness
- Competence
- Honesty
- Fairness
- Diligence

Applying the standard

This Standard requires the client’s free, prior and informed consent to all relevant and allowable remuneration arrangements for you and your principal. To meet this Standard, the client should be given a clear and simple explanation of the fees and charges, and the benefits you or your principal will receive, that are attributable to you or your principal acting for the client. There is an extended definition of benefits in subsection 4(1) of the Code, to include monetary and non-monetary benefits. The explanation can be given by you or someone else.

Existing clients’ consent must be obtained as soon as practicable after the Code commences. The Code commenced on 1 January 2020. The commentary provided in Standard 4 of this guide will assist in applying this requirement.

You must be satisfied that your client understands and agrees to these arrangements, and you must have reasonable grounds to be satisfied.

This Standard prohibits you receiving “third party” benefits for acting for a client (unless the Act expressly allows and is not otherwise prohibited by this Code). This also applies to a relevant provider who is an individual financial services licensee.

However, it does not prevent a corporate financial services licensee from deriving third party benefits because one of its authorised representatives provides advice to clients. Corporate financial services licensees are not relevant providers subject to the Code.

This standard also requires that all fees and charges payable to you or your principal, and benefits you or your principal receive, for acting for the client are fair and reasonable, and represent value for money for your client. This is an integral part of your duty to deal fairly with your client, and in his or her best interests. There is an extended definition of benefits in subsection 4(1) of the Code, to include monetary and non-monetary benefits.

In assessing whether your fees are fair and reasonable, you may consider for example the quantum and complexity of services you provide to each client, the level of ongoing advice you provide, what value you are adding to the client and how the amount you charge the client reflects that service and value.

Fees should reflect the benefit to clients over the long term balanced by the costs in providing the advice.
Applying a reasonable/disinterested (unbiased) person test similar to that explained in Standard 3 will assist you in assessing compliance with Standard 7.

Part 7.7A Division 3 and 4 of the Act includes detailed requirements about remuneration arrangements, including “conflicted remuneration”. The Code does not remove, but augments, the need to comply with the requirements of these Divisions.

Standard 7 notes, unless expressly permitted by the Corporations Act, you may not receive any benefits in connection with acting for a client that derive from a third party other than their principal. Referrals to specialists or other professionals are acceptable. However, Financial Advisers cannot receive referral fees directly from a third party for advice and services provided to their client, even if these are non-financial products. In any scenario, the provisions of Standard 3 continue to apply.

Note: Standard 7 and the Code in general apply only to relevant providers (financial advisers), they do not apply to the broader business structures which employ those advisers. Referral arrangements through those broader business structures are not governed by the Code.

In assessing whether consent is required for clients which are classified as ‘existing clients’, Standard 7 notes that “if required, in the case of an existing client, consent should be obtained as soon as practicable after the Code commences”. There are two components to this Standard. The first part is “if required”. If an adviser has already received the client’s free, prior and informed consent, Standard 7 has been met. If they haven’t, they will need to work out a practicable timeframe to do so, within 12 months. The precise timetable will be influenced by a number of factors including number of clients, next scheduled contact, etc. The commentary provided in Standard 4 of this guide will assist in applying this requirement.

**Fundamental Questions**

1. As an adviser I have a referral arrangement with a Mortgage Broker. I refer my financial advice clients to the Mortgage Broker when my clients need help with their mortgage or any new loans. In return the Mortgage Broker gives me a $500 payment from the commission he receives for the loan/mortgage. Given this is not a financial product that is affected by the Code can I still receive this fee?

   **Answer:** Referral fees received from a third party directly by the adviser will breach the Code of Ethics.

2. As a Licensee or Corporate Authorised Representative (CAR), I have contractual referral arrangements with third parties which will be difficult to change before the Code commences on 1 January 2020. Will my advisers breach the Code until these arrangements have been changed?

   **Answer:** Licensee arrangements fall outside the Code and will not be required to change as they are not subject to the Code provisions. However, if the structure of these referral arrangements negatively impacts on the ability of relevant providers to meet their obligations under the Code, FASEA would expect that they be reviewed and amended.
Where the adviser’s remuneration is linked to referral fees generated via the Licensee structure or CAR, the adviser will need to demonstrate compliance with the Code in the same manner as any other form of remuneration received.

An adviser would need to satisfy themselves that remuneration received from the Licensee and/or CAR doesn't inappropriately influence the advice by for example demonstrating the following:

- The advice and product recommendation is in the best interests of the client;
- The fee paid by the client is fair and reasonable and represents value for the client and is fully understood by the client;
- The client understands benefits, costs and risks of the advice;
- The advice and fee structure are appropriate for the client; and
- A disinterested or unbiased person, in possession of all the facts, would reasonably conclude that:
  - The fee paid by the client is fair and reasonable and represents value for the client
  - The remuneration could not lead the adviser to prefer the interests of someone (including their own) over the client’s best interests.

3. What format is required when obtaining consent from my clients?

Answer: An adviser will need to ensure they receive signed consent from their clients. This may be using existing forms e.g. Ongoing Service Agreement, Initial Service Agreement, Authority to Proceed with Advice, etc. FASEA does not expect that a new form is created to meet this standard.

**Standard 8**

You must ensure that your records of clients, including former clients, are kept in a form that is complete and accurate.

**Intent**

The intent of Standard 8 is to ensure that financial advisers keep complete and accurate records of advice and services provided to their clients and meet legislative requirements relating to storage of records.

Advisers should ensure that records are kept in a form that is complete and accurate for both current and former clients.

**Values Demonstrated**

- Competence
- Honesty
- Diligence
- Trustworthiness
Applying the standard

In assessing whether you have records that are complete and accurate, you may consider the following:

- Have I kept accurate and complete records of client advice and services provided including file notes of discussions?
- Are client records securely stored and accessible if needed?
- Have I complied with legal obligations in preparing client records?

Fundamental Questions

1. I have decided to transition from paper-based client files to an online system. Are there any security measures I need to take?

   **Answer:** It is important that the online electronic file system has appropriate security measures and that records are kept in one place similar to hard copy files, allowing easy location of important documents such as final versions of advice documents and client consent forms.

2. I have a new job and I am moving practices. Can I take my existing client files with me to the new practice?

   **Answer:** The adviser has an obligation to maintain records in relation to the advice they provided whilst authorised by the current employer/practice. Before finishing with the current employer/practice they should review and update client files to ensure they are complete and accurate. If the existing clients are not transferring with the adviser to the new AFSL, the adviser may not take the files with them. If clients are transferring the adviser will need to request access to existing files.

Standard 9

All advice you give, and all products you recommend, to a client must be offered in good faith and with competence and be neither misleading nor deceptive.

Intent

The intent of Standard 9 is to require that all financial product advice, and all financial products, offered to a client be offered in good faith by an adviser who has the knowledge and skill (competency) to provide the advice.

Advice that is neither misleading nor deceptive requires demonstration of the value of honesty by providing advice that is both in the best interests of the client and in a form that the client can understand and rely upon ‘at face value’. The adviser will not be acting in good faith if there is something they are aware of, or ought to be aware of, that would lead to the conclusion that their advice is not in the clients’ best interests or is misleading or deceptive or that has not been communicated, in clear terms, to the client.
Values Demonstrated

- Honesty
- Competence
- Trustworthiness
- Fairness
- Diligence

Applying the standard

The Standard requires that all financial product advice, and all financial products, be offered “with competence”. As the client is relying on your understanding of the product, you have a duty to your client to duly investigate the product and satisfy yourself you have sufficient knowledge, skill and understanding of the product to be able to advise on it.

The standard of competence is closely linked to the competency requirements of Standard 10.

You will meet the standard if you act efficiently, honestly and fairly. Paragraph 912A(1)(a) of the Act requires licensees to “do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly”. This Standard ensures that a corresponding ethical duty applies to all relevant providers.

This Standard reflects the current law requiring that financial product advice given, and financial products recommended, must not be misleading or deceptive.

In assessing whether you have considered the requirements of Standard 9, you may consider the following:

- Have I undertaken sufficient research and investigation of the product that I am considering for the client?
- Do I understand the risk, benefits, cost and customer implications of the product that I’m recommending?
- Do I have the knowledge, skills and experience to give the advice or should I seek assistance from a specialist?
- Have I acted at all times in good faith in the interests of the client?
- Have I identified risks to the client and discussed these openly and honestly with the client?

Fundamental Questions

1. A new product was added to my Licensee’s approved product list (APL), can I recommend it to my clients?

Answer: It would be appropriate to ensure that you understand the product in detail ie. Benefits, risks, and costs before you recommend it to any of your clients.
2. My Licensee has advised that their in-house product is in the best interests of the majority of clients and the Licensee expects that a high proportion of product recommendations are to the in-house product. Am I required to provide evidence the in-house product is in the best interests of the client?

**Answer:** For each client the adviser should be satisfied that the product recommendation is in the best interests of the client. You may seek to be satisfied that:

- The client understands the advice including the benefits, costs and risks;
- The advice, product recommendation and fee structure are in the best interests of the client;
- The fee paid by the client is fair and reasonable and represents value to the client and is fully understood by the client; and
- A disinterested or unbiased person, in possession of all the facts, would reasonably conclude that:
  - The fee paid by the client is fair and reasonable and represents value to the client
  - the remuneration could not lead the adviser to prefer the interests of someone (including their own or their Licensee) over the client’s best interests.

**Standard 10**

You must develop, maintain and apply a high level of relevant knowledge and skills.

**Intent**

The intent of Standard 10 is to ensure that financial advisers have and maintain an appropriate level of relevant knowledge and skills to provide competent advice in the best interests of their clients.

In developing relevant knowledge and skills, Section 921B of the Corporations Act (2001) requires at a minimum advisers will hold a bachelor or higher degree, or equivalent qualification, approved by FASEA or, in the case of advisers educated internationally, a foreign qualification approved by FASEA.

To maintain relevant knowledge and skills, Subsection 921B(5) of the Corporations Act (2001) requires financial advisers to meet the requirements for continuing professional development set by FASEA. FASEA’s Continuing Professional Development (CPD) standard provides a framework to assist advisers in meeting this requirement.

In applying relevant knowledge and skills it is expected that financial advisers will only provide advice in areas they have the necessary skills and competencies to do so in a professional way.

**Values Demonstrated**

- Competency
- Diligence
- Trustworthiness
- Honesty
- Fairness
Applying the standard

Details of bachelor or higher degree and equivalent qualifications approved by FASEA are available here. Foreign qualifications are approved on an individual basis by FASEA with the application process detailed here.

To meet this standard you must undertake sufficient continuing professional training to maintain competence at a level appropriate for the professional services (including financial product advice) you provide, or intend to provide, and keep up to date with developments relevant to your practice.

At a minimum you must meet the requirements of the CPD standard (available here). In general, this requires completion of a minimum 40 hours of CPD each year across the following mandatory categories:

1. Technical – 5 hours
2. Client care and practice – 5 hours
3. Regulatory competence and consumer practice – 5 hours
4. Professionalism and ethics – 9 hours

The balance up to 40 hours must consist of qualifying CPD.

Where you specialise in a particular area, you should not provide advice outside that area unless you have the necessary skills and competencies to do so in a professional way. If you do not consider you have the necessary skills and competencies to provide the advice the client seeks, it is appropriate to refer the client to an adviser with relevant skills and knowledge.

Fundamental Questions

1. I would like to provide specialist advice in shares. What training do I need to undertake?

   **Answer:** FASEA’s approved degrees provide core competency areas. It is the Licensee’s responsibility as well as that of the adviser, to ensure the adviser has the relevant competency to be authorised for specialist areas. It may be appropriate to include the specialist area as a focus area in the adviser’s CPD plan or ongoing education.

2. As an Adviser, I have basic knowledge in SMSF that I learnt when undertaking an approved Graduate Diploma. My client has requested specialist SMSF advice involving a number of complex issues I have not previously encountered. Should I provide advice to the client?

   **Answer:** In this circumstance, it would be appropriate for the adviser to seek the assistance of another adviser with specialist SMSF skills before giving advice or to refer the client to another adviser with the necessary competency. If the adviser wished to give this type of advice in the future they should undertake additional specialist SMSF study and training before doing so.
**Standard 11**

You must cooperate with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.

**Intent**

The intent of standard 11 is to place personal responsibility onto financial advisers to uphold the ethical values of the Code by proactively cooperating with ASIC and monitoring bodies in any investigation of a breach or potential breach of this Code.

**Values Demonstrated**

- Trustworthiness
- Honesty
- Diligence

**Applying the standard**

You will demonstrate you meet this standard by cooperating with the appropriate regulator or disciplinary body when instructed under an investigation. This includes responding to requests in a timely and open manner and providing any requested documentation or records that will assist the investigation.

**Fundamental Questions**

1. If appropriate, under an investigation what records do I provide?

   **Answer:** It is expected that an Adviser cooperates with the appropriate regulator and/or disciplinary body undertaking the investigation. The Adviser is expected to respond in a timely way to questions and provide all relevant documentation that they and their licensee hold to the investigators.

**Standard 12**

Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest.

**Intent**

The intent of standard 12 is to ensure financial advisers both individually and in cooperation with their peers not only meet the values and standards of the Code but that they promote meeting and maintaining those values and standards in their dealings with the profession and the public.

This Standard deals with relevant providers’ professional relationships with each other, emphasising that they need to be supportive and aligned to the profession as a whole—being, and being seen to be, a profession that acts ethically and professionally.
The standard encourages financial advisers to hold each other accountable including by demonstrating a willingness to challenge others who are not upholding the values and standards of the Code of Ethics.

The intent of Standard 12 goes to the heart of Financial Advisers contribution to the promotion of financial advice as a trusted profession.

For those new to the profession, experienced Financial Advisers, as Supervisors, play an important role in ensuring new entrants are given appropriate guidance and support and that they meet the requirements of the Professional Year to uphold the ethical behaviour expected in the profession.

**Values Demonstrated**

- Trustworthiness
- Competence
- Honesty
- Diligence

**Applying the standard**

You will demonstrate you meet this standard by applying the provisions of the Code of Ethics to each of your dealings with your clients and through a willingness to challenge other advisers who do not do the same.

**Fundamental Questions**

1. I have a client who is transitioning to another Adviser. To minimise the impact on the client should I provide the client’s file to the new Adviser?

   **Answer:** As with other professions it is best practice for professionals to provide the client file/documentation to the new professional adviser. There are basic principles that the new Adviser may follow, including:
   
   a. Ensure they have received written client consent to obtain the client file from the previous Adviser
   
   b. Formalise the request in writing to the previous adviser with your professional request of the client file and/or appropriate documentation
   
   c. Expect a reasonable time (ie. 2-3 weeks) for the previous Adviser to provide the client file and/or appropriate documentation.

2. As an adviser reviewing the new clients file, I have some concerns that the client received advice that was not in their interests, what do I do?

   **Answer:** In identifying inappropriate advice or misconduct, the Adviser has a professional obligation to report for further investigation. Options include:
   
   a. Contacting the AFS Licensee and advising them of the situation and your concerns
   
   b. If the inappropriate advice has caused harm to the client, refer the client to AFCA’s complaint process. [here](#)
   
   c. Finally, ASIC has existing process for the reporting of misconduct. [here](#)
### Glossary

Words and expressions used in this guide are defined in the following table:

<table>
<thead>
<tr>
<th>Expression</th>
<th>Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASIC</td>
<td>Australian Securities and Investments Commission.</td>
</tr>
<tr>
<td>Authority</td>
<td>Financial Adviser Standards and Ethics Authority Ltd, which is the standards body under section 921X of the Act.</td>
</tr>
<tr>
<td>benefits</td>
<td>includes remuneration and both monetary and non-monetary benefits. It does not include the fixed component of remuneration. Variable components, such as bonuses, are included.</td>
</tr>
<tr>
<td>client</td>
<td>generally, an employee does not have clients; the employer does. The same is likely to be true for directors of corporate licensees. To ensure that the application of the code will not be evaded, this definition results in the code applying to a relevant provider who is an employee or a director of a financial services licensee as if the provider's clients included the retail clients of the provider's licensee and the retail clients of other relevant providers who have the same licensee.</td>
</tr>
<tr>
<td>code</td>
<td>Financial Planners and Advisers Code of Ethics 2019</td>
</tr>
<tr>
<td>financial product</td>
<td>defined in Division 3 of Part 7.1 of the Act.</td>
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<tr>
<td>financial services</td>
<td>a person who holds a financial services licence.</td>
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<tr>
<td>licensee or licensee</td>
<td></td>
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<tr>
<td>monitoring body</td>
<td>defined in section 910A of the Act</td>
</tr>
<tr>
<td>personal advice</td>
<td>defined in subsection 766B(3) of the Act.</td>
</tr>
<tr>
<td>principal</td>
<td>a financial services licensee who has authorised the relevant provider to provide, on its behalf, personal advice to retail clients.</td>
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<tr>
<td>provisional relevant</td>
<td>defined in section 910A of the Act.</td>
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<td>provider</td>
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<tr>
<td>relevant provider</td>
<td>defined in section 910A of the Act.</td>
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<tr>
<td>retail client</td>
<td>defined in sections 761G and 761GA of the Act.</td>
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<tr>
<td>SMSF</td>
<td>self-managed superannuation fund.</td>
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<tr>
<td>supervisor</td>
<td>defined in subsection 921F(2) of the Act.</td>
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