



# **CODE OF PROFESSIONAL CONDUCT**

**Effective: 2017**



# CONTENTS

	<b>Page</b>
<b>A BACKGROUND</b>	4
<b>B INTRODUCTION</b>	6
<b>C MINIMUM STANDARDS OF ETHICAL BEHAVIOUR</b>	7
Standard 1 Placing client interests first and acting with integrity	7
Standard 2 Not bringing the financial advisory industry into disrepute	7
Standard 3 Using the term “independent”	8
Standard 4 Borrowing from or lending to a client	9
Standard 5 Conflicts of Interest	
Standard 6 Underwriter support for premium quotations	
<b>D MINIMUM STANDARDS OF CLIENT CARE</b>	
Standard 7 Behaving professionally	12
Standard 8 Ensuring retail clients can make informed decisions	13
Standard 9 Agreeing the nature and scope of service	13
Standard 10 Suitability of personalised services for retail clients	14
Standard 11 Complaints processes	14
Standard 12 Keeping information about personalised services for retail clients	15
Standard 13 Record retention	15
Standard 14 Complying with the Insurance Intermediaries Act 1994	16
<b>E MINIMUM STANDARDS OF COMPETENCE, KNOWLEDGE AND SKILLS</b>	
Standard 15 Overarching competence requirement	17
Standard 16 Requirement to have an adequate knowledge of Code, Act, and Laws	17
<b>F MINIMUM STANDARDS FOR CONTINUING PROFESSIONAL TRAINING</b>	
Standard 17 Professional development plan requirement	18
Standard 18 Undertaking continuing professional training	18
<b>G PROCEDURES FOR BREACHES OF THE CODE AND RULES</b>	20
<b>H DEFINITIONS SCHEDULE</b>	25

## A. BACKGROUND

This section of the *Code* provides a brief overview of the scope and aims of the *Code*. The remainder of the *Code* contains the operative provisions which must be complied with by all *Members*.

This Code of Professional Conduct is for *Members* of the Insurance Brokers Association of New Zealand Inc. (IBANZ).

- (a) IBANZ is a body overseeing the business practice of its *Members*.
- (b) This *Code* regulates the conduct of *Members* among themselves, with *clients* and the general public, to ensure there are clearly defined means of redress for any *person* or *persons* who believe that a *member* has not acted in accordance with the *Code*.
- (c) This *Code* applies to the *Members*, their employees, agents or anyone acting on their behalf.
- (d) It shall be an overriding obligation of all *Members* to conduct business with integrity, and observe and comply with the laws of New Zealand.
- (e) The *Code* shall be subject to regular review. The IBANZ Board may as a consequence of any such review, or at any other time, amend this *Code* in accordance with the Constitution and Rules of IBANZ.
- (f) This *Code* is administered by IBANZ in accordance with its Constitution and Rules. Definitions in the Constitution and Rules of IBANZ also apply to words used in this *Code*.
- (g) Any breach of the *Code* could result in disciplinary action.
- (h) The objectives of IBANZ are:
  - (i) Establish standards of professional conduct for *Members* in their business.
  - (ii) Promote effective resolution of disputes between *Members*, between *Members* and their *clients* and between *Members* and the public.

**It should be noted that this *Code* applies to all *Members*, individual and corporate except those individuals who are an Authorised Financial Adviser (AFA). An AFA is subject to the Code of Professional Conduct for AFAs for the purposes of the Financial Advisers Act 2008.**

*Financial advisers* (including general insurance brokers) are required to be registered, and in some cases, authorised under the Financial Advisers Act 2008 (the Act) in order to provide *financial adviser services*.

*Financial advisers* are required to be authorised under the Act in order to provide *personalised service* to a *retail client* that is:

- (i) *financial advice* or a *discretionary investment service* in relation to a *category 1 product*;  
or
- (ii) an *investment planning service*.

*Financial advisers* may also elect to become authorised under the Act in other situations specified in regulations made under the Act.

The overarching purpose of the Act is “to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers”. This purpose provides the spirit underpinning the *Code*. When considering their conduct and disclosure obligations under the Act and the *Code*, *Members* should have that spirit in mind.

The *Code* contains minimum standards of competence, knowledge and skills, of ethical behaviour and of client care. The *Code* also provides for continuing professional development for *Members*.

## B. INTRODUCTION

Each standard in this *Code* consists of an overarching principle identified as a ***Code Standard*** together with additional provisions that contain further detail about the application of the ***Code Standard***.

Unless otherwise stated, the additional provisions do not limit the application of the overarching principle under which they are stated, or the application of any ***Code Standard***. *Members* must apply the ***Code Standards*** in a way that encourages public confidence in the professionalism and integrity of financial advisers.

Terms used in this *Code* that appear in italics are defined in the definitions schedule.

This *Code* does not limit a *Member's* legal obligations, including those under the *Act*.

The regulatory regime requires complaints to be handled in a specific manner.

As a first step the *client* must go through the *Member's* internal dispute resolution system.

If deadlock is reached then there are different ways for the complaint to be progressed:

1. Complaint on a behavioural issue, client is not seeking monetary compensation
  - Registered only Financial Advisers or their companies - go to the IBANZ Complaints Committee
  - Authorised Financial Adviser - goes to the Securities Commission
2. Complainant is seeking monetary compensation or some other form of redress
  - The dispute goes to the members external dispute resolution service

## C. MINIMUM STANDARDS OF ETHICAL BEHAVIOUR

### Code Standard 1

**A Member must place the interests of the *client* first, and must act with integrity. These obligations are paramount.**

This **Code Standard** applies to any activity of a *Member* that relates to the *Member's financial adviser services*.

The obligation to place the interests of the *client* first, and act with integrity in accordance with the overarching purpose of the *Act*, applies irrespective of the application and effect of any other **Code Standard**.

What is required to place a *client's* interests first for the purposes of the *Code* is determined by what is reasonable in the circumstances, including any regulatory obligations binding on the *Member* in addition to the *Code*.

Compliance with this **Code Standard** does not require a *Member* to provide services that are not within the range of the *Member's* services, as advised to the *client in writing*, or provide *financial adviser services* in relation to *financial products* that are outside of that range.

A *Member's* obligation under this **Code Standard** to place a *client's* interests first will not be breached by reporting to the Financial Markets Authority any breaches of the *Act* that the *Member* reasonably believes to have occurred.

### Code Standard 2

**A Member must not do anything or make an omission that would or would be likely to bring the financial advisory industry into disrepute.**

This **Code Standard** prohibits a *Member* from conduct that would undermine public confidence in the professionalism or integrity of the financial advisory industry. However, this **Code Standard** does not prevent a *Member* from commenting in good faith on the business, actions, or inactions of any *person* (including any other *financial adviser*, financial adviser group, financial service provider or industry body).

### Code Standard 3

**A *Member* must not state or imply that the *Member* is independent, or that any *financial adviser services* are independent, or that any *financial adviser services* provided are independent, if a reasonable *person* in the position of a *client* would consider that the *Member* or the services provided are not independent.**

The following are examples of circumstances where neither the *Member* nor the *Member's* provision of *financial adviser services* may be described as 'independent':

- (a) a *related person* of the *Member*, or a *related person* of the *Member's* employer, or *principal*, is the *product provider* of a *financial product* relevant to the *financial adviser service* provided; or
- (b) the *Member* is subject to a contractual obligation to:
  - recommend a particular *financial product* or *financial products*; or
  - limit the *Member's* recommendations to a particular *financial product* or *financial products*; or
  - attain or maintain a target in relation to a particular *financial product* or *financial products*.
- (c) The *Member* or a *related person* of the *Member* will or may directly or indirectly receive a *benefit* from a *person* other than the *client* for providing the services or from the *client's* acquisition of a *financial product* or products.

However, for the purposes of this paragraph (c) the following *benefits* that do not affect a *Member's* ability to describe the *Member* or the *Member's* services as independent:

- receiving brokerage/commission from an insurer at rates which are within the range of what is usual in the market for the relevant class of business; and
- those that are paid, credited, or transferred to the *client*; and

- those that are remote or insignificant; and
- those that are received by the *Member* in the form of salary or wages as an employee, or in the form of fees as a contractor, that are not determined in whole or in part by reference to volume or other targets relating to a particular *financial product* or *product provider*.

A *Member* must not state or imply that a researcher or other third party service provider used by the *Member* in relation to the *Member's financial adviser services* is independent unless the *Member* has reasonable grounds to believe the third party would be able to describe themselves as independent under this **Code Standard**, if the third party were a *Member*.

#### **Code Standard 4**

***A Member must not borrow from, or lend to a retail client.***

This **Code Standard** does not apply if the *client* is

- (a) a *related person* of the *Member*; or
- (b) in the business of borrowing or lending money or valuable property and the *Member's* borrowing or lending is in the ordinary course of the *client's* business on terms consistent with the *client's* normal business terms.

This **Code Standard** does not prevent a *Member* or a *Member's* employer or *principal* from entering into financial arrangements on behalf of a *client* as the *client's* agent to meet settlement obligations in relation to any *financial product*.

A *Member* must not arrange for a *Member's* employer or *principal* to borrow from or lend to a *client*, other than in the ordinary course of the employer's or *principal's* business.

## Code Standard 5

***A Member must effectively manage any conflicts of interest that may arise when providing a financial adviser service.***

Effective management for the purposes of this **Code Standard** includes a requirement for the *Member* to identify, and clearly and effectively communicate to the *client*, all interests of the *Member* or a *related person* that might influence the services the *Member* provides to the *client*. Where a conflict of interest that arises when providing a *financial adviser service* is such that a *Member* is unable to manage the conflict so as to place the interests of the *client* ahead of the interests of the *Member* or a *related person*, the *Member* must decline to act.

## Code Standard 6

**A Member must not provide premiums, pricing or terms for insurance to clients or potential clients without the written support of an underwriter for the premiums, pricing or terms.**

*Members shall not:*

- (a) provide a *client* or potential *client* with a premium and/or pricing and/or terms for insurance without the written support of the Underwriter; or
- (b) imply or promise or guarantee a *client* or potential *client*, can achieve a set reduction on their current premiums, without the written support of the Underwriter; or
- (c) provide a *client* or potential client with a premium and/or pricing and/or terms for insurance specifying an Underwriter before agreement has been reached with that Underwriter as to the matters in question; or
- (d) provide a *client* or potential *client* with a premium and/or pricing and/or terms for insurance which are less than that agreed to by the Underwriter other than where a "net" quote is to be provided.

*Members may, using the Member's professional experience and/or their company's database, provide a client or potential client with an "indicative" premium and/or pricing and/or terms for insurance, or a range thereof, that a client could expect in the current market place, to assist the client's or potential client's understanding of what may be available to them provided that:*

- (e) The *client* or potential *client* has requested such professional advice and/or "indicative" premium and/or pricing and/or terms for insurance prior to these being provided; and
- (f) The *member* has a documented and appropriate risk profile and other relevant underwriting information about the *client* or potential *client*, including claims experience from the *client* and where possible the current and previous underwriters; and
- (g) The "indicative" premium and/or pricing and/or terms for insurance given to the *client* or potential *client* are qualified in writing to the effect that:
  - (i) the premium and/or pricing and/or terms for insurance given have not been agreed to by any Underwriter; and
  - (ii) they are given based on experience of similar risk profiles and are an indication of insurance market conditions only, and may change once the *client's* or potential *client's* specific risk profile and the recommended insurance programme is given to Underwriters for their underwriting assessment.

## D. MINIMUM STANDARDS OF CLIENT CARE

### Code Standard 7

***A Member must behave professionally in all dealings with a client, and communicate clearly, concisely and effectively.***

When providing *financial adviser services* to a *client*, a *Member* must:

- (a) provide only services that the *Member* has the competence, knowledge and skill to provide; and
- (b) provide the services and perform the *Member's* obligations in a timely way; and
- (c) make recommendations only in relation to *financial products* that have been assessed or reviewed by the *Member* to a level that provides the *Member* with a reasonable basis for any such recommendation, or by another *person* if it is reasonable in all the circumstances, for the *Member* to rely upon that other *person's* assessment or review.

Communicating 'effectively' for the purposes of the *Code* requires a *Member* to take reasonable steps to ensure the *client* understands the communication.

When transmitting the *financial advice* of another *person* to a *client*, a *Member* must take reasonable care to ensure that the *person* providing the *financial advice* has an appropriate level of competence, knowledge, and skill to provide that advice, and either:

- ensure the *client* is aware that the *Member* has not prepared the *financial advice* or assessed its suitability for the *client*; or
- accompany the *financial advice* with the *Member's* own *financial advice* in relation to the same subject matter (in which case the *Member* may have further obligations under **Code Standard 9-10**).

When providing *financial adviser services* to a *wholesale client*, a *Member* must take reasonable steps to ensure the *client* is aware that the client is regarded as a *wholesale client* for the purposes of the *Act* and the *Code*, and also is aware of the consequences of that status.

### **Code Standard 8**

***A Member must ensure each retail client has sufficient information to enable the client to make an informed decision about whether to use the Member's financial adviser services.***

The information a *Member* may be required to provide a *retail client* under this **Code Standard** includes (but is not limited to) *written* information about the range of the *Member's financial adviser services*, the basis on which those services are provided and any interests the *Member* is required to communicate under **Code Standard 5**, in relation to the *Member's financial adviser services* provided to the *client*.

The requirements of this **Code Standard** may be satisfied in whole or in part by complying with the *Member's* disclosure obligations under the *Act*. In some circumstances additional information may need to be provided to a *retail client* to ensure the *client* has sufficient information to be able to make an informed decision.

The information required under this **Code Standard** must be updated when there is any change in the *Member's* circumstances that is material to the *financial adviser services* provided by the *Member* to the *client*.

### **Code Standard 9**

***When providing a financial adviser service to a retail client, a Member must agree with the client the nature and scope of the service to be provided.***

The nature and scope of a *personalised service* provided to a *retail client* must be clearly and effectively communicated to the *client*.

The *Member* must take reasonable steps to ensure the *client* is aware of the extent of any limitations on the scope of a *personalised service* agreed with a *retail client*, and of any implications those limitations may have for the *personalised service* to be provided.

Where a *class service* is provided, the *client* can be taken to have agreed to the nature and scope of the service, although a *Member* must still take reasonable steps to ensure the *client* is aware of the limitations of the service provided.

### Code Standard 10

**When providing a *personalised service* to a *retail client*, a *Member* must take reasonable steps to ensure that the *personalised service* is suitable for the *client*, having regard to the *agreed nature and scope of the personalised service* provided.**

### Code Standard 11

**A *Member* must ensure there is an appropriate internal process in place for resolving *client complaints* in relation to the *Member's financial adviser services*.**

The complaint resolution process under this ***Code Standard*** must ensure that:

- (a) the *client* is, as soon as reasonably practicable after making a *complaint*, provided with acknowledgement of the *complaint*, information about the *member's internal complaints handling process*, and how to complain to the Financial Markets Authority and to any applicable *external dispute resolution scheme*; and
- (b) a register is kept recording all *complaints*, and action taken towards resolving those *complaints*.

The complaint resolution process required under this ***Code Standard*** is required in addition to the *Member's external dispute resolution scheme* (if any).

## Code Standard 12

***A Member must record in writing adequate information about any personalised services provided to a retail client.***

The information required to be recorded under this **Code Standard** in relation to each *retail client* must be sufficient to demonstrate compliance with **Code Standards 5-10**, and must include copies of all information and documents provided to, or received from, the *client in writing*, in connection with the *Member's personalised services*.

A *Member* who is an employee may satisfy the *Member's* obligations under this **Code Standard** by taking reasonable steps to ensure that relevant measures taken by the *Member's* employer are consistent with the measures contemplated under this **Code Standard**.

A *Member* must comply with all obligations under the Privacy Act 1993. Without limitation, this includes obligations in relation to the use and disclosure of *clients'* personal information and the protection of that information from loss and unauthorised access, use, modification, or disclosure.

## Code Standard 13

***A Member must ensure that records of all information and documents required under this Code are kept for a minimum of 7 years.***

The 7 year minimum period required under this **Code Standard** generally commences on the last date that the *Member* provides a *financial adviser service* to the *client*. However, for information relating to a *financial product* transaction entered into by the *client*, the 7 year minimum period for that information commences on the date that all benefits potentially available to the *client* from the *financial product* have been realised, if that date is earlier than the date that would otherwise apply. The records required under this Code Standard may be kept in electronic form, provided the records are readily retrievable.

A *Member* may satisfy the *Member's* obligations under this Code Standard by arranging for records or information and documents required under this Code Standard to be held by a third party (for example, the *Member's* employer, or a purchaser of the *Member's* business) by taking reasonable steps to ensure the third party keeps the records contemplated under this Code Standard for at least as long as the *Member* would otherwise have been required to keep them.

### **Code Standard 14**

**Members shall at all times comply with the requirements of the Insurance Intermediaries Act 1994.**

Premium payments shall be kept in a separate and identifiable insurance broking client bank account.

Unless instructed otherwise:

- money received from an insurer for payment to an insured shall be paid to the insured within 7 days after the day on which the money was received by the broker;
- any cheque received from an insurer that is payable to an insured shall be sent to the insured immediately;
- profit share rebate credit invoices shall be forwarded directly to the client within 7 days.

Any premium funding activities shall be in compliance with the Credit Contracts and Consumer Finance Act 2003 and conducted through a separate bank account and/or separate legal entity.

**E. MINIMUM STANDARDS OF COMPETENCE, KNOWLEDGE, AND SKILLS REQUIRED TO PROVIDE FINANCIAL ADVISER SERVICES**

**Code Standard 15**

**Before providing a *financial adviser service*, a *Member* must have the competence, knowledge and skills to provide that service.**

A *Member* must be able to demonstrate that the *Member* has a reasonable basis for believing that the *Member* has the level of competence, knowledge and skills required by this **Code Standard**.

**Code Standard 16**

**A *Member* must have a knowledge of the *Act*, the *Code* and other legal obligations relevant to the operation of the *Member's* practice as a *financial adviser* (including relevant consumer protection laws), that is adequate for the proper operation of that practice.**

## F. MINIMUM STANDARDS FOR CONTINUING PROFESSIONAL TRAINING

### Code Standard 17

***A Member must maintain and keep current a professional development plan for each CPD period.***

A *Member's* professional development plan must:

- (a) identify any areas for improvement in the *Member's* competence, knowledge and skills in relation to the *financial adviser services* the *Member* provides or intends to provide;
- (b) include the *Member's* proposals for making those improvements; and
- (c) where available, include details of courses, seminars, workshops and any other training or professional development planned to be undertaken.

### Code Standard 18

***A Member must undertake sufficient continuing professional training to maintain the Member's competence at a level appropriate for the financial adviser services the Member provides or intends to provide, and keep up to date with developments relevant to the Member's practice.***

In order to satisfy this **Code Standard**, a *Member* must complete no less than 15 hours of *structured professional development* over the course of each *CPD period*.

In addition to that minimum *structured professional development* requirement, in each *CPD period* a *Member* must undertake such additional training as is necessary to maintain the *Member's* competence at the appropriate level required by this **Code Standard** or to satisfy the *Member's* professional development plan for that *CPD period*, whether in the form of additional *structured professional development* or some other form.

A *Member* must keep appropriate records of any *CPD* activity completed that is required by this ***Code Standard*** in a form suitable for demonstrating compliance with this ***Code Standard***.

## **G. PROCEDURES FOR BREACHES OF THE CODE AND RULES**

### **1. Introduction**

- (a) Enquiries into the conduct of *Members* are carried out by the Disciplinary and Complaints Committee (“Committee”). The Committee is convened from time to time in accordance with the Constitution and Rules of IBANZ.
- (b) The Committee shall be made up of no more than five members.
- (c) The Chair, plus two other lay members of the Committee shall be independent and not IBANZ *Members*.
- (d) The remaining two representatives shall be IBANZ Board Members or others as appointed by the Board. They should be *persons* who have an interest in and are knowledgeable about consumer issues relevant to the business of IBANZ *Members*.
- (e) Two alternative IBANZ representatives shall also be appointed to fill in where required due to the unavailability of any IBANZ representative, or where conflict of interest arises.
- (f) A minimum of three Committee Members shall be a quorum. These must comprise of the chair, one independent and one broker representative. If the required numbers are not present within sixty (60) minutes of the called time, the meeting shall be adjourned for 7 days or a lesser time by mutual agreement of Committee Members present.
- (g) No business shall be transacted without a quorum.

### **2. Complaints Handling Procedure**

- (a) The Committee may of its own motion or on the complaint in writing of any *person* or entity enquire into the conduct of any *Member*.
- (b) The Chief Executive or such other *person(s)* as delegated on receiving a written complaint from any *person* or entity in relation to the conduct of any *Member* must forward it to the Committee for consideration.
- (c) In determining whether there has been a breach of the Code, the Committee will have regard to what is fair and reasonable on all the circumstances as well as the principles of Insurance Law and Practice and the principles and objectives of the Code.
- (d) The Committee may decline to consider an alleged breach of the Code. The Committee is entitled in its sole discretion to refuse to consider, or to refuse to refer to mediation

an alleged breach of this Code if the Committee believes it would be inappropriate to do so. For example, depending on the circumstances, this may be because:

- The Committee does not consider the conduct complained of is covered by the Code.
  - Insufficient information has been provided by the complainant within a reasonable period of time, to allow the Committee to properly consider the complaint.
  - The Committee considers that the facts giving rise to the complaint are disputed and for the Committee to make a decision will substantially involve the Committee in having to make findings of credibility.
  - The complaint is the subject of litigation between the complainant and the *Member*.
  - The Committee considers the complaint concerning the alleged breach is frivolous or vexatious.
- (e) The Complainant will be asked to state whether the matter is to be referred to mediation or for it to be considered by the Committee. The complainant may decline mediation. Any enquiry by the Committee will function informally with a minimum of legal form and technicality.
- (f) The Committee may, of its own motion, suggest to the complainant that mediation may not be of assistance to the complainant in resolving the complaint.
- (g) The complainant elects to have the matter mediated; the Committee is still entitled to consider the complaint and to take any necessary disciplinary action against the *Member*.
- (h) In the Committee's opinion it is not clear whether there has been a breach of the Code, the complaint can be referred by the Committee, with the complainant's agreement, to mediation.

### **3. Decisions by the Committee**

- (a) When investigating a complaint against any *Member*, if the Committee is of the opinion, after affording the *Member* a reasonable opportunity to be heard, the *Member* is guilty of clearly and unequivocally breaching the Code, the Committee in its discretion is entitled to impose one or more of the following:

**Level 1:** Censure the *Member*

**Level 2:** Require the *Member* to take certain action

**Level 3:** Fine the Member up to a maximum of \$ 25,000 + GST but nevertheless no less than \$500 + GST. Order the Member to pay to IBANZ such reasonable amounts as the Committee shall in its discretion determine for the costs and expenses of and incidental to the complaint. The *Member* must pay any fine and costs to IBANZ within 14 days of such determination. Failure to pay may result in expulsion from IBANZ.

**Level 4:** Suspend the *Member* from Membership for a period and fine the *Member* up to a maximum of \$25,000 + GST.

**Level 5:** Expel the *Member* from IBANZ.

- (b) If the Committee considers the breach of the Code by the *Member* is serious enough to warrant suspension or expulsion from IBANZ, then the Committee will refer the matter to the Board of IBANZ together with its recommendation. The Board is then entitled, by resolution passed at a meeting of the Board to impose one or more of the sanctions in accordance with the Constitution and Rules of IBANZ.

#### **4. No Right of Appeal**

The Complainant and the *Member* do not have any right to appeal any decision, order or sanction imposed by the Committee or the Board of IBANZ

#### **5. Mediation**

If a complaint is to be mediated then the Committee will appoint a Mediator from the panel of Mediators maintained by IBANZ for this purpose. The following conditions apply to the mediation.

- (a) The mediation will be on the standard terms of mediation adopted by the Committee from time to time, unless the *Member* and the parties to the complaint agree otherwise.
- (b) The mediation fees are to be paid by the *Member*. If the dispute is between two or more *Members* then the fees will be split equally between the *Members*.
- (c) If a *Member* refuses to attend mediation instigated by a complainant the *Member* is required to provide a satisfactory explanation of their reasons to the Committee.
- (d) Both the Complainant and or the *Member* may object to the nominated Mediator and their reasons will be considered by the Committee. If the mediation does not result in an agreed settlement then the Complaint may be referred back to the Committee for determination. The Committee's decision is then final.

## **6. Litigation**

If the complaint is the subject of litigation, the Committee is entitled to reserve its view on taking any disciplinary action until after the litigation is finally resolved. The Committee is entitled to require the *Member* to provide full details of the resolution of the litigation subject to any contractual or legal restraint.

## **7. Committee Refuses to Consider Breaches**

Where the Committee refuses to consider an alleged breach of the Code the Committee will advise the complainant and *Member* of this, giving the reason (s) for refusal.

## **8. No liability of the Committee**

The Committee and the Board of IBANZ will not be liable to the *Member*, complainant or any other *person* or entity for any loss or damage (including legal costs) arising directly or indirectly from performing their duties under the Code.

## **9. Failure to pay fine**

Following the determination by the committee that a fine is to be imposed the *Member* must pay any fine and costs to IBANZ within 14 days of such determination.

If payment is not received within the 14 day period then the Chief Executive Officer should make personal representation to the Member over the failure to pay.

If the fine and any costs remain unpaid for 30 days after the original determination then the *Member* may be expelled from IBANZ following referral to the IBANZ Board.

## **10. Reporting**

The Committee will report to the Board on:

- (a) Identified breaches of the Code and remedial action taken
- (b) Publicity and staff training matters
- (c) Complaints, enquiry and disputes, and their resolution
- (d) Monitoring adherence to industry and the principles in the Code
- (e) Costs and other details of administration

## DEFINITIONS SCHEDULE

In this *Code*, unless the context otherwise requires, the following terms have the meanings set out below. To assist, those terms are shown in *italics* wherever they appear in the body of the *Code*. Any term that is not defined in this Schedule, but is defined in the *Act* or in regulations made under the *Act*, has the same meaning in the *Code* as in the *Act* or in those regulations, as applicable. Where there is any inconsistency between the definition of a term defined in the *Act* and the definition of that term in the *Code*, the definition in the *Act* prevails.

<b>Act</b>	the Financial Advisers Act 2008
<b>AFA</b>	an authorised financial adviser
<b>Authorised Financial Adviser</b>	A <i>person</i> described in section 51 of the <i>Act</i> who is authorised by the Financial Markets Authority under section 55 of the <i>Act</i>
<b>benefit</b>	any money, property, or other valuable consideration
<b>business partner</b>	A <i>person</i> who is a member of a partnership as defined in section 4 of the Partnership Act 1908
<b>category 1 product</b>	means any of the following products: <ul style="list-style-type: none"><li>a) an FMCA financial product (other than a product that is a category 2 product); or</li><li>b) a DIMS facility (other than a facility that is a category 2 product); or</li><li>c) an investment-linked contract of insurance (as defined by regulations); or</li><li>d) any other product specified by regulations made under the <i>Act</i>; or</li><li>e) a renewal or variation of the terms and conditions of an existing category 1 product</li></ul>
<b>category 2 product</b>	means any of the following products <ul style="list-style-type: none"><li>a) a bank term deposit; or</li><li>b) any bonus bond; or</li><li>c) any call building society share; or</li><li>d) a call credit union share; or</li><li>e) a call debt security; or</li></ul>

---

	<ul style="list-style-type: none"> <li>f) a share in a co-operative company (as defined in section 2(1) of the Co-operative Companies Act 1996); or</li> <li>g) a unit in a cash or term portfolio investment entity (as defined by regulations); or</li> <li>h) a consumer credit contract within the meaning of the Credit Contracts and Consumer Finance Act 2003; or</li> <li>i) a contract of insurance (other than an investment-linked contract of insurance); or</li> <li>j) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009; or</li> <li>k) a DIMS facility, if the investment authority covers only category 2 products; or</li> <li>l) any other product specified by regulations made under the Act; or</li> <li>m) a renewal or variation of the terms and conditions of any existing category 2 product</li> </ul>
--	---

---

<b>class service</b>	<i>a financial adviser service that is not a personalised service</i>
----------------------	---

---

<b>client</b>	<p>means, in relation to a <i>Member</i>:</p> <ul style="list-style-type: none"> <li>(a) a <i>person</i> who receives a service from the <i>Member</i> (whether or not on payment of a charge); but</li> <li>(b) does not include a <i>person</i> who receives any services from the <i>Member</i> if the service is both provided and received in the course of, and for the purposes of: <ul style="list-style-type: none"> <li>(i) the same business; or</li> <li>(ii) the businesses of related bodies corporate; or</li> <li>(iii) the businesses of members of a QFE group,</li> </ul> </li> </ul> <p>irrespective of whether the <i>person</i> providing or receiving the service is the <i>person</i> carrying on the business, a controlling owner, a <i>director</i>, an agent, or any other <i>person</i></p>
---------------	--

---

<b>Code</b>	Code of Professional Conduct for the Insurance Brokers Association of New Zealand Incorporated
-------------	--

---

<b>Code Standard</b>	a standard specified in the <i>Code</i>
----------------------	---

---

<b>complaint</b>	an expression of dissatisfaction by a <i>client</i> to an <i>Member</i> about the <i>Member's financial adviser services</i> provided to the <i>client</i> , other than an expression of dissatisfaction that is trivial or vexatious or that the <i>client</i> indicates is not intended to constitute a complaint for the purposes of the <i>Code</i>
------------------	---

---

<b>CPD</b>	continuing professional development or training relevant to the <i>financial adviser services</i> the <i>Member</i> provides or intends to provide
<b>CPD period</b>	a calendar year commencing on the 1 <sup>st</sup> day of January
<b>director</b>	Has the meaning given by section 126 of the Companies Act 1993, but also includes, in relation to a body that is not a <i>company</i> , a <i>person</i> who occupies a position comparable to that of a <i>director</i> (such as a trustee or a partner)
<b>discretionary investment management service</b>	a service which an <i>AFA</i> , acting under an authority granted to the <i>AFA</i> (or to the <i>AFA</i> 's employer or <i>principal</i> ) manages all or some of the <i>client</i> 's holdings of <i>financial product</i> , and decides which <i>financial products</i> to acquire or dispose of on behalf of the <i>client</i>
<b>external dispute resolution scheme</b>	in respect of a <i>Member</i> , the scheme under section 48 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to which any complaint concerning the <i>Member</i> must be referred
<b>financial advice</b>	making a recommendation or giving an opinion, in relation to acquiring or disposing of (including refraining from acquiring or disposing of) a <i>financial product</i> , <i>noting that whether or not advice is financial advice is not affected by how the advice is given or communicated</i>  <i>The mere provision of information, or making a recommendation or giving an opinion relating to a class of financial products, or making a recommendation or giving an opinion about the procedure for acquiring or disposing of a financial product, or transmitting the financial advice of another or recommending that a person consult a financial adviser, does not amount to financial advice</i>
<b>financial adviser</b>	a <i>person</i> who provides a <i>financial adviser service</i>
<b>financial adviser service</b>	giving <i>financial advice</i> in the ordinary course of business
<b>financial product</b>	a <i>category 1 product</i> or a <i>category 2 product</i>
<b>FMCA financial product</b>	Has the same meaning as in section 5 of the Act
<b>internal complaints handling process</b>	A <i>Member</i> 's internal process for handling and resolving <i>complaints</i> as described in <b>Code Standard 11</b>
<b>Investment planning</b>	A service provided by an <i>AFA</i> under which the <i>AFA</i> designs, or offers

<b>service</b>	<p>to design, a plan for an individual that:</p> <p>(a) is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and</p> <p>(b) includes 1 or more recommendations or opinions on how to realise those goals (or 1 or more of them)</p> <p>Regardless of whether the analysis and identification is of the individual's particular financial situation and goals or of the financial situations and goals attributable to a class of <i>persons</i> that the individual is identified as coming within</p>
<b>member</b>	Individual or body corporate admitted to membership as defined in the Constitution and Rules of the Insurance Brokers Association of New Zealand Incorporated
<b>person</b>	includes an individual, a corporation sole, a body corporate, and an unincorporated body (including the trustees of a trust)
<b>personalised service</b>	<p><i>financial advice</i> or an <i>investment planning service</i>:</p> <p>(i) given to or in respect of a <i>named client</i> or a <i>client</i> that is otherwise readily identifiable by the <i>Member</i>; and</p> <p>(ii) the <i>Member</i> has taken into account the <i>client's</i> particular financial situation or goals (or any one or more of them) in providing the service, or the <i>client</i> would, in the circumstances in which the service is provided, reasonably expect the <i>Member</i> to take into account the <i>client's</i> particular financial situation or goals (or one or any more of them), however a service is not personalised merely because the <i>client</i> comes within a class of <i>persons</i> having predefined characteristics and the <i>financial adviser</i> takes the fact that the <i>client</i> comes within that class into account</p>
<b>principal</b>	a <i>person</i> who is the principal in an agency relationship
<b>product provider</b>	<p>means:</p> <p>(a) the issuer, in the case of an FMCA financial product; or</p> <p>(b) the creditor, in the case of a consumer credit contract (within the meaning of the Credit Contracts and Consumer Finance Act 2003); or</p> <p>(c) the insurer, in the case of a contract of insurance (other than an investment-linked contract of insurance); or</p> <p>(d) the <i>person</i> specified by regulations in any other case</p>

<b>QFE</b>	an entity that is registered and has QFE status or a number of partner entities that are each registered and jointly have QFE status
<b>related person</b>	<p>(a) in relation to an individual, a parent, child, sibling, spouse, de facto spouse, civil union partner, employer or <i>business partner</i> of that individual, or a <i>principal</i> on whose behalf the individual provides <i>financial adviser services</i> by way of a contract for services; and</p> <p>(b) in relation to a body corporate A:</p> <p>(i) a <i>person</i> who</p> <p>(a) is also a body corporate; and</p> <p>(b) has substantially the same shareholders as A; or</p> <p>(c) is under the control of the same <i>person</i> or <i>persons</i> as A; or</p> <p>(ii) a <i>person</i> who is able, directly or indirectly, to –</p> <p>(d) exercise, or control the exercise, of 25% or more of the voting at a meeting of the shareholders of A; or</p> <p>(e) appoint or control 25% or more of a governing body of A</p> <p>(c) in any case , includes an associated <i>person</i> or a related body corporate, as those terms are defined under section 12 of the Financial markets Conduct Act 2013</p>
<b>retail client</b>	a client who is not a <i>wholesale client</i>
<b>structured professional development</b>	<p>training that has identifiable aims and with outcomes relevant to the learning needs identified in the <i>Member's</i> professional development plan, and:</p> <p>(a) is provided by a qualified educator or relevant subject matter expert; and</p> <p>(b) provides for interaction and feedback; and</p> <p>(c) participation is verifiable by documentation.</p> <p><i>Structured professional development</i> may include technical product training but excludes training provided for the principal purpose of promoting a particular <i>financial product</i></p>

---

---

<b>unit</b>	a unit standard forming part of the National Certificate in Financial Services (Financial Advice) (Level 5) or the New Zealand Certificate in Financial Services (Level 5) on the National Qualifications Framework
-------------	---

---

---

<b>wholesale client</b>	a <i>client</i> classified as a <i>wholesale client</i> under section 5C of the Act
-------------------------	---

---

<b>written or in writing</b>	includes in electronic form
------------------------------	-----------------------------

---