

- + **Implementation** - That you can then assist the client to implement the strategies that they decide to adopt; and
- + **Remuneration and charges** - How you are remunerated for your services, e.g. “There will be a fee to prepare a financial plan for you and I may also receive commissions from life insurers if you take out life insurance”.

TIP

The FSG is a good tool to use when introducing your services to the client.

TRAP

Don't overlook the privacy requirements. Showing your concern for the confidentiality of the client's information is a good way to create trust. Alternatively, you may prefer to provide the client with a brief written privacy collection statement (which may be included in your FSG).

See section 13 of the Companion to the Financial Adviser Manual for more information about Privacy.

3.2.2. Ensure You Can Meet the Client's Needs

Before proceeding further, determine with the client whether the services you offer and your competencies meet their needs. Consider whether you or your staff have the appropriate abilities, skills and knowledge to meet the client's needs and expectations. For example a client may seek specific advice about a defined benefit scheme or a product/strategy which requires specialist advice. In such circumstance it may be necessary to refer the client to another adviser or specialist for that specific piece of advice.

Consider whether you have any conflicts of interest that would affect your ability to work successfully with the client. These could include circumstances or relationships that could place your interests in conflict with the client's interests, e.g. an association with a product provider or an in-house investment service.

Standard 3 of the Code of Ethics states: 'You must not advise, refer or act in any other manner where you have a conflict of interest or duty.'² Despite the strict wording, subsequent guidance³ from FASEA suggests that it does not require you to avoid all potential conflicts of interest. Instead, you must *manage* potential conflicts so that they do not become *actual* conflicts.⁴ You can do this by ensuring that all advice, referrals and other services provided to the client are demonstrably in the best interests of the client and represent reasonable value for the client.

² s5 *Financial Planners and Advisers Code of Ethics 2019*

³ Preliminary Response to Submissions - FG002: Financial Planners and Advisers Code of Ethics 2019 Guidance, Dec 2019 – pages 8-9

⁴ This includes verbal guidance provided by Mr Stephen Glenfield, CEO of FASEA, at the Code of Ethics consultation sessions held in December 2019

Tell the client about your conflicts of interest and only proceed if they are comfortable with them. However, there will be cases in which you will not be able to comply with Standard 3 unless you avoid the conflict altogether, which will generally mean declining to advise the client.

TIP

Take every opportunity to get to know your client at every interaction with them. This will help you a great deal if a complaint or a Professional Indemnity claim is made.

See section 14 of the Companion to the Financial Adviser Manual for more information about Conflicts of Interest.

SAMPLE

4 COLLECTING CLIENT INFORMATION

4.1 RETAIL/WHOLESALE CLIENT

Before you provide any services to the client, consider if they are likely to be a retail client (you may not know at this stage).

As a general rule, all superannuation (including self managed superannuation fund (SMSF) trustees) and retirement savings account clients are retail clients.⁵

SMSF trustees can be treated as wholesale clients in some circumstances, however the application of the wholesale client tests to SMSFs is particularly complex. Refer to the Companion to the Financial Adviser Manual for further information about when they are available and how to apply them.

For other financial products (including life and insurance), a person is a retail client unless they fall into one of the following seven wholesale client categories:

- + **Product Value** – The price for the provision of the product(s) exceeds \$500,000 (excluding superannuation sourced money i.e. money paid as a lump sum superannuation benefit);⁶
- + **Assets/Income** – The person has net assets of at least \$2.5 million or gross income for each of the last 2 financial years of at least \$250,000 a year;⁷
- + **Controlled Company or Trust** - Companies or trusts which are controlled by a person who meets the Assets/Income Test, can be treated as wholesale clients when they receive a financial product or service;⁸
- + **Related Bodies Corporate** - If the product or service is provided to a related body corporate of a company that is a wholesale client, the related body corporate can also be treated as a wholesale client;⁹
- + **Business** – The product or service is provided for use in connection with a business that is not a small business;¹⁰
- + **Professional Investor** – The person acquiring the product or service is a professional investor;¹¹ or

⁵ s761G(6) *Corporations Act 2001* (Cth)

⁶ s761G(7)(a) *Corporations Act 2001* (Cth)

⁷ Reg.7.1.28 *Corporations Regulations 2001* (Cth)

⁸ s961G(7)(ca) *Corporations Act 2001* (Cth); Reg. 7.6.02AB *Corporations Regulations 2001* (Cth)

⁹ s761G(4A) *Corporations Act 2001* (Cth); Reg. 7.6.02AD *Corporations Regulations 2001* (Cth)

¹⁰ s761G(7)(b) *Corporations Act 2001* (Cth)

¹¹ s9 *Corporations Act 2001* (Cth)

- + **Sophisticated Investor** – The client is deemed to be a sophisticated investor and has signed a written acknowledgement to this effect.¹²

Section 1 of the Companion to the Financial Adviser Manual contains detailed information to help you identify wholesale and retail clients.

TIP

There are significant differences in the way in which 'retail' and 'wholesale' clients should be serviced. Ensure that you clearly understand when a client is a retail client and what additional steps need to be taken when dealing with them.

See the Companion to the Financial Adviser Manual for more information.

TRAP

The wholesale client test for general insurance is quite different. Do not use the above tests if you are advising on general insurance.

4.2 PRIVACY

When you collect personal information, you must tell the person from whom you collect it the following things:¹³

- + Who you are and how they can contact you;
- + The purposes for which you are collecting the information;
- + The third parties to whom you usually provide it;
- + Any law that requires the information to be collected;
- + If the information is or will be collected from other sources, what information and the circumstances of how that occurred or will happen;
- + What will happen if they do not provide the information to you;
- + The fact that they can gain access to the information, correct it or complain about a breach of the Australian Privacy Principles and that the details of how to do this and how you deal with privacy complaints are in your Privacy Policy;
- + Where they can find your Privacy Policy (e.g. in your Financial Services Guide, on your website, etc.); and
- + Whether the information is likely to be disclosed to someone overseas and if so, the countries in which they are likely to be located.

You can do this by telling the person this information or providing them with a copy of your Privacy Collection Statement.

TIP

¹² s761GA *Corporations Act 2001* (Cth)

¹³ Australian Privacy Principles 5.1 and 5.2

The Privacy Collection Statement should be incorporated into documents and correspondence that you use to communicate with clients and potential clients and/or collect personal information for the first time (e.g. Financial Services Guide, Fact Finder, Enquiry/Application Forms).

TPB registered tax (financial) advisers must obtain a client's permission to disclose any information relating to the client's affairs to a third party, unless the adviser has a legal duty to disclose the information. You can do this by providing the Privacy Collection Statement to a client and asking them to give their consent by signing it.

4.3 FINANCIAL SERVICES GUIDE (FSG)

All retail clients must be provided with your FSG.¹⁴ This summarises and confirms the information about your services that you have just given to the client and other important information required by law.

Keep a record of the date and version number of the FSG given to the client.

TIP

You don't need to provide the FSG if the client already has an up-to-date FSG.

TRAP

If time is critical (if the client needs the advice or financial product before you are able to provide the FSG), remember to tell the client about what remuneration you will receive, any associations that might influence the advice you provide and any other information that is relevant to the services you will provide. Provide the FSG to the client within 5 business days.¹⁵

See Appendix 1: Summary of Disclosure Requirements for a summary of when disclosure documents must be provided. See section 15 of the Companion to the Financial Adviser Manual for more information about FSGs and when they must be provided.

4.4 NEEDS ANALYSIS

Standard 2 of the Code requiring you to act with integrity is a broad ethical obligation. It is based on a more professional relationship between you and your 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.¹⁶

¹⁴ s941A and s941B *Corporations Act 2001* (Cth)

¹⁵ RG 175.102 ASIC Regulatory Guide 175: Licensing: Financial product advisers – conduct and disclosure, November 2017

¹⁶ FG002: Financial Planners and Advisers Code of Ethics 2019 Guidance, Dec 2019 – page 13

4.4.1. Identify Client's Objectives and Goals

The next task is to identify the client's personal and financial objectives, needs and priorities that are relevant to the scope of your engagement.

It is important that you clearly understand these in the context of the client's current situation. They show the client's intentions, provide guidance and bring structure to the financial planning engagement. You may even be able to assist the client in clarifying and prioritising their short and long-term objectives, and discuss the merit and feasibility of any objectives that appear to be unrealistic. This can be quite a difficult task as many clients may not know what their goals and objectives are. However, this is one of your most important functions as it will form the basis for your advice and recommendations.

If the client doesn't know or fully understand their objectives, financial situation or needs; or their instructions are unclear or seem inconsistent with their circumstances, you'll need to make further inquiries or exercise your judgement to determine their objectives, financial situation and needs.

For existing clients, it's enough to confirm that any information already provided is still current and relevant. If they're seeking advice on a new topic, you will need to make additional inquiries to identify their objectives, financial situation and needs in relation to that topic.

4.4.2. Subject Matter of the Advice

Identify the subject matter of the advice you will provide i.e. what does the client want advice about.

Consider the following factors when identifying the subject matter of the advice:

- + The client's instructions;
- + Why the client is seeking financial advice;
- + The outcomes the client wants to achieve; and
- + How much the client is willing to pay for the advice.

The subject matter could be:

- + A goal the client is seeking to achieve and a strategy for reaching their goal; and/or
- + A recommendation about specific financial products or classes of financial products; and/or
- + An event or situation e.g. divorce, redundancy or receiving an inheritance.

If the subject matter is not self-evident, tell your client what you think it is to test if you're right.

You may need to reconsider and reconfirm this with the client after you have completed the fact find.

Tip

Determine who will be your client i.e. who are you advising? An individual, couple, trustee of an SMSF/family trust, company etc.

4.4.3. Scope of the Advice

Once you have identified the subject matter of the advice, determine the scope of the advice. This must be consistent with the client's financial situation, needs and objectives and subject matter of the advice they are seeking.

Standard 2 of the Code¹⁷ requires you to be proactive in developing the advice. It requires you to try to identify client needs of which the client may not be aware. This means undertaking a broad fact find process rather than just limiting inquiries to the subject matter sought by the client. Although it is important to take into account the client's wishes, this does not override your obligation to provide advice that is in the client's best interests.¹⁸

4.4.4. Fact Find

Collect sufficient quantitative and qualitative information and documents about the client to enable you to have a conversation with them about their needs and objectives.

You must make reasonable enquiries to ensure the information is complete and accurate.

Tell the client how important it is that they provide complete, current and accurate information and that you will respect their confidentiality. You may need to help the client to resolve obvious omissions and inconsistencies in the information collected before you make and/or implement any recommendations.

A fact-finding questionnaire will help you collect the information that you need.

TIP

Your fact finding document becomes your record of the information on which your advice will be based so it is prudent to have the client read and sign it to confirm the accuracy of the information.

Most advisers will cover all or some of the following areas during the fact find process.

| Subject | Items to cover |
|------------------|--|
| Personal details | + Client(s) name. If the client is a company or trust also include the |

¹⁷ s5 *Financial Planners and Advisers Code of Ethics 2019*

¹⁸ FG002: *Financial Planners and Advisers Code of Ethics 2019 Guidance* - page 14