



Strategi
Compliance

*Standard conditions for
transitional financial advice
provider licences*

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GUIDANCE NOTE

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Introduction

This guidance note should be read by all directors, managers and compliance staff of businesses intending to obtain a transitional financial advice provider (FAP) licence.

This guidance note has been prepared to assist Strategi Group clients to understand the implications of the standard conditions and provide guidance on ways to meet those conditions.

What is a 'standard condition'?

A standard condition is a requirement of a licence and is imposed by the Financial Markets Authority (FMA) under sections 402 and 403 of the Financial Markets Conduct Act 2013 (FMC Act) and Part 6 of Schedule 4 of the FMC Act. If you accept a transitional FAP licence, then you are accepting the standard conditions and the FAP MUST ensure it always meets those standard conditions. You will be in breach of your licence obligations if you fail to meet the standard conditions.

Two standard conditions have been put in place for transitional FAP licences and these standard conditions will likely also be conditions of a full FAP licence. The new regime commences on 29 June 2020 and at that date, your FAP will need to ensure it is meeting the two standard conditions.

Other conditions

Your transitional FAP licence may also have specific conditions (specifically relating to your FAP) plus conditions imposed under Regulations. These are in addition to all your other obligations as a FAP.

Strategi has a separate Guidance Note which lists all the FAP obligations under legislation, regulation, Code of Professional Conduct and Standard Conditions. This Guidance Note only addresses the implications relating to Standard Conditions.

Who is responsible?

Meeting standard conditions is the responsibility of the FAP. The FAP can, via employment agreements with financial advisers/nominated representatives or via contracts with authorised bodies, impose requirements to ensure the conditions are met. However, the FAP needs to have

systems and processes in place to be able to check and ensure that the standard conditions are being met. It becomes easier when all those under a FAP licence use one CRM and follow the same policies, processes and controls. It becomes more difficult when a FAP has authorised bodies which use different software solutions or are in different localities and use hard copy files. Standardisation within a FAP is not mandatory, but it will reduce costs and improve compliance.

Record keeping

Standard condition:

You must create in a timely manner and maintain adequate records in relation to your financial advice service.

Your records:

- a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us;
- b) may be in any language providing you create and keep an accurate summary of the record in English and, if required by us, provide a full translation of the record into English by a translator approved by us;
- c) must be available for inspection by us at all reasonable times; and
- d) must be kept for a period of at least 7 years from the later of:
 - i) the date the record is made; and
 - ii) the date the financial advice to which the record relates is given; and
 - iii) the date any later record is made that refers to or relies upon information in the record.

What needs to be recorded?

You are required to keep a record of all regulated financial advice given to retail clients by those operating under your FAP licence. The advice could be delivered via phone, email, text, face-to-face, video, WeChat or in writing. There is no legal requirement to produce a statement of advice nor have all advice only provided in writing. However, it would be very difficult for a FAP to meet its obligations under the Code of Professional Conduct for Financial Advice Services and demonstrate the standards of competence, knowledge and skill required by the New Zealand Certificate in

Financial Services (Level 5) version 2, if advice was not provided in writing and consolidated into an advice document such as a statement of advice. Strategi recommends all FAPs develop a documented advice process with templates for each step of the process. Strategi can provide guidance on this issue.

The draft Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 propose that the standard conditions be expanded to include a requirement for a FAP to keep a record of each disclosure made to clients regarding the advice being provided. Advice will be made in three stages so systems and processes will need to be in place to confirm that the disclosure has been made. The best way to do this is to integrate this into the advice process and templated documents. Strategi can assist with this.

Tips for implementation

- **Record format:** Preferably store client information and records in an electronic format as this speeds up information retrieval and enables easier access for compliance reviews, thereby potentially reducing costs. It is recommended a robust Client Relationship Management (CRM) tool be used so you can capture all client interaction including file notes, emails, texts, letters, reports, phone calls, meetings. Having all records of client interaction saved into one centralised system with good file referencing helps to provide a good audit trail, enables multiple staff to help the client and demonstrates a client focused approach to service. You will likely email clients from your computer/laptop and your phone/tablet. It is recommended that all these devices synchronise to your CRM so all information is automatically saved. Simply leaving all communications in your inbox/sent mail may be showing you have kept records, but it is not a convenient way to retrieve information and quickly form a holistic view of the client and the advice provided.
- **Language:** You need to take reasonable steps to ensure the client understands your advice (Standard 4 of Code of Professional Conduct for Financial Advice Services). This means you may end up talking with the client and producing written advice in the client's preferred language. However, your staff, your internal compliance officer, FMA and your external compliance provider will need to be able to review your client files. Therefore, we recommend:
 - You provide an English version that is materially correct when compared with what is provided in the foreign language. It is recommended that as you engage with clients, you

save an English language version of all communications. This will help avoid significant delays and costs later when an external party needs to review your files. Official translators are expensive, and costs tend to start at around \$50 plus GST per page.

- More detailed file notes should be retained in your CRM especially relating to verbal discussions.
 - Avoid jargon and phrases that are not directly translatable between languages.
 - Consider providing all written advice in English but also provide an audio file that summarises the advice and in particular outlines the key risks and disadvantages. The audio file can be sent to the client and also saved into your CRM as a WAV/MP3 or similar. It is important you correctly name the file when you save it into the CRM.
 - When using WeChat, take screen shots of all communications, appropriately name the file and save into your CRM.
- **Availability of records:** The FMA requires your records to be available for their inspection at all reasonable times. Normally, the FMA will contact you in advance of any visit but they could potentially ring or visit during work hours and ask for specific documents. This means you need to keep all client records up to date. The FAP holds the responsibility so the FMA will likely be asking the FAP to supply the records - even those of an authorised body not co-located with the FAP.
 - **Retention of records:** Seven years is a long time to store the client information - but the time could be longer than this. *Example: The financial adviser collects client data via a fact find in November 2019 and provides advice via a Statement of Advice in December 2019 recommending saving via a KiwiSaver Scheme. In October 2022, the client calls the financial adviser to state they now have more money to save into the KiwiSaver Scheme. The financial adviser looks at the 2019 fact find and advises where to place the additional funds. Unless a new fact find is completed, it now means the 2019 client fact find needs to be retained until October 2029 - a total of 10 years.*

This reinforces the importance of:

- storing information digitally,
- having excellent file naming conventions for all documents,
- being able to export all digital records from one software solution to another,
- having a file server (cloud or office based) that is large enough and powerful enough to quickly store client records, and
- having a CRM that automatically saves all emails to the client record rather than needing human intervention to drag documents to a client folder.

Internal complaints process

Standard condition:

You must have an internal process for resolving client complaints relating to your financial advice service that provides for:

- a) complaints to be dealt with in a fair, timely and transparent manner; and
- b) records to be kept of all complaints and any action taken in relation to them including the dates on which each complaint was received, and any action was taken in relation to that complaint.

What is a complaint?

A complaint relating to your financial advice service is an expression of dissatisfaction made to you or to a person engaged by you, relating to your financial advice service (including any regulated financial advice given to a retail client by you or on your behalf), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected. A complaint includes a complaint about a failure to provide a service or give advice.

Disclosure requirements relating to your internal complaints process are set out in the Financial Markets Conduct Regulations 2014.

Tips for implementation

- All FAPs must belong to a dispute resolution service (DRS) so your internal complaints process should reflect that of your DRS.
- As part of your full FAP licence application, you will likely have a complaints policy and you need to ensure your internal process reflects what is contained in the policy document.
- Ensure your internal complaints process is aligned with what you have on your website and this should meet the requirements contained in the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 (when it comes into effect).
- The FAP should have oversight of all complaints received by any of its authorised bodies.

Next steps

Strategi recommends you:

- Carefully read this guidance note and consider how you would apply these conditions within your business.
- Put in place appropriate training for all staff on the standard conditions and how the FAP intends to meet them.
- Build the standard conditions into your obligations register and compliance assurance plan.

Strategi can be engaged to assist you to build policies, processes and controls to meet these standard conditions and your other FAP licence obligations.

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