Guernsey Financial Services Commission

CODE OF CONDUCT FOR FINANCIAL ADVISERS

The Code of Conduct for Financial Advisers

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The Principles of Conduct of Finance Business

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A licensee should observe high standards of integrity and fair dealing in the conduct of its business.

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A licensee should act with due skill, care and diligence towards its customers and counterparties.

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A licensee should either avoid any conflict of interest arising or, where a conflict arises, should ensure fair treatment to all its customers by disclosure, internal rules of confidentiality, declining to act, or otherwise. A licensee should not unfairly place its interests above those of its customers and, where a properly informed customer would reasonably expect that the firm would place his interests above its own, the firm should live up to that expectation.

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A licensee should seek from customers it advises or for whom it exercises discretion any information about their circumstances and investment objectives which might reasonably be expected to be relevant in enabling it to fulfil its responsibilities to them.

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A licensee should take reasonable steps to give a customer it advises, in a comprehensible and timely way, any information needed to enable him to make a balanced and informed decision. A licensee should similarly be ready to provide a customer with a full and fair account of the fulfilment of its responsibilities to him.

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Where a licensee has control of or is otherwise responsible for assets belonging to a customer which it is required to safeguard, it should arrange proper protection for them, by way of segregation and identification of those assets or otherwise, in accordance with the responsibility it has accepted.

7. Market Practice

A licensee should observe high standards of market conduct, and should also comply with any code of standard as in force from time to time and issued or approved by the Commission.

8. Financial Resources

A licensee should ensure that it maintains adequate financial resources to meet its finance business commitments and to withstand the risks to which its business is subject.

9. Internal Organisation

A licensee should organise and control its internal affairs in a responsible manner, keeping proper records, and where the firm employs staff or is responsible for the conduct of finance business by others, should have adequate arrangements to ensure that they are suitable, adequately trained and properly supervised and that it has well-defined compliance procedures.

10. Relations with Guernsey Financial Services Commission

A licensee should deal with the Commission in an open and co-operative manner and keep the regulator promptly informed of anything concerning the firm which might reasonably be expected to be disclosed to it.

1. Introduction

1.1. The Commerce and Employment Department requested *the Commission* to implement the Guernsey Financial Advice Standards to be effective from 1 January 2015. These standards apply to investment licensee *employees* advising *retail clients* on *controlled investments* and also *authorised insurance representatives* providing advice to *retail clients* on *long term insurance products*; these *employees* are collectively termed *financial advisers*.

1.2. The objective in setting out this document is to establish a recognised standard of professional conduct with which *financial advisers* are expected to comply in the carrying out of their *long term insurance business*.

1.3. The terms herein are an extension of the Principles of Conduct of Finance Business, which were issued by *the Commission* in February 1991. The Principles of Conduct of Finance Business must be observed by *financial advisers* at all times.

1.4. The requirements herein shall only apply when a *financial adviser* is providing advice on *long term insurance products* to a client classified as a *retail client* as defined in the Insurance Intermediaries (Conduct of Business Rules) 2014 ("the Intermediary Rules")

1.5. The standards herein shall not apply;

(a) for the provision of advice to a client classified as a *professional client* or an *eligible counterparty*,

(b) for the provision of services to execution only clients,

(c) for a transaction entered into solely as a result of the client responding to an 'off-the-page' *advertisement*, or

(d) for the issuing of periodical publications containing recommendations as to the acquisition, retention or disposal of investments of any kind.

1.6. Acts of gross negligence or repeated acts of negligence may amount to unprofessional conduct and may be investigated by *the Commission*. Nevertheless, claims against *financial advisers* and their *licensee* for compensation arising from acts or omissions amounting to negligence are matters for determination by the Courts.

1.7. The requirements herein are designed to be complied with by all *financial advisers* advising on *long term insurance products* in or from within the Bailiwick of Guernsey.

2. Interpretation

For the purposes of this code:

"advertisement" means every form of advertising, whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting, television or any other electronic media, and advertising shall be construed accordingly;

"attitude to investment risk" means the investment risk a client is willing and able to accept to achieve their financial goals taking into consideration the client's *capacity for loss*;

"authorised insurance representative" means an individual authorised in accordance with section 16 of *the Law*;

"Board" has the meaning given to it by section 133 of the Companies (Guernsey) Law, 2008, as amended or, in the case of an unincorporated entity, the committee or managing board of a partnership or other similar governing body;

"capacity for loss" means the financial loss a client could tolerate without a detrimental effect to their standard of living at the date of investment or inception of the policy;

"the Commission" means the Guernsey Financial Services Commission;

"eligible counterparty" is considered in Rule 7 of the Intermediary Rules;

"employee" in relation to a person, means an individual who is employed in connection with a *licensee's long term insurance business* in Guernsey whether under a contract of service or for services or otherwise;

"financial adviser" means an *authorised insurance representative* authorised by a licensee to give advice to retail clients on *long term insurance products*;

"insurance intermediary business" means performing any of the activities defined in section 2(5) of *the Law*;

"the Law" means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended;

"licensee" means the holder of a licence to carry on *insurance intermediary business* issued under *the Law*;

"long term insurance business" means performing any of the activities defined in section 2(5) of *the Law* in relation to *long term insurance products*;

"long term insurance product" means any policy or product falling under schedule 1 of *the Law*, excluding permanent health, credit life assurance and any contracts on human life that are renewable annually;

“other relevant legislation or standards” means any legislation or enactment enacted to enable the Commission to supervise the carrying on of *insurance intermediary business*. Other standards include codes or standards (however described) of professional bodies that *financial advisers* may belong to, for example, the Chartered Insurance Institute;

“professional client” is considered in Rule 7 of the Intermediary Rules;

“retail client” is considered in Rule 7 of the Intermediary Rules;

“shortfall provisions” means that where a policyholder exercises his right to cancel a contract he may not get a full refund of the money he has paid if the value of the investment falls before the cancellation notice is received by the insurer.

3. General principles

3.1. *Financial advisers* must be authorised by the *licensee* by whom they are employed and only authorised *financial advisers* may advise *retail clients* on specified *long term insurance products* in or from the Bailiwick of Guernsey.

3.2. A person shall not use the term "*financial adviser*" unless authorised to do so by an entity appropriately licensed by *the Commission*.

3.3. No standards can be exhaustive in all circumstances. In areas where the terms herein are not specific, *financial advisers* should be guided by the Principles of Conduct of Finance Business and the underlying spirit of these requirements.

3.4. Lack of mention herein of a particular act or omission shall not be taken as indication that such an act or omission constitutes acceptable professional conduct.

3.5. A *financial adviser* shall:

(a) comply with all applicable laws, enactments, regulations, rules, codes, guidance, principles and instructions when dealing with clients;

(b) in the conduct of his business, provide advice objectively and not act in any way which is contrary to the terms herein or any *other relevant legislation or standards*;

(c) whenever possible, make an appointment before visiting a client;

(d) where unsolicited calls are unavoidable, yet deemed to be in the client's best interests, ensure that they are made at an hour likely to be convenient to the client; and

(e) when making unsolicited contact with prospective clients, for the purpose of marketing or advising on *long-term insurance products*, the *financial adviser* shall identify himself at the start of the call and explain the genuine purpose of the call. The purpose of the call should be to discuss the prospective client's financial arrangements and not to sell specific products.

3.6. Prior to providing advisory services to a client, a *financial adviser* shall:

(a) make it known that he represents a regulated entity which assumes responsibility for his conduct while advising clients on financial matters;

(b) disclose to the client in writing the classes of products upon which he is authorised to provide advice, his qualifications and his professional experience;

(c) disclose to the client in writing the range, scope and any limitations in the product providers and/or products upon which he is able to provide advice;

(d) fully explain to the client any involvement in conditional selling;

(e) ensure that he has sufficient knowledge of the legislation affecting the client including taxation. If he is unable to advise a client then he should inform the client and, if possible, refer the client to a person who can give him appropriate advice;

(f) give advice only on those matters in which he is competent and shall seek or recommend specialist advice where necessary;

(g) not use or disclose any information acquired from his clients except in the normal course of negotiating, maintaining, renewing, encashing or surrendering a policy, or in handling a claim for a client, unless the written consent of the client has been obtained beforehand or disclosure of the information is required in the public interest or is compelled by law;

(h) not inform the client that his name has been provided by another person without that person's consent, and shall disclose that person's name if requested to do so by the client; and

(i) inform the client of any ongoing services provided by the *licensee* and shall disclose to the client in writing all fees and charges for providing those services.

4. Assessing suitability

4.1. Prior to recommending a *long term insurance product* (or any material change to an existing *long term insurance product* including cancellation), the *financial adviser* shall:

(a) obtain and record sufficient knowledge of the client's personal and financial circumstances and understanding of their objectives to ensure that any advice is suitable to the needs, wishes and financial position of the client;

(b) assess the knowledge and experience of the client in relation to financial matters. The client should be classified as either a *retail client*, *professional client* or an *eligible counterparty* and the client informed of their classification in writing. The client should also be informed of the effect of this classification and if it reduces any protection available to them;

(c) make a documented assessment of the client's *attitude to investment risk*. In the event of a recommendation to be made in joint names, a separate assessment should be made of each person and a documented decision made with the clients for an overall *attitude to investment risk*;

(d) make a documented assessment of the affordability of the funds to be invested by the client and of the client's *capacity for loss;* and

(e) maintain evidence on each client's file of product research carried out, including but not limited to quotations, illustrations and comparisons unless the licensee maintains a *Board* or committee approved "white list".

5. Product research and recommendation

5.1. A *financial adviser* shall:

(a) not advise a client to convert, allow to lapse, cancel or surrender any product unless he can demonstrate the action to be in the best interests of the client. If such action is advised then the reasoning should be fully documented in the written advice provided to the client;

(b) not make comparisons with any other types of policies unless he clarifies the differing characteristics of each policy;

(c) not make inaccurate or unfair criticisms of any financial institution;

(d) not withhold any written evidence or documentation relating to the product from the client;

(e) if using illustrations, projections and forecasts supplied by a provider, ensure that the client is provided with all relevant documentation that has been supplied;

(f) ensure that all illustrations, projections and forecasts are relevant to the specific country where the client is resident and if they are not, explain the differences; and

(g) use his judgement objectively in the best interests of his clients where a choice of provider is available to the *financial adviser*;

5.2. Prior to the inception (or any other material change to a long term insurance product including cancellation) of a *long term insurance product*, and in order to assist the client in making an informed decision, a *financial adviser* shall provide the client with written advice, which must include as a minimum:

(a) a recommendation setting out in plain language what product is being recommended, how it meets the client's needs, wishes and financial position and why it is favourable over any other products considered;

(b) the principal terms of any product recommended by him;

(c) an explanation of the key risks associated with the product being recommended. It is not sufficient to rely on provider literature for this purpose;

(d) in the case of products where the investment return is not guaranteed, explain that it is not guaranteed. Where a product purports to be guaranteed, explain any conditions or limitations applying to the guarantee;

(e) an explanation, where applicable, of the different surrender values that may be available over the term of the policy, including a warning that surrender practice may vary from time to time;

(f) warnings of the possible penalties of early surrender, whether at the choice of the client or through their death. Where a terminal bonus may be payable, emphasise that the product will normally have to run its full term before the bonus becomes payable;

(g) details of any cooling off period relating to the particular product being recommended and an explanation that there will be an opportunity for the client to cancel or withdraw from the contract and set out the period during which he will be able to exercise this option. Any *shortfall provisions* should also be explained at this time;

(h) disclosure to the client of the extent of research carried out, including the names of the providers and products considered;

(i) full and frank disclosure of any matter which may affect the client's decisions;

(j) an explanation to the client of the amount of remuneration that the licensee will receive as a result of the sale or variation of each product recommended, and an explanation of any and all charges (including bid-offer spread charges and cancellation charges) that will or may be incurred both at inception and the ongoing charges during the life of the product. If the amounts are not known, then the basis of calculation shall be provided; and

(k) where applicable, explain that deductions are made to cover the cost of life cover, commission, expenses, surrender penalties and other charges.

5.3. After providing a client with a written recommendation, a *financial adviser* shall:

(a) afford the client reasonable time to consider the written advice prior to the client making a decision to accept the recommendation;

(b) ensure as far as possible that when a client is completing an application form or any other document, that all material facts are accurately and properly disclosed, making it clear to the client that all answers or statements are the client's own responsibility. If the *financial adviser* completes the proposal form on behalf of the client then the client must be asked to check the details before signing the form and be provided adequate opportunity to do so; and

(c) inform the client of the name of each provider with whom a contract is placed. This information shall be given whenever possible prior to the inception of the product and any changes thereafter shall be advised at the earliest opportunity to the client.

6. Post inception principles

6.1. Following the inception of a *long term insurance product*, the *financial adviser* shall as soon as reasonably practicable:

(a) ensure that any confirmation of investment, certificates or evidence of cover and the basis of payments are provided to the client at inception and again on any renewal or as soon as is reasonably practicable; and

(b) have proper regard for the wishes of a client who seeks to terminate any agreement.

7. Additional principles for long term insurance business

7.1. For the purpose of selling insurance, the *financial adviser* shall not use or disclose any information acquired from any record of the licensed insurer or licensed insurance intermediary or a related party of any of the above, obtained for a purpose other than one specifically designed in connection with the provision of insurance by that licensed insurer or licensed insurance intermediary unless with the written permission of the client.

7.2. Prior to the inception (or any other material change to a product including cancellation) of the product, the *financial adviser* shall:

(a) inform the client that non-disclosure of material facts or the inclusion of incorrect information may result, inter alia, in a claim being repudiated or policy avoidance.

(b) where applicable, explain to the client the consequences of missed premiums;

(c) on request, provide the client with a copy of the proposal form or any other relevant documentation; and

(d) if in receipt of policy monies which need to be passed on to an insurer, keep a proper account of all financial transactions with a client and acknowledge receipt, if requested, of any monies received. Any such monies must be remitted in strict conformity with any agreement that exists between the insurance representative and the *licensee*.

7.3. In respect of a claim or incident, a *financial adviser* shall:

(a) inform the insurer without delay if the client advises him of an incident that might give rise to a claim;

(b) give prompt advice to the client of the insurer's requirements concerning the claim, including details of the information required to establish the nature and extent of the loss;

(c) pass information received from the client to the insurers without unreasonable delay; and

(d) pass on to their *licensee* all information regarding claims or incidents which might give rise to claims, and give reasonable assistance to the client in pursuing a claim.

8. Breaches

If a *financial adviser* breaches any part of the terms herein he must immediately inform the *licensee* by whom he is employed.