

You want me to do WHAT? Ethical dilemmas in financial planning

In a world where doing the right thing can be a subjective exercise, the establishment and policing of an ethics code for an industry such as financial planning is never an easy exercise. When questions of ethics arise it is wise to seek advice.

All of us believe we are 'ethical'. But different value systems mean that one person's ethical actions are not necessarily another's.

As advisers we can sometimes come into conflict with the views of our clients and encounter potential ethical dilemmas in our daily role in the securities industry.

To deal with these situations effectively, one needs to be aware not only of one's own beliefs and values but also have an understanding of the beliefs and values of others.

The Securities Institute's Code of Ethics sets out the standards adopted by the securities 'community'. If you compare it to other Codes or to the licensee obligations under the Financial Services Reform Act you will see a considerable alignment.

Take the following examples: Often a client will tell us something that we didn't want, or need, to know. This creates a dilemma. Does our duty of client confidentiality override our duty to report wrongdoing? How can we overcome this dilemma?

There are obvious legal sanctions if you are implicated in the wrongdoing. Is your first thought for your own protection? Or perhaps it is your client's spouse, employees or creditors who should be informed? What will your client think of you if they discover that you have disclosed their confidential information?

Some financial planners have a customer charter, setting out what they will do for their client. You should make it clear at the outset that you will not have anything to do with unethical conduct with a statement such as: 'We will be open and honest with you at all

times. In return, we expect openness and honesty from our clients. If we become aware of illegal conduct we will report it to the appropriate authorities.' A statement such as this puts you in a position to deal with your client's unethical actions. You may lose a client but did you really want them?

Another dilemma that often arises in financial services is the unintended or often unrecognised conflict of interest. We must always put the client's interest before our own in providing advice.

Full disclosure is the best way to avoid such a conflict arising. If a customer knows exactly what you will receive for providing them with advice, the interest no longer becomes a conflict.

We have been disclosing commissions on investment products for some time now but what about the fringe benefits provided by product issuers? Do they affect a recommendation?

Once again, the actions of a few have led to prescriptive legislation. The Financial Services Reform Act requires disclosure of 'anything that may influence a recommendation' in the Statement of Advice, which is a far more wide-ranging requirement than at present.

How will it be possible to compare different reward destinations that may influence an adviser's choice of product to recommend? More and more laws are framed in a way that puts the responsibility on the individual to determine their own conduct.

The Financial Services Reform Act requires a licensee to provide financial services 'efficiently, honestly and fairly'. The meaning

of these expressions will move with community standards.

For example, it is quite possible that 18th century slave traders had a code of conduct for dealing with each other! They treated each other 'efficiently, honestly and fairly'.

There has been a lot of resistance to framing codes with disciplinary measures attached. If a code is treated as a law, with grudging compliance, then it is not working effectively. Codes should be adopted because they are in accordance with the values and beliefs of their participants, rather than imposed by applied enforcement.

Participants in a code should be moulding the requirements to meet the expectations of the various stakeholders, including their clients, the community, industry colleagues and those of the persons relying on them.

If you have doubts as to how you should deal with an ethical dilemma, there are many organisations that will discuss the matter with you in confidence, including the Institute's own Ethics Advisory Service, run in conjunction with the St James Ethics Centre, which can be reached on 1800 672 303.

The Institute, other professional bodies, industry organisations and regulators are all committed to raising the standards of conduct in the financial services industry and will be offering further guidance in line with the changes in community standards and expectations.

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