FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

7 March 2017

KiwiSaver advice

This guidance note is for advisers and financial firms advising on KiwiSaver products.

It gives guidance on
when advice is class advice,
personalised advice or just information.

About FMA guidance

Our guidance:

- explains how we interpret the law
- describes the principles underlying our approach
- gives practical examples of how to meet obligations.

Guidance notes: provide guidance on a topic or topic theme. Issuing guidance is just one of the ways we can be transparent and share our intended approach with the market. Guidance notes are not binding, but they help market participants to be confident they understand our approach and how we interpret, and intend to apply, the law relating to their responsibilities.

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

You might also like to check the reports and papers on our website. For example, our monitoring reports describe actual practice we are seeing and our comments on this.

Document history

This version was issued in March 2017 and is based on legislation and regulations as at the date of issue. It replaces the original version 'Guidance Note: Sale and Distribution of KiwiSaver' issued in October 2012.

www.fma.govt.nz

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Introduction

New Zealanders must prepare properly for their retirement. For many, KiwiSaver may represent a large part of their retirement savings and of their overall ultimate financial security. It may also be their first investment therefore, it is very important New Zealanders get the help they need to make good decisions about KiwiSaver. Over a lifetime, the cost of the fees charged will also be significant. Getting good information and good advice improves their chances of achieving the retirement they want.

Replaces our earlier guidance

This guidance replaces our 2012 *Guidance Note: Sale and Distribution of KiwiSaver*. Our previous approach emphasised that personalised advice should be given only by those advisers who were eligible by law to give it. We have received feedback that our approach resulted in some people not getting the help they needed, as firms saw it as risky to provide advice.

By replacing our earlier guidance, we want to change this situation, and to encourage advisers and financial firms to help people make good decisions about KiwiSaver.

We have reconsidered our approach to personalised and class advice. While we still consider some situations require personalised advice, the law describes a clear role for class advice. We recognise that if our view of what can be delivered as class advice is too restrictive, the likely result is firms will not allow their staff to give class advice – or, any advice, resulting in New Zealanders not getting the help they need.

This guidance updates and clarifies our view of the different types of advice, so advisers can be more confident they are within the rules. We pay special attention to explaining class advice, because much of what customers want and need to know about KiwiSaver is class advice.

It remains true that many would likely benefit from detailed personalised advice, however, the more pressing need for many is to start getting the help they need to make informed decisions about KiwiSaver.

Changes coming

This guidance applies the current law, which distinguishes between class and personalised advice. Currently, financial advisers can give customers 'information only', or they can give 'class' or 'personalised' advice. Only some advisers can give personalised advice. This guidance discusses our view of what falls into each of these types of services.

However, we note the Government has signalled significant changes to the Financial Advisers Act 2008 (FA Act), the legislation regulating financial advisers. The changes will affect the rules for advice on financial services and products, including KiwiSaver.

When the new legislation comes into effect, this guidance will be reviewed and possibly replaced. In the meantime, this guidance recognises there is an opportunity to remove an identified barrier to New Zealanders getting the help they need to make good decisions about KiwiSaver.

What you should tell investors

Customers often want simple, focussed advice. They may not want to pay for advice and may not want to share their personal information. In those situations, there are four main pieces of information and advice that will be useful for every customer, whether they are considering joining KiwiSaver, switching between funds within a KiwiSaver scheme, or transferring between schemes. The four can be explained as part of a conversation about KiwiSaver without knowing a customer's financial situation or goals. These are:

Strongly encourage investors to consider these four factors

- Be in – be a KiwiSaver member (providing a general explanation of how KiwiSaver works and why it is suitable for most New Zealanders).
- Contribute – choose a contribution rate (at the very least, enough to get all the member tax credit).
- Right fund – identify the right type of fund.
- Tax – how to choose the correct prescribed investor rate (the tax rate that applies to their KiwiSaver investment).

Types of advice

Information only is not advice

Advice involves a recommendation or opinion about a financial product. Providing information only is not advice.

Personalised advice

Personalised advice is a recommendation or opinion that takes into account a person's financial situation or goals (for example, their outgoing expenses, and plans to leave money for their children).

A **rule of thumb** is that you have moved from class to personalised advice when you cannot answer a customer's question without knowing about their personal financial situation or goals (for example 'how much can I afford to contribute to KiwiSaver?').

Class advice

Class advice is a recommendation or an opinion that is not personalised advice. It takes into account the pre-defined characteristics that come with a class of people (such as gender, age and risk profile), rather than information specific to a particular person (such as their financial situation or goals).

A lot of advice about KiwiSaver people want and need will be class advice.

Who can provide which type of advice

You can see which type of adviser can provide the different types of advice about KiwiSaver in this table.

	Authorised Financial Advisers (AFA) Individuals who are registered and authorised by the FMA[1]	Qualifying Financial Entity (QFE) advisers Representatives of entities approved by the FMA as Qualifying Financial Entities	Registered Financial Advisers (RFA) Individuals registered to provide financial advice	Registered Financial Adviser entities Entities registered to provide financial advice
Class advice	✓	✓	✓	✓
Personalised advice	✓	✓ about KiwiSaver products issued by the QFE or a member of the QFE group	✗	✗

[1] Each AFA will be subject to the terms of the particular AFA's authorisation from the FMA.

Information that is not advice

If you give someone information about KiwiSaver, with no opinion or recommendation about a particular KiwiSaver product, it is not advice, and is not subject to the rules in the FA Act.

Examples of what is not advice

Giving a customer the following types of information is not advice.

Topic	Example
What is KiwiSaver?	• General explanation about KiwiSaver: lock in, set levels of contributions, first home and hardship withdrawals; understanding the long-term financial impact; maximising KiwiSaver across their family; understanding risk and volatility • How it works, and how a customer can join a KiwiSaver scheme • Where a customer's money goes • General explanation about the different types of funds • How a customer can transfer KiwiSaver schemes • When a customer can get their money out • Can a customer lose their money if they make a mistake • How joining a/this KiwiSaver scheme can affect a customer's existing superannuation • Whether it is a good idea to join KiwiSaver[2]
What are the features of this KiwiSaver scheme?	• How the scheme has performed • The fees involved • The service a customer will get • How the scheme will communicate with the customer • Providing disclosure documents. • Confirming how a customer might obtain financial advice, and whether the customer would have to pay for that advice
What do I have to do?	• What forms the customer will have to fill out • Whether the customer will need to tell their employer • Where the customer can find information that will help them provide the correct prescribed investor rate • Confirming the minimum contribution that would need to be made to qualify for the full member tax credit • Providing a calculator that will help the customer choose their contribution rate

[2] This is an exception. The definition of advice says giving an opinion or making a recommendation about a **class** of financial product – like KiwiSaver – is not advice. It's not advice, therefore, to give an opinion or recommendation that investing in KiwiSaver is a good financial decision.

Class advice

What is it and what's included

Class advice includes making a recommendation or giving an opinion relevant to a class of people –meaning, 'most people' with certain characteristics. Therefore, you can take a person's characteristics into account and still be providing class advice and not personalised advice.

An adviser can ask questions to establish what class a person is (for example; their age, whether they have bought their first house, whether they are comfortable with taking some risk and so on) and use this information to give advice on KiwiSaver. This advice will be class advice.

Personalised advice includes the situation when a customer would, in the circumstances in which the service is provided, reasonably expect the financial adviser to take into account their particular financial situation, their goals, or both. However, firms have raised concerns that as they cannot control customer perceptions, they cannot be certain whether class advice has moved into being personalised advice. Similarly, advisers have told us that they are particularly concerned when customers volunteer information about their personal financial situation or goals.

There are some simple ways you can manage customer expectations when you are giving class advice, and help your customers to understand that this is what you are doing. We understand discussions can develop differently, so in some situations it's more effective to explain class advice at the start of the discussion. In some cases it will not be clear what class of advice will meet the customer's needs until the discussion has been going for a while, and explaining class advice is better done at that point. In *either* case you could:

- explain that class advice is useful for people who are generally within the particular class you have identified, or will identify (based on your conversation with them), as being relevant to them. They may wish to consider whether that will be useful.
- if, instead, they think there are other factors about their financial situation or goals that should be taken into account, tell them they may wish to receive personalised advice.
- explain you are not providing personalised advice, and the advice you will be giving them, if the conversation proceeds, is class advice.
- say if they would like personalised advice you can refer them to an adviser who can give that advice[3] (or, if appropriately qualified, you can provide that advice yourself).

If, after hearing and understanding these points, the customer confirms they are happy to proceed on a 'class' basis, you can carry on and provide class advice not based on the customer's personal situation or goals.

Using digital tools

People are increasingly using digital tools to get information about KiwiSaver. This is sometimes called 'robo advice'.

Under current law, personalised advice must be given by a human. Only information and class advice can be given by digital tools. Proposed legislation will enable people to get personalised advice through technology.

If your digital tools ask good questions to get people to think about the 'four factors' on page 5, you will be providing your customers the important information they need. You will also have the assurance the advice is not shaped by a person's financial situation or goals as your digital tools can limit questions to getting information about a class of people.

[3] Meaning, as in the table on page 6: an authorised financial adviser (AFA), or a QFE adviser (about the products issued by the QFE/a member of the QFE group). Note that these types of adviser can also provide class advice.

Examples of class advice

You can give useful advice on the topics listed below without needing to rely on personal information about the person's financial situation or goals. In cases where a customer is asking about switching funds or transferring providers, we believe it is important to *prompt them* to think about the pros and cons of those decisions.

Topic	Examples of class advice
Why this KiwiSaver scheme?	• Advising whether the returns and fees of the scheme are lower or higher than that of other schemes generally when recommending the scheme to your customer • Describing the benefits of the particular KiwiSaver scheme when recommending the scheme to your customer
Choosing a type of fund	• Recommending a particular fund for people of a certain age • Recommending a particular fund for people who want to use their KiwiSaver funds to buy a house
Switching KiwiSaver funds	• Recommending a particular fund for people of a certain age • Recommending a particular fund based on risk appetite
Transferring KiwiSaver providers	• Recommending that a customer consider the pros and cons of their existing scheme compared to the new scheme
Choosing a contribution rate	• Recommending that a customer choose a contribution rate that is at least what is required to receive the full member tax credit

Sorted.org.nz's KiwiSaver Fund Finder tool is a useful resource to help answer questions about transferring between KiwiSaver providers.

Example 1 of class advice

Marama comes into a financial services firm to ask about life insurance and talks to Sue, a QFE adviser

During the discussion, Sue notes Marama is not in KiwiSaver. Once the discussion about life insurance has concluded, Sue asks Marama if she is interested in finding out more about KiwiSaver. Sue explains she can provide information and general advice about KiwiSaver. Sue further explains that, while she provided advice about life insurance based on Marama's financial situation and goals, she won't be able to give Marama advice about KiwiSaver on the same basis*. Sue says if Marama would like personalised advice about KiwiSaver, she can arrange for her to speak to an adviser at the firm who can do that. Marama says she is happy to proceed with Sue.

Marama says she doesn't know much about KiwiSaver. Sue says there are lots of benefits, including the government contribution and the employer contribution that make KiwiSaver worthwhile. Sue provides information about the firm's KiwiSaver scheme and takes Marama through the product disclosure statement.

Marama decides to join the firm's KiwiSaver scheme and completes the investor profile. Marama asks whether she should be in a growth fund, as she is considering buying a house in the next three to four years. Sue suggests a more conservative fund is appropriate for people wanting to buy a house in the near future, as returns are less likely to go down significantly in a three to four year period.

Our approach

Sue has provided class advice about her firm's KiwiSaver scheme because the recommendation is based on Marama's circumstances that belong to a class. Although this includes taking into account Marama's plan to buy a house, Sue has advised Marama based on class considerations, and not on Marama's financial situation or goals such as evaluating how much Marama should contribute when Marama's income and debt are taken into account.

*Although Sue is a QFE adviser, her wealth management firm has decided that she shouldn't give personalised advice on KiwiSaver products.

Example 2 of class advice

Ben is an AFA who works for X Bank. John (age 35) is a customer of X Bank, where he has his current and savings accounts and insurance. Four years ago, John was enrolled in X Bank's KiwiSaver scheme. He defaulted into the conservative fund in the scheme because he did not make an active fund selection at that time.

He goes into an X Bank branch and Ben is available to talk to him. John says that he would like a bit more help choosing a fund that's right for him. In particular, he wants to understand more about the risks of investing and about getting a fund that matches how much risk he's prepared to take. Ben explains clearly (following the approach discussed on page 8) that he is providing class advice. Ben then asks John a series of questions to identify his risk profile. The results of the risk assessment questionnaire indicate John has a moderate risk profile.

Ben then calculates an example showing if a person leaves $15,000 in a conservative fund and contributes the minimum 3% until age 65 that could result in a balance on retirement of $160,000 in today's dollars. But if they invest in a balanced fund, the balance on retirement could be $240,000*.

After explaining these calculations, and the underlying assumptions, Ben then gives John information about the balanced fund. Ben explains that such a fund has been designed for investors who are willing to accept a medium level of fluctuations in investment returns, with the potential for a medium level of capital growth over the long term. Ben tells John other investors who have the same risk profile tend to invest in a balanced fund and recommends the balanced fund to John.

Our approach

Like most calculators, including those on www.sorted.org, the one Ben used took John's income into account to produce the retirement balance estimates. Nevertheless, in this situation, Ben has provided class advice, because his recommendation was based on class characteristics, not on John's financial situation or goals.

*assuming an annual salary of $110,000 and investment returns, post fees and tax, of about 2% p.a. for the conservative fund and about 4% p.a. for the balanced fund

Personalised advice

What is it and what's included

Personalised advice is given when the adviser takes into account the customer's financial situation or goals (or the customer would reasonably have expected the adviser to take these into account). Their **financial situation** is mostly about their income and debt. So, you will ask questions about; the sources and level of their income, their savings, whether they have a mortgage, credit card and other debt, and the terms of that debt. When talking about KiwiSaver, the customer's **financial goals** are how much income they would like to live on in retirement, and for how long.

We have received feedback that our earlier guidance caused concern if a customer provides any type of personal information, any advice given would not be class advice. However, our view is advice is only personalised when it takes into account a person's *financial* situation or goals.

Personalised advice will usually involve meeting a customer and, having understood their financial circumstances and goals, identify their investment needs and provide advice and products appropriate to those needs. Typically, it will involve discussing and potentially recommending several investment possibilities, not just KiwiSaver.

However, personalised advice can be about a single financial product, or a range of products.

The following advice will be personalised advice:

Examples of personalised advice
• Advice about how much a customer should contribute, based on that customer's income and level of debt
• Following a discussion about a customer's circumstances and goals, and some good KiwiSaver savings targets, the target that you think is best for the customer
• The proportion of savings a customer should put aside for their children's education, and the proportion that customer should put into their KiwiSaver fund
• Advice about the level of contributions a customer should make where that customer's partner is not in good health and whether that customer should get health insurance and pay less to KiwiSaver
• Advice about whether a customer should take advantage of the first-home withdrawal facility now, or whether that customer should wait until they have paid off their car and their job is secure
• Advice as to whether the KiwiSaver fund that has been recommended is enough to meet the customer's goals or whether the customer should also be investing in something else

What is the difference between class and personalised advice?

An answer to some questions might be class or personalised advice, depending on whether the adviser simply slots the person into a class, or takes into account the customer's financial situation or goals. Understanding a person's financial situation and goals generally takes more time and thought than giving class advice about KiwiSaver. The following factors may help you decide whether advice is class or personalised.

Factors to help you decide

The customer's expectation

Is the customer expecting advice on the best investments for them, based on their financial situation or goals? Or do they just want general advice about KiwiSaver? If they just want general advice about KiwiSaver, you should explain clearly (using the approach described on page 8) you are providing class advice.

The nature of the interaction and the context

Has the customer booked a time with an adviser? If so, have they booked an appointment time long enough to go over all of their financial situation and goals? Or, have they booked a short time, or dropped in off the street?

The nature of the information

- Does the discussion require the customer to provide a lot of information?
- Does the discussion require the adviser to understand the customer's financial circumstances (that is, sources and amount of income and levels of debt, and goals such as how much the person wants to have each week to live on when they retire)?
- How detailed is the adviser's analysis?

Example of personalised advice

Philip is an AFA who works for a financial planning firm. Fran (age 58) has been thinking about the need to do some in-depth planning for her impending retirement. Fran has been in KiwiSaver since inception and has a balance of $200,000 in a growth fund. She also has a couple of rental properties and a number of direct share investments.

Fran has a general sense she is reasonably well prepared for her retirement but wants to make sure, particularly since she would quite like to leave something behind for her grandchildren's education. Fran is particularly interested in talking about whether she should stop contributing to KiwiSaver and put her discretionary income in to something else. Or, whether she should keep her contributions where they are but switch some or all of her KiwiSaver to a conservative fund to ensure she doesn't lose a big piece of her nest egg if markets perform poorly in the next few years.

Fran has made an appointment to see Philip and brings along a risk profile which she completed through his financial planning firm's website. She discusses the results with Philip and outlines to him her goals and situation. Philip tells her he can definitely help, and asks a lot of information about her debt, her income and expenses, what sort of life she wants in retirement, and exactly how much she wants to leave to her children and when.

Philip says Fran will need to supply him with further details, but she should probably re-allocate her investments toward income rather than growth, with the effect of reducing her exposure to equities and to direct property. Philip says Fran should come back and see him again, when he will have an asset allocation, draw-down schedule and investment recommendations for her to consider.

Our approach

Philip is providing personalised advice. It would have become obvious very quickly Fran's needs could not be met just by understanding class characteristics. Plus, while a decision about KiwiSaver was an important part of the discussion and decisions to be made, it was not the only decision to be made.

Good conduct

Good conduct is vital to fair, efficient and transparent markets, and ensures businesses, investors and consumer can participate confidently.

Financial advisers must exercise care, diligence and skill, and not engage in misleading or deceptive conduct. AFAs must comply with the Code of Professional Conduct for AFAs. Advisers must also disclose certain information to customers. It is important to give fair, transparent and relevant information. For more on disclosure obligations, see our website.

Overall, we are most interested in how firms and financial advisers demonstrate how they satisfy themselves they have consistently delivered good outcomes to their customers.

Offering incentives to customers

Some KiwiSaver providers and advisers offer incentives. Incentives differ in the value they represent to customers, and the outcome they seek to achieve. Overall, our view is advisers and KiwiSaver schemes can offer incentives, provided they do not distract the customer from making good decisions about KiwiSaver. We have already been speaking to providers about this, and will continue to do so.

Incentives can achieve good outcomes for customers when they encourage customers to get the best out of KiwiSaver. Examples include; incentives offered to existing customers to provide a prescribed investor rate, or an email address (so they can receive information about their investment), or to engage in a discussion about whether switching from a default KiwiSaver fund to another fund within a scheme may better meet their needs.

We may be concerned where there is a combination of a high-value incentive and an effort to influence a customer to make a significant decision about KiwiSaver (such as a decision to transfer to another KiwiSaver provider). Our concern would centre on whether the value of the incentive was such that the customer was focussed on that, rather than making a good decision about KiwiSaver. For example, we would be concerned if providers were offering reduced mortgage lending rates to new customers, on the condition that the customer also transfers their KiwiSaver account to the new provider, without any evidence that the customer was also making a good decision about KiwiSaver. We may also be concerned where the incentive has features that might further distract a customer from making a good decision about KiwiSaver (for example where there was a time limit to accept the incentive offered).

If we believe an incentive offered by a provider may distract a customer from making a good decision about KiwiSaver, we will look more closely at what the provider is offering, as well as how and why it’s offered (including internal sales incentives).

In such circumstances the provider will need to show us how their advice and sales practices have been developed to ensure that customers are encouraged to make decisions based on the best KiwiSaver outcomes for them. The provider will also need to be able to satisfy us the offer is in the customer’s interest. If the provider is unable to satisfy us of this, we will consider all appropriate actions open to us.

For more on good conduct, see A guide to the FMA’s view of conduct.