

MAY 2022

Record keeping for financial advice providers

This information sheet sets out our expectations for how licensed financial advice providers (FAPs) can demonstrate compliance with the standard condition for record keeping. It will be useful for small and medium-sized FAPs to consider the examples provided when reviewing their internal arrangements for creating and maintaining records.

Overview

The new financial advice regime came into force on 15 March 2021. Entities and individuals granted a FAP licence under the [Financial Markets Conduct Act 2013](#) (FMC Act) are now subject to [certain standard conditions](#) (Standard Conditions).

Standard Condition 1 (for both transitional FAP licences and full FAP licences) states, among other things, that *'You must create in a timely manner and maintain adequate records in relation to your financial advice service'*.

We consider record keeping critical, as it will help FAPs demonstrate compliance with their duties and obligations under the FMC Act, the [Financial Markets Conduct Regulations 2014](#) (FMC Regulations), the Standard Conditions, and the [Code of Professional Conduct for Financial Advice Services](#) (Code Standards).

We also encourage FAPs to consider their conduct obligations.¹ Good conduct, at its core, means focusing on customers – the result of which is good customer outcomes. Consistently delivering good outcomes requires sound systems, controls, record keeping, being disciplined about meeting compliance obligations, and good disclosure. It needs to be part of an organisation's culture, including setting clear expectations and leading by example.

¹ The Code Standards set out the standards of ethical behaviour, conduct and client care, including Code Standard 1 (Treat clients fairly) and Code Standard 2 (Act with integrity).

About the record keeping requirements

Maintaining adequate records helps FAPs demonstrate that they are complying with their duties and obligations. In our monitoring of the previous financial adviser regime under the (now repealed) Financial Advisers Act 2008, we consistently identified poor record keeping as an area of concern.

Under the new regime, failure to create in a timely manner and maintain adequate records in relation to your financial advice service will result in a breach of Standard Condition 1.

In the absence of records, FAPs may have to rely on their memory of any actions and conversations with clients when providing evidence to show compliance with their obligations. This will not meet the form and manner requirement set out in the standard condition and may result in a breach of Standard Condition 1. Additionally, it could make it harder for a FAP to demonstrate they met their obligations (for example, whether they met the requirements of Code Standard 4, i.e. a person who gives financial advice must take reasonable steps to ensure that the client understands the financial advice).

Records can help you demonstrate that you met your duties and obligations. You should proactively review your record keeping practices on a regular basis to ensure they are sufficient to meet these requirements.

Source of record keeping obligations

For a summary of the main FAP duties and obligations, visit the FMA website [here](#).

Standard conditions for full FAP licences²

Standard Condition 1 requires you to create in a timely manner and maintain adequate records in relation to your financial advice service. Records will be adequate if they clearly demonstrate (together with your systems, process and controls) how you, and any person engaged by you, and the regulated financial advice given to retail clients by you or on your behalf, met your duties and obligations.

The records must be:

- created in a timely manner
- 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 the FMA
- available for inspection by the FMA at all reasonable times
- readily available to you, and in any event within 10 working days or as otherwise agreed by us when requested
- kept for a period of at least 7 years from the later of:
 - the date the record is made; and

² Standard Condition 1 for transitional FAP licences differs from Standard Condition 1 for full FAP licences in some respects. Please refer to the Standard Conditions document for more details:

[Click here](#) for Standard Conditions for transitional FAP licences

[Click here](#) for Standard Conditions for full FAP licences

- the date the financial advice to which the record relates is given; and
- the date any later record is made that refers to or relies upon information in the record; and
- the date of the conclusion of the life of the financial advice product that the financial advice relates to.

The records may be in any language, providing that for records kept in a language other than English, if required by the FMA, you provide in a timely manner a full translation of the record into English by a translator approved by the FMA.

Code Standards

Code Standard 5 states that a person who gives financial advice must take reasonable steps to protect client information against loss and unauthorised access, use, modification, or disclosure. The commentary for Code Standard 5 details the purposes for which client information should be used, retained or disclosed.

Client information includes all information about the client that is collected or held by a person who gives financial advice. That includes information in work papers and records, and the financial advice given to the client.

FMC Act

The FMC Act requires that FAPs comply with the Standard Conditions of their FAP licence (refer to [section 402\(3\) of the FMC Act](#)). Additionally, the FMC Act imposes duties on persons who give regulated financial advice to retail clients (refer to [sections 431I to 431P of the FMC Act](#)) and on FAPs and interposed persons that engage them (refer to [sections 431Q and 431R of the FMC Act](#)). These include the duty to comply with the Code Standards.

FAPs who engage nominated representatives (NRs) to give financial advice on their behalf are required to keep an up-to-date record of their NRs (refer to [section 431T of the FMC Act](#) and [regulation 229M of the FMC Regulations](#)).

FAPs who receive or hold client money on trust are required to keep trust account records that disclose clearly the position of the client money in the trust account (refer to [section 431ZE of the FMC Act](#)).

Our expectations

Your records should accurately reflect all material aspects of your financial advice service. We expect FAPs (and any person engaged by them or their authorised bodies) to maintain adequate records of:

- all regulated financial advice given to retail clients (by you or on your behalf); and
- how you (and any person engaged by you) have complied with the financial advice duties.

Our expectation is you ensure record keeping practices are suitable for the scale and nature of your organisation and advice offering (business model). We expect you to understand the purpose of record keeping, and how your records can demonstrate you are meeting your duties and obligations. This will help you determine what information needs to be maintained to meet the standard condition.

We suggest you consider the following when reviewing your record keeping practices.

Develop arrangements for keeping records

Arrangements include the processes, systems and controls you maintain for keeping records that support you in meeting your obligations. Arrangements may differ between FAPs depending on the structure and complexity of the organisation, the different business models and the approach taken to creating and maintaining records.

Processes, systems and controls for keeping records should be appropriate for your organisation and need not be overly complex. For example, recording financial advice given to clients could be supported by a list of steps setting out the information that must be captured at the different stages of the advice process by persons giving advice on your behalf. It could also take the form of a digital tool that helps guide your advice process and requires relevant records to be submitted before progressing to the next stage of the interaction.

Care should also be taken to put in place arrangements for non-financial advice related records. This could include records relating to managing conflicts of interest as well as the organisation's gift register.

Absence of processes, systems and controls could lead to inadequate record keeping, which in the context of recording financial advice may result in poor customer outcomes.

Standard Condition 1 states that the form and manner in which records are to be maintained must ensure the integrity of the information and enable it to be conveniently inspected and reviewed by the FMA. We recommend your processes, systems and controls take this into account. For instance, if records are to be stored in an electronic format on an online server, your processes, systems and controls should detail how these records will be secured and maintained in the event of a cyber incident or problems arising with a third-party storage provider.

It is important for all persons providing financial advice to take the time to review and understand the FAP's policies and processes. Following the policies and processes will help them demonstrate compliance with applicable duties (for example [section 431L of the FMC Act](#) duty to exercise care, diligence and skill) and obligations (for example Standard Condition 2 - Acting with integrity).

Maintain oversight

A regular review of the record keeping arrangements will ensure that information is accurately recorded and adequate for meeting the requirements of Standard Condition 1. This can be done by way of compliance testing, and any deficiencies identified can be addressed through a remediation plan. This should be included in your compliance assurance programme.³

Records may be kept by another person on your behalf, but you should maintain sufficient controls and oversight over this arrangement to ensure that you continue to comply with Standard Condition 1. If you outsource your record keeping system or process, you must also consider your obligations relating to outsourcing under Standard Condition 4 for full FAP licences.

You should ensure that staff are made aware of and understand their responsibilities with respect to record keeping. This could be done through awareness campaigns and regular training.

Key observations

Supervision Insights report

In September 2020, the FMA published our [Supervision Insights report](#), which contains findings from the monitoring reviews of regulated entities. The report highlights numerous examples of non-compliance with record keeping obligations⁴ for those operating under the Financial Advisers Act 2008 (repealed), such as:

- No policies, procedures and controls to assist the adviser to comply with record keeping obligations.
- Insufficient evidence retained to show that key processes had been followed, such as
 - not documenting the rationale for financial advice given to a client,
 - failing to show that the scope of service had been communicated to the client,
 - failing to document what information, disclosure documents and financial advice were provided to the client.
- Incomplete or insufficient records of discussions with clients, including agreements reached in those discussions.

FADC decisions

The [Financial Advisers Disciplinary Committee](#) (FADC)⁵ conducts disciplinary proceedings arising from complaints regarding financial advisers, which are referred to it by the FMA.

³ Refer to our [information sheet](#) on compliance assurance programmes for more details.

⁴ Note that the record keeping obligations under the Financial Advisers Act 2008 have been repealed and replaced by the requirements under the FMC Act. Although relating to the repealed law, the examples are still broadly useful to illustrate where shortcomings in record keeping practices may be identified.

⁵ The FADC was established in December 2010 by the Minister of Commerce to conduct disciplinary proceedings arising out of complaints regarding financial advisers referred to it by the FMA.

FADC decisions under the Financial Advisers Act 2008 (repealed) have identified the following examples of inadequate record keeping⁶:

- Inadequate information about financial advice that was given to a client, including about the scope or nature of the financial advice.
- Reliance on the long-standing nature of client relationships and inherent understanding of the clients, rather than retention of adequate records to evidence this.
- Insufficient records of research on the state of the market or assessment of the suitability of the products for the client.

Record keeping examples

The following examples illustrate how FAPs can demonstrate they meet the requirements of the Standard Conditions.

When giving financial advice

To determine what records need to be kept, FAPs must understand the purpose of maintaining the record.

The type of information that should be kept when giving regulated financial advice to retail clients includes, but is not limited to:

- a. details about the person to whom financial advice is given, along with any information received from the person;
- b. the financial advice given, including the nature and scope of advice given;
- c. the basis on which the recommendations have been made to the client (e.g. suitability);
- d. the benefits and risks of following the advice that were communicated to the client;
- e. information that demonstrates the FAP (and any person who gave the financial advice on its behalf) took reasonable steps to ensure the client understands the financial advice (including any additional steps taken where vulnerable clients may be involved)⁷;
- f. the prescribed information provided to the client (for example the disclosures required by the FMC Regulations)⁸, including the client's acknowledgement of receipt of any information;
- g. if the client expresses dissatisfaction, details of the complaint and what (if any) action was taken in relation to that complaint;
- h. details of any ongoing review of advice; and
- i. general compliance with duties and obligations under the FMC Act, FMC Regulations, Standard Conditions, special conditions to the FAP licence (if applicable), and the Code Standards. For example,

⁶ See footnote 4 above.

⁷ Refer to our information sheet on [Customer vulnerability – our expectations for providers](#).

⁸ The disclosure regulations are detailed in regulations [229A to 229J of the FMC Regulations](#).

records to evidence financial advice-related obligations such as details of compliance with the duty to give priority to the client's interests where there is a conflict of interest.

This information could be captured by way of documents (for example a Fact Find sheet) or could form part of a digital tool that covers the advice process and requires data to be entered about the client interaction at each stage.

Adequate records for the purpose of meeting your obligations will depend on the relevance of the information, and the nature and scope of the services being provided. We note that in the case of records relating to the advice process, most client interactions are likely to be relevant to the advice that is given.

Example

You are introducing a new digital advice facility on your website. This facility will require your prospective customers to answer a few questions about their situation. The algorithms in place will then generate financial advice for these customers based on the information provided.

You are putting together a list of information that the system needs to retain for clients to whom financial advice has been given through the digital advice facility.

You ensure your system records, among other things, financial advice given, information received from the client that was taken into account to generate the financial advice, and details of the algorithms and software used by the digital advice facility to generate the financial advice.

Ongoing advice

When any ongoing financial advice is given to existing clients, we expect adequate information about this to be created and maintained. For example, where financial advice is given that may result in a material change to the client's initial financial advice, we expect to see a record of the explanation given to the client about the impact or consequence of the change on the original advice, and evidence to demonstrate that the client has understood and agreed to the change.

Advice relating to product replacement

During monitoring engagements we will look for instances where financial advice relating to product replacement (or even product cancellation) is given to clients. As part of our engagement we will review whether records are available to show that the risks, benefits and any conflicts arising from the change were well communicated to the client.⁹ We encourage FAPs to read our reports on insurance providers' replacement business practices and address any risks posed at the point of product replacement.¹⁰

⁹ Refer to Code Standard 3 (Give financial advice that is suitable) and Code Standard 4 (Ensure that the client understands the financial advice).

¹⁰ Refer to [QFE insurance providers' replacement business practices](#) published in July 2018 and [Replacing life insurance – who benefits?](#) published in June 2016. Although some terms used in the report relate to the (now repealed) Financial Advisers Act 2008 Act, the findings remain relevant to the present financial advice regime.

Record retention

FAPs should ensure that records are retained for the correct period of time, as set out in Standard Condition 1. Your record keeping policies and processes should take into consideration risks that may impact the retention of these records.

Example

Standard Condition 1 requires you to maintain records relating to your financial advice service for a period of at least 7 years starting from the specified point in time.

You are aware that during the retention period, it is likely you will have staff changes. You identify the risk that a staff member responsible for giving financial advice may leave your FAP without creating proper records of advice given to your clients.

You review your processes, systems and controls to ensure this risk is addressed. You also take steps to mitigate this risk by reviewing your contractual arrangements with staff and ensuring these include mandatory provisions for complying with your processes.

Complaints management

Good records may help in the swift resolution of any complaints relating to you or a person engaged by you. Records relating to your financial advice service will help demonstrate compliance with your obligations, e.g. if you have records showing how you met your obligations, you'll likely have less difficulty in the event of a complaint.

Example

Standard Condition 2 requires you to have an internal process for resolving client complaints relating to your financial advice service that provides for records to be kept of all complaints received and the action taken in relation to each complaint.

You receive a complaint from a client stating that a financial adviser in your FAP did not tell them about the financial advice product offered by a particular product provider. You add the complaint to your complaints register and take steps to provide the disclosure relating to your internal complaints process to the client.

You review the client file on your system. Your system requires financial advisers to upload disclosure acknowledgments received during the advice process, at the time the nature and scope of advice is known, and when financial advice is given.

The records show that the client was provided with a disclosure that set out a list of product providers the FAP gives advice on. A copy of the disclosure provided to the client has been uploaded on the system.

Further, the record of client conversation describes reasonable steps taken to ensure that the nature and scope of advice was explained to the client, including the product providers that will be considered.

You reach out to the complainant in line with your complaint resolution process. The records maintained by your financial adviser enable you to describe to the complainant the steps taken to ensure they understood the nature and scope of advice. You also send the complainant a copy of the disclosure previously provided to them. The complainant is now able to recall the specific conversation and has no further questions.

You arrange a follow-up meeting between the complainant and a financial adviser for any further questions the complainant may have about the financial advice product recommended to them. You also create a record detailing the steps you took to resolve the complaint and update your complaints register.

Demonstrating compliance

You can also use records as part of your overall compliance assurance programme. A robust record keeping practice will enhance confidence in your compliance framework and provide assurance that the policies, processes and controls are fit for purpose.

Example

A person who gives financial advice must undertake continuing professional development in the manner set out in Code Standard 9.

You undertake a regular review of the training records of your staff. This control helps you identify that some staff who give financial advice are not recording complete information about the learning activity undertaken – for example, the date on which it was attended, or the type of activity.

You reach out to the relevant staff to ensure that the records are updated and remain accurate. You also include training on recording adequate information about continuing professional development at your next staff training day.