TOPIC 1

KAPLAN PROFESSIONAL EDUCATION

1

Introduction to financial planning

KAPLAN PROFESSIONAL EDUCATION

Overview

Financial planning is a dynamic sector that has experienced enormous growth since the 1980s. Since its infancy, when financial planners were primarily concerned with placing investments or arranging insurance, financial planning has evolved into an increasingly professional industry, offering services that address a comprehensive range of client planning needs.

A planner is now required to have an extensive knowledge of all areas of financial advice, including investment markets, taxation, social security, retirement planning, estate planning and risk management. Planners also need to have the technical competency to apply this knowledge to the development of a holistic financial plan.

Furthermore, planners are required to remain up-to-date with the constant legislative and administrative changes associated with financial planning.

This topic introduces the concept of financial planning, outlines issues concerning the provision of advice, presents the fee-for-service versus commission debate, and discusses the dynamics of a financial advisory practice.

Learning objectives

In this topic, you will learn:

- to define financial planning
- the role and functions of a financial planner
- relevant legal principles that apply to financial planners
- the difference between personal financial product advice and general financial product advice
- the changes to adviser conduct provisions resulting from the introduction of the Future of Financial Advice (FOFA) reforms on 1 July 2013
- the disclosure requirements placed on advisers under the Corporations Act 2001 (Cth)
- the different scopes of advice
- relevant industry standards and codes of conduct
- the role that ethics and professionalism play in financial planning
- key features of a successful financial planning practice
- sustainability and the effects it has on a financial planning practice
- the need for financial planners to work with other professionals.

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Before you begin reading, you should download the assignment from KapLearn.

Go to: <www.kaplearn.edu.au>.

Read the assignment questions before you begin your self study. Your study plan is a useful resource. As you read your subject notes, think about the assignment questions and the knowledge required to answer them. Make notes as you read to help you to recall where to go to find the answers to the assignment questions.

1 What is financial planning?

Financial planning is the process of developing strategies to assist clients to manage their financial affairs so they can build wealth, be financially secure and enjoy life. Since the 1980s, there has been enormous change in the Australian financial system and a corresponding growth in the financial planning sector because of:

- the deregulation of the financial system
- growth in the variety of investment products
- advances in technology
- the introduction of the superannuation guarantee (SG)
- the information revolution leading to increased investor knowledge and sophistication.

As competition for the investment and savings dollar has increased, so has the growth in financial planning providers. In addition to independent financial planning firms, specialised financial planners are also affiliated with banks, building societies, retail fund managers and insurance companies.

Financial planning is now recognised as a holistic process that involves examining a client's personal and financial circumstances, including their overall financial situation, investments, insurances, income tax payments, retirement and estate planning.

The client's short- and long-term goals are determined and a set of actions (i.e. a financial plan) is developed to assist them achieve those objectives. The plan must also take into account the resources they currently have available and their anticipated future requirements.

Resource 1 — A history of financial planning in Australia

(Kaplan Professional)

Read this article about the history of financial planning and financial services regulation in Australia.

Note: You can access this resource at KapLearn.

1.1 The changing role of financial planners

Before the introduction of the social security system in the early 20th century, it was left to the individual to save enough to cater for retirement years when they were unable to earn an income. With the introduction of the social security system and the provision of an Age Pension scheme in 1909, the financial future became somewhat more secure for most people.

Financial advice was normally available from the bank manager or the company accountant. The door-to-door insurance salesperson was generally the first introduction most families had to a 'financial planner' of any description. The problems with these traditional sources of financial advice is summarised as follows:

- They were inadequate. Bank managers or company accountants were not specialised and the advice they provided was supplemental to their main areas of interest. Unable or unwilling to keep apprised as investment options increased, it became clear that financial advice was becoming a separate discipline.
- They were rarely independent. Traditional sources of advice were normally biased towards a narrow range of products in which they had vested interests. For example, solicitors were likely to recommend a mortgage loan administered through their office while stockbrokers would limit their recommendations to stocks, shares and fixed-interest securities that provided them commission.
- Financial advice tended to be ad hoc with no real overview of a client's needs and aspirations. A holistic approach was required whereby every aspect of an individual's financial situation was analysed and an overall plan provided with adequate scope for revision as required.

Today, financial planning is recognised as a specialist discipline and is becoming a profession in its own right. While some financial planners tend to specialise in particular areas (e.g. retirement or risk management planning), the true financial planner is able to give advice on all areas and to all age groups. While they may still need to refer the client to a specialist (e.g. for specific tax issues), financial planners are normally able to provide a holistic recommendation in the form of a financial plan based on the needs analysis completed with the client.

Individuals at all life stages require financial advice, whether it is a young adult attempting to manage debt and accumulate assets, or a retiree focused on life after work. Therefore, financial planning takes into account risk management, taxation, investment planning, retirement planning and estate planning.

1.2 Major challenges facing the financial planning sector

Increasing affluence of the community and the growth in superannuation has created sophisticated products and, accordingly, the need for professional, sophisticated advice. Financial planners may now be approached by clients of a higher net worth than ever before.

Conversely, personal financial planning has not been readily accepted by the general population, with as little as one-third having sought the services of a financial planner.

Coupled with a generally higher net worth is an increase in the level of investor financial sophistication. As little as forty years ago, generally the very wealthy only invested in the sharemarket. Floats and sales of public companies, along with the increased media coverage of superannuation, means the majority of Australians are to some degree now exposed to the sharemarket. The mystique that surrounded the world of finance and investment has faded as general access to the market, and the availability and speed of information, has increased. Individual investors are becoming more knowledgeable about investment types and strategies, and are demanding more specialised advice from financial planners.

There is a greater emphasis on fee-based service as financial planners face the responsibility of making independent recommendations free of vested interest and commission considerations.

Financial planners are also facing increasing government regulation due to the view that the industry has failed to self-regulate and must raise its level of performance.

2 Who seeks financial advice?

Increasing levels of personal wealth, combined with increasing life expectancies; changing work patterns; greater legislative regulation, economic volatility and investment market sophistication, have made personal financial planning a critical service for a wider range of clients than previously.

Despite the increasing importance of financial planning, individuals are often hesitant to seek professional advice for a number of reasons, including:

- the impression that financial advice will be expensive
- the belief that advice is still tainted by conflicts of interest
- the belief that they do not have enough income or assets to warrant advice
- the assumption they have enough investment expertise to manage their own affairs
- not recognising their own planning needs.

The reality is that without an effective and appropriate financial plan, individuals:

- may not be able to achieve some or all of their lifestyle and financial goals
- will have little or no protection against unexpected events
- may pay more tax than is necessary
- experience unnecessary financial worry and concern.

Financial planning clients may come from all walks of life. The decision to consult a financial planner is sometimes prompted by life events (e.g. retirement, marriage or divorce).

2.1 How do clients benefit?

Financial planning can, among other things, help clients to:

- make informed decisions about their money
- use their financial resources effectively
- choose financial products that suit their needs
- balance income and capital needs
- protect against the unexpected
- understand risk
- achieve an acceptable level of return on investments for the risk undertaken
- effectively structure and manage debt
- legitimately minimise tax
- provide security for themselves and any dependants
- achieve goals and their preferred lifestyle
- balance their current lifestyle with their preferred future lifestyle.

2.2 Client needs

While clients seek the services of a planner for many reasons, their needs can be grouped together in the following categories:

- debt management and/or restructuring of current finances
- wealth creation (including investment advice)
- financial protection (including insurance advice)
- retirement planning
- estate planning
- taxation planning
- business financial advice.

Debt management and/or restructuring of current finances

Some clients will seek financial advice because they have taken on large levels of debt (e.g. buying a home) or they are intending to assume a large debt and want advice as to how best to manage, reduce or eliminate it. Other clients may seek advice about their current financial situation to ensure they are making the most of their available money and to meet current lifestyle objectives.

Wealth creation (investment advice)

For many clients, wealth creation is a primary goal to help them achieve many of their lifestyle objectives or needs. Wealth creation can be achieved through saving or better management of existing assets. This could include advice on whether it would be appropriate for the client to borrow to increase their potential for wealth accumulation.

In many cases, wealth creation strategies may require investment recommendations or advice to support the strategies.

Investment advice is the advice provided about a client's existing assets or recommended assets, such as:

- cash deposits
- term deposits
- debentures
- government bonds
- shares
- property
- derivatives
- managed unit trusts
- managed investment schemes
- insurance investment products, such as insurance and investment bonds, superannuation bonds and annuities.

Investment advice takes into account a client's goals and investment preferences as well as their tolerance to risk. The financial planner can then develop a portfolio that places the client's funds in a range of investments that aim to provide the income and growth needed to achieve their goals. Investment advice seeks to maximise returns after tax while allowing for inflation.

Financial protection (insurance advice)

Advice concerning a client's exposure to personal and property risks and the appropriate insurances available to reduce or mitigate those risks, forms an important part of the financial planner's role. Insurance advice includes personal, general and business insurance.

Personal insurance advice involves an assessment of the impact that a client's death or disability may have on their own or their dependants' lifestyle. Once an assessment is complete, a financial planner can recommend different products that provide a lump sum or regular income if an insured event occurs.

General insurance advice includes advice on policies that cover a client's assets or risks not covered by life insurance policies, e.g. building, household contents, public risk, motor car and private health benefits.

Business insurance advice uses personal and general risk products to address issues such as key person protection, business expense insurance or business succession planning.

Retirement planning

Retirement planning has two functions:

- funding the planned retirement
- maximising income during retirement.

Retirement funding

Retirement funding advice is investment advice to create a capital base sufficient to provide income for clients and their dependants after they retire.

When most clients think of retirement income funding, they think of superannuation. However, retirement funding is not limited to this investment vehicle alone, so planners should consider a client's other assets.

Retirement income

Retirement income advice is about maximising income from the client's available assets, their investment portfolio, property, and superannuation. It may include structuring a client's assets and income to obtain government benefits.

Estate planning

Comprehensive financial advice should include estate planning. Estate planning is the transfer of ownership of personal assets after the client's death to their selected beneficiaries.

Estate-planning issues that should be as a minimum addressed include:

- the preparation of a will
- the use of powers of attorney
- the establishment of testamentary trusts
- the nomination of beneficiaries for superannuation savings.

Estate planning includes advice on how assets can be distributed in a tax-effective manner.

For example, a superannuation lump sum may be paid tax-free to a dependant but taxes may apply if paid to a non-dependant.

While a financial planner can make recommendations about issues relating to the distribution of assets, a qualified legal practitioner needs to perform the drafting and execution of wills and other estate-planning instruments. Financial planners need to work at times with other professional advisers the client may have, such as solicitors and accountants, in satisfying the client's financial and lifestyle goals.

Taxation planning

It is important for clients' financial affairs to be structured in the most tax-effective way. Although individuals should pay the tax for which they are liable because tax evasion is a crime, tax minimisation is often possible via an appropriate strategy that is both legal and ethical.

For example, investment products with particular tax advantages can be used, or strategies such as income splitting and borrowing to invest may be appropriate.

Tax effectiveness, however, should not be the primary reason for selecting an investment.

While a financial planner will consider the taxation effects of strategies, the provision of tax advice remains the responsibility of accountants and registered tax agents. Clients should always be referred to taxation professionals for confirmation of all taxation matters.

Note: In June 2013, new federal legislation was introduced which will amend the Tax Agent Services Act 2009 (Cth) (TASA), the effect of which will make financial advisers who provide tailored tax advice overseen by the Tax Practitioners Board (TPB). The changes are designed to ensure that those who provide a 'tax (financial) advice service' (as defined), meet relevant education, experience and other requirements.

A three-year transition period commences from 1 July 2014 to allow advisers to prepare for the new regime, which may include the completion of courses on tax and/or tax related subjects.

Business financial advice

A financial planner can provide advice for businesses on how to maximise benefits from their financial assets, borrowing and how to protect their business.

Financial planners do not typically provide advice to businesses on expansion or business strategy. Some planners advise in structuring businesses, company establishment, partnerships, etc.; or provide loan advice. However, these are specialised areas of advice not common to most planners.

Business owners should consider the loss of profits in the event of the death or disability of one or more key employees and how they will fund any succession plans after the death of one of the owners. Financial planners can provide advice on insurance or alternate strategies to meet these needs for business owners.

Financial stages of life

Individuals usually progress through several different financial stages in their working lives. These stages involve different financial and emotional concerns and varying financial goals, priorities, aspirations and attitudes that may affect a client's overall financial planning requirements.

These stages are typically identified as:

- employed and single
- partnered with no children
- partnered with children
- partnered post-children (the 'empty nest')
- retired.

Apply your knowledge 1: Financial stages of life

Consider the financial stages of life. Recognising that each client will have their own unique set of circumstances, identify some characteristics, concerns, needs and objectives that may be relevant to each stage.

Before commencing, you may wish to review the advice individuals may need at different stages of their life on the Financial Planning Association of Australia's website. Go to <www.fpa.asn.au> → Visit Consumer Site → What could a financial planner do for me?

The example below will help get you started.

Financial stage of life	General characteristics	Possible concerns, needs and objectives
Employed and single	May have disposable income/savings capacity	Budgeting
Partnered with no children		
Partnered with children		
Partnered- post-children (the 'empty nest')		
Retired		

Note: You can access 'Suggested answers' for this activity at the end of this topic.

3 The provision of financial product advice

3.1 Introduction — FOFA

Effective from 1 July 2013, major changes occurred to the adviser conduct provisions of the Corporations Act. This follows the federal government's FOFA reforms.

These reforms were the result of a Parliamentary Joint Committee on Corporations and Financial Services (PJC) inquiry into financial products and services in Australia. The PJC was formed in response to high-profile failures, including Storm Financial and Opes Prime, and agribusiness managed investment schemes Timbercorp and Great Southern. The PJC report recommended changes designed to increase the integrity and quality of financial advice in Australia. The federal government acted on the report through the FOFA legislation.

ASIC Regulatory Guide RG 175 'Licensing: Financial product advisers — conduct and disclosure' (RG 175) was in existence before the FOFA reforms, and was amended and reissued when the reforms became law, as a guide for those who provide financial product advice to retail clients.

RG 175 gives guidance on how certain conduct and disclosure obligations apply to the provision of financial product advice.

Resource 2 — ASIC Regulatory Guide RG 175

(Australian Investment and Securities Commission)

Go to <www.asic.gov.au> → Publications → Regulatory documents → Regulatory guides → RG 175 (download for future reference).

The reforms were voluntary until 1 July 2013, when they became compulsory. The chief reforms are:

- Australian financial services (AFS) licensees and all those who are authorised by their licensee to provide financial product advice, are required to obtain their retail clients' agreement to charge them ongoing fees for financial advice unless exempted by ASIC. To continue charging an ongoing fee for a period longer than 12 months, the fee recipient must provide both an annual fee disclosure statement and a renewal notice to the client every two years. This renewal must be obtained from the client or the collection of the ongoing fee must stop. Essentially, this is the requirement for clients to 'opt in' for ongoing advice every two years.

  Advisers need to provide the client with the fee disclosure within a minimum of 30 days after the 12-month anniversary of the initial agreement; thereafter renewals can be for 24 months.

  Clients can inform the adviser in writing at any time if they want to 'opt out' of an ongoing service arrangement.

- The ability of ASIC to supervise the financial services industry is strengthened through changes to its licensing and banning powers.

- An obligation is placed on providers of personal financial advice to retail clients to act in the best interests of the client in relation to the advice. The 'best interests' obligation became mandatory from 1 July 2013.
- A ban on the payment and receipt of conflicted remuneration (e.g. commissions from the sale of products) that has the potential to influence the advice financial services licensees, and their representatives, provide to retail clients.

  Conflicted remuneration does **not** include a benefit given to the licensee or representative solely in relation to a life risk insurance product, other than:

  – a group life policy for members of a superannuation entity

  – a life policy for a member of a default superannuation fund.
- A ban on the receipt of volume-based shelf-space fees by a platform operator and the receipt of asset-based fees on borrowed amounts by a financial services licensee.

  Under ASIC Regulatory Guide RG 183 'Approval of financial services sector codes of conduct' (March 2013 edition), ASIC has provided guidance on their approach to approving codes under section 962CA. This approval could enable financial planners exemption from the 'opt-in' obligations if they are bound by an approved code of conduct such as that applying to members of professional associations.

Notes:

1. The description 'financial planner' is not yet defined in any law, even though ASIC has acknowledged that some financial product advisers prefer to describe themselves as 'financial planners' for market advantage. With no legislative restriction currently applicable on the use of these words, any person could conceivably call themselves a financial planner. The government is considering amending the Corporations Act that would restrict the use of the words to only those who are properly licensed or authorised under the Corporations Act.
2. In 2014, the current Federal Coalition Government introduced legislation (yet to be passed by parliament as at May 2014) which would amend some of the original FOFA provisions (e.g. the withdrawal of the 'opt in' and fee statement provisions).

3.2 Personal versus general advice, versus factual information

To recap from previous studies, financial product advice can be either personal or general.

Personal financial product advice is advice tailored to a client's individual situation and needs. It is given after:

- the provider of the advice has considered one or more of the person's objectives, financial situation and needs, or
- a reasonable person might expect the provider to have considered one or more of those matters (i.e. objectives, financial situation and needs).

An AFS licence must be held before personal advice can be given. Providers of advice are limited to licensees and authorised representatives, or employees of the licensee.

General financial product advice is financial product advice that is not personal advice (i.e. is not tailored to a specific client's need). This means that the advice is of a general nature only and is not based on any personal information that the adviser might know about the client.

Possessing personal information about a client will not, by itself, mean that the advice provided is personal advice. An adviser can be in possession of personal information about a client when only giving general advice. The test as to whether advice is personal or general is whether the adviser considered the client's personal circumstances when the advice was prepared and given. If it was considered, then it would likely be deemed personal advice.

As a general rule, a person or entity cannot carry on a business in Australia of giving general advice on a financial service or product unless they hold an AFS licence with an authorisation to give general advice, or be an authorised representative of such a licensee.

By the nature of the service they provide, financial planners providing complex advice almost always provide personal advice. When providing personal advice, there is a general obligation that the advice is appropriate, in the best interests of the client, and is provided correctly.

Warning required when general advice is given

Whenever general advice is provided, the Corporations Act requires financial product advisers to include a warning to the client or clients that the advice is of a general nature only, and that the client should not act on it until they receive advice tailored to their circumstances.

Specifically, general advice warnings to clients must include that:

- the advice has been prepared without taking into account their objectives, financial situation or needs
- the client should, therefore, consider the appropriateness of the advice before acting on it
- if the advice relates to the purchase, or possible purchase, of a particular financial product, the client should obtain a product disclosure statement (PDS) (if required) relating to the product and consider the PDS before making any decision.

Financial advisers can use their own words when giving the warning and, when providing general advice orally, a shorter, simpler warning is acceptable.

Note: ASIC has stated that an adviser cannot use the general advice warning to avoid the requirements when giving personal advice.

Factual information

An AFS licence is not required when providing only factual information about a financial product.

Factual information is described by ASIC as 'objectively ascertainable information, the truth or accuracy of which cannot reasonably be questioned'.

ASIC has said that they will not consider providing factual information about a financial product as financial product advice if the person giving it clarifies with the client that they are only providing factual information and that it is not intended to imply any recommendation or opinion about the financial product(s).

There are many people in financial services companies who service client enquiries without the need to provide financial product advice, and thus without being accredited. Their roles may include distributing financial services guides (FSGs) and PDSs to potential clients and generally giving factual information to clients about their company's products and/or services.

3.3 The FOFA reforms

The FOFA reforms extended the already in place conduct provisions, applying to licensees and their advisers. As a result of the reforms, the Corporations Act and guidance's contained in ASIC RG 175, require advisers providing **personal** advice to:

- act in the best interests of the client
- provide an FSG to clients in a timely manner and in the prescribed form
- provide the client with appropriate advice
- give clients a statement of advice (SOA) (with certain exceptions detailed below). The SOA is a written report covering prescribed areas including:
  - the advice and recommendations
  - the reasoning that led to the advice
  - material conflicts of interest (e.g. adviser remuneration and costs, loss of benefits)
- warn the client if their advice is based on incomplete or inaccurate information
- prioritise the interests of the client, particularly where there is a conflict with their own interests or those of one of their related parties
- provide a PDS to clients before they commit to the purchase of a financial product.

Note: An SOA is not required where the personal advice relates to:

- a general insurance product (except for advice about sickness and accident or consumer credit insurance)
- basic deposit products
- non-cash payment products.

The list of exempted products is not exhaustive.

Also note that the best interests duty and related obligations that apply to personal advice do not apply to general advice.

Financial services guide

An FSG must contain specific, up-to-date information and include the following:

- your name and contact details
- any special directions about how your client may provide you with instructions
- the name and contact details of your authorising licensee
- a statement that you are the authorised representative of that licensee
- the kinds of financial services and financial products you can offer as representative of the licensee
- for whom the licensee acts when providing those services
- the remuneration, commission and benefits you and the licensee will receive
- any relationships between you, or your licensee, and the issuer of any financial products that might influence your recommendations
- information about the licensee's dispute resolution system
- confirmation that you are authorised by your licensee to distribute the FSG
- the date of the FSG.

Additional information may be included in the FSG, such as:

- further explanation of your client's rights
- the relationship between you and your licensee
- information relating to specific product characteristics or risks.

Product disclosure statement

Each financial institution must have a PDS for each retail product, or one PDS covering a group of similar retail products. A client must be given a copy of the PDS for the particular financial product the adviser is recommending. This must be done prior to the client agreeing to proceed with the recommendation so their decision to proceed will be an informed one.

Every PDS has the following information:

- the name of the company selling the product
- a description of the main benefits of the product and how the benefits accrue
- significant investment risks of the product
- the cost of the product, including ongoing charges and deductions after the product is purchased
- the return generated and any expenses deducted from earnings
- significant characteristics or features of the product
- significant tax implications
- any amounts debited from the original investment amount

- details of the cooling-off period. This is the time a client may have to review the terms of the contract after they have bought it. If they feel the product will not meet their needs, they may cancel the purchase
- if there are any social, environmental or ethical issues concerning the product
- dispute resolution arrangements
- how to access additional information (e.g. the name of a financial adviser the client can contact or a 1800 number the client can call)
- the date of its preparation. Make sure you give the client the most up-to-date PDS.

3.4 Best interests duty and related obligations

A financial planner has a duty of care for their client and is legally obliged to:

- exercise as much care as the circumstances require
- ensure the client is misled in no way.

Be aware that everyone views the world in a different way. As a financial planner, it is important not to be misled by your own perceptions or assumptions.

Communication between the planner and the client is the most vital part of the planning exercise. The planner will only be effective if they can communicate well with the client and get to know them. Encouraging the client to express their thoughts and feelings on a variety of issues allows the planner to accurately assess:

- what the client wants
- what the client needs
- their lifestyle and financial objectives
- the level of investment risk they are comfortable with.

Under the best interests obligations, the law and ASIC requires an advice provider, when making a recommendation, to put the client's interests first and clearly show how the strategy recommended was designed to satisfy the client's stated goals and as a result will place them in a better position. (Refer to RG 175.224-231).

Included within the adherence with the best interests duty, is an implied requirement that when an advice provider makes a product recommendation, they need to conduct reasonable investigation into the financial products that might achieve the objectives and meet the needs of the client that would reasonably be considered relevant to the advice on that subject matter.

Under pre-FOFA adviser obligations, what was known as the **'know your product'** rule, planners were required to 'investigate the subject matter of the advice' provided. Although reference to the know your product rule has been removed from the legislation, the new best interests obligations described above essentially puts the same obligations on the adviser.

In a Victorian Supreme Court case, *Dale Newman & Ors v Financial Wisdom Limited* [2004] VSC 216, the Court found at paragraph 168, (based on the testimony of an expert witness), that:

> *… investment advisers could either carry out research and analyse investment products themselves or use research and analysis generated from external sources. The extent of the research and the analysis which it would be reasonable to expect the adviser to do depended on the nature of the product which formed the basis of the particular recommendation and the needs of the client being advised. [Advisers] often relied on information being supplied by external research organisations, in which case, the adviser should evaluate the overall quality and effectiveness of the analyses so provided so as to ensure that reliance placed on any such information was reasonable in all the circumstances. For the purpose of advising a client, the adviser should take into account general economic and other information in relation to markets, industries and securities so as to be in a position to make judgments about future income and growth expectations and risk factors associated with particular securities. An adviser should provide written reports to the client about recommended securities so that the client can understand the basis on which those securities are recommended. The reports should cover such matters as risks associated with the issuer of the security, risks associated with the product, market and economic risks, capital and income prospects and so on.*

Although this is a case heard under the previous rules, it is likely to be similar to the obligations that an adviser would need to meet under the new best interests obligations. It remains to be seen how the courts will interpret these obligations.

The best interests and related obligations apply to the individual providing the advice.

3.5 Personal advice and the best interests duty

When providing personal advice to retail clients, advice providers must:

- act in the best interests of their client
- provide appropriate advice
- warn the client if the advice is based on incomplete or inaccurate information
- prioritise the client's interest.

These provisions were designed to improve the quality of advice consumers receive from advisers.

ASIC has stated that advisers can comply with their best interests duty if they adhere to certain steps when advising their clients.

These steps, which act as a 'safe harbour' for complying with the best interests duty, are set out in section 961B(2) of the Corporations Act and are discussed in RG 175.248.

There are eight steps, which can be summarised as follows:

- **Step 1:** Identify the objectives, financial situation and needs of the client that were made known through the client's instructions.
- **Step 2:** Identify the subject of the advice the client is looking for (whether explicitly or implicitly).
- **Step 3:** Identify the objectives, financial situation and needs of the client that would reasonably be considered relevant to the advice sought on that subject (the client's relevant circumstances).
- **Step 4:** If it is reasonably clear that information relating to the client's circumstances is incomplete or inaccurate, make reasonable inquiries to get complete and accurate information.
- **Step 5:** Assess whether the advice provider has the expertise to advise the client about what they are looking for and, if not, decline to provide the advice.
- **Step 6:** If recommending a financial product would be reasonable:
  - investigate the financial products that might achieve the client's objectives and would be relevant to advice on the subject
  - assess the information gathered in the investigation.
- **Step 7:** Base all the advice on the client's relevant circumstances.
- **Step 8:** Take any other step that, at the time the advice is provided, would reasonably be seen as being in the best interests of the client, given their relevant circumstances. Tier 1 personal advice providers must also:
  - only give advice if it is reasonable to conclude that it is appropriate for the client
  - warn the client if the advice is based on incomplete or inaccurate information
  - prioritise the interests of the client over their own interests and those of related parties, including their AFS licensee.

ASIC has said that an overall test of compliance with the best interests duty is whether a reasonable advice provider would believe that the client is likely to be in a better position if the client follows the advice. RG 175 gives guidance and examples of advice that is likely to leave a client in the better position.

3.6 Modified best interests obligations

In some circumstances, a modified form of best interests duty applies when personal advice is provided on:

- a basic banking deposit product only, and the advice is provided by an agent or employee of an Australian authorised deposit-taking institution (ADI)
- a general insurance product only
- a combination of a basic deposit product and general insurance product
- general insurance and other products

An adviser need only follow Steps 1 to 4 of the safe harbour steps to have acted in the best interests of their client (Refer to RG 175.243).

- **Step 1:** Identify the objectives, financial situation and needs of the client that were made known through the client's instructions.
- **Step 2:** Identify the subject of the advice the client is looking for (whether explicitly or implicitly).
- **Step 3:** Identify the objectives, financial situation and needs of the client that would reasonably be considered relevant to the advice sought on that subject (the client's relevant circumstances).
- **Step 4:** If it is reasonably clear that information relating to the client's circumstances is incomplete or inaccurate, make reasonable inquiries to get complete and accurate information.

The above products fall generally under the 'Tier 2' classification in RG 146. Personal advice providers on the above products must still comply with the appropriate advice requirement and the obligation to warn the client if advice is based on incomplete or inaccurate information.

Note: Tier 2 personal advice providers *do not* need to comply with the requirement to prioritise the client's interest.

Further examples of how the best interest obligations for different advisers are applied can also be found in RG 244 'Giving information, general advice and scaled advice'.

The importance of the best interests obligations is highlighted by the fact that failure to provide appropriate advice is an offence under the Corporations Act. Further, a retail client may take civil action for any loss or damages resulting from failure to comply.

3.7 When giving general advice

When an adviser is giving only general advice, the rules are less burdensome because the advice is general and not personal.

The Corporations Act and ASIC RG 175 require advice providers providing general advice to only:

- provide an FSG to clients in a reasonable time and in the set form
- ensure that the client is given a general advice warning
- provide a PDS to clients before they commit to buying a financial product.

Note: ASIC has granted some exemptions to the requirement on Tier 2 general advice providers to provide an FSG. Although those providing general advice on general insurance products are required to provide an FSG to clients, an exemption exists for those providing advice on cash management trusts, basic deposit products and non-cash payment products and travellers cheques.

3.8 What is considered appropriate advice

As previously stated, ASIC has stated in RG 175 that the appropriate advice requirement is directly concerned with the quality of advice.

In the light of the best interests duty, ASIC has said that the appropriate advice requirement imposed on all providers of personal advice would be satisfied if it would be reasonable to conclude, at the time the advice was provided, that:

> *(a) it was fit for its purpose and was likely to satisfy the client's relevant circumstances; and*
>
> *(b) the client was likely to be in a better position if they followed the advice.*
>
> (RG 175.342)

At the time of writing (May 2014) there has been no material action either in a court or administrative tribunal testing the application of either the best interests duty or what constitutes appropriate advice. The examples provided by ASIC in RG 175 are the best guides to date.

3.9 Response to FOFA reforms

The Investment Trends' 2009 planner business model report showed at the time the FOFA reforms were proposed, more than 56% of 1401 financial planners surveyed received their revenue from commission-based payments.

Many industry groups and financial services companies were in favour of the reforms. The Financial Planning Association of Australia (FPA) supported the reforms, advocating that clients, rather than product providers, should pay for the financial advice they receive.

The FPA stated that while clients should be able to choose how they pay for advice, a commission-based regime creates a conflict of interest that acts as a disincentive for those seeking financial advice. They argued that eliminating commission-based payments would make it easier for clients to understand which parts of their fee relate to advice, product(s) and administration, providing them with a greater understanding of the true value of advice.

Separate to the law but parallel to it, the association's Code of Professional Conduct and Code of Ethics requires practitioner members to put the client's interests first and bans receipt of commissions.

At the time of the proposed reforms, it was estimated just 30% of Australians sought financial advice and despite the higher up-front charges a fee-for-service model could bring, its transparency could encourage more Australians to seek the help of a qualified financial planner.

As FOFA has only been mandatory from 1 July 2013, it has been difficult to measure if there has been any increase in the uptake of advice since its inception.

4 Scope of advice

The scope of financial advice provided can vary from a single communication concerning a specific query or event, known as 'limited advice', to a full financial planning service offering comprehensive and ongoing advice, known as 'full' or 'holistic' advice.

Until recently this view of advice as being either full or limited was common in the industry. The FOFA reforms marked a shift in how ASIC views financial advice as outlined in ASIC's Regulatory Guide RG 244 'Giving information, general advice and scaled advice'.

> *Advice is provided along a continuous spectrum. You can scale all types of advice, including advice about complex issues. The inquiries you make, as an advice provider, will need to reflect the complexity of the matters you are considering.*

ASIC's Regulatory Guide RG 200, 'Advice to super fund members', also details what ASIC considers to be general advice and factual information, and provides guidance regarding the provision of scaled advice in the context of superannuation.

Other ASIC regulatory guidance also explains the distinctions between factual information, general advice and personal advice, and how to give scaled advice. These consist of:

- Regulatory Guide RG 36 'Licensing: Financial product advice and dealing'
- Regulatory Guide RG 84 'Super switching advice: Questions and answers'
- Regulatory Guide RG 175 'Licensing: Financial product advisers — Conduct and disclosure'.

New scaled advice requirements are detailed below.

Holistic advice

Holistic financial advice generally refers to the process where a planner helps an individual move towards meeting personal and financial goals through the development and implementation of a full financial plan. A full financial plan/statement of advice includes more than just investment advice and may cover retirement planning, risk management (including insurance), debt management, estate planning, taxation and social security planning. Full advice relies on the client providing all relevant financial information and being prepared to carefully review their goals.

Scaled advice and limited scope

The term limited scope refers to situations where the planner is restricted to giving advice on a specific type or types of financial products because the:

- client is only seeking advice on specific products, or
- the planner is limited on the advice that may be given. For example, they may be restricted to advice on only managed funds, insurance products and term deposits.

Another example of limited scope would be where a client says, ‘I don’t want advice on foreign investments or government bonds’ or ‘I want to exclude any advice on my insurance needs’.

When giving limited scope advice, a planner should give the client a clear warning that this is the case and may refer the client to another planner if appropriate. Under the new best interests duty advisers must ensure that any limitations in scope of advice still meet the best interests of the client.

Limited advice needs to be distinguished from advice given to clients who have only provided ‘limited information’. Limited client information does not necessarily mean that the planner can only give limited advice, however, the client must be warned that the advice is based on limited information and that it may not be appropriate for that reason.

No advice

No advice, also known as ‘execution only’, refers to a situation where the planner is merely accepting the decision of the client and processing documentation. When the planner gives no advice, no responsibility is taken for the appropriateness of the product decision of the client. An example of a no-advice transaction is where a client leaves a unit trust application for processing at their local bank.

Apply your knowledge 2: Which scope of advice is applicable?

What scope of advice applies in each of the following scenarios?

Scenario 1

Mr Maple has recently retired from a 40-year career with a large bank and has received a substantial lump sum payment. He has researched a suitable package of investment products and approached you to invest his lump sum according to his instructions and complete all related paperwork.

Scenario 2

Louise and Dan have been married for two years and have recently purchased a new home with the money they made from the sale of their first home. The house is in an excellent location but needs some renovations, including a new kitchen and laundry. Louise and Dan also want to extend the house in the future and require advice on how to manage their cash flow to achieve this. Further, Dan is unsure how to manage his superannuation.

They are both earning a good wage and are unsure of the best saving and investment options, including whether or not to contribute more to superannuation.

Louise and Dan have approached you to advise them. You have specialist knowledge in financial planning including debt management, budgeting, derivatives, superannuation and managed investments.

Scenario 3

Elizabeth is a successful small business owner who wants to expand her business overseas without putting Australian investments at risk. Elizabeth has concerns about foreign exchange transactions including taxation issues. She also has a self managed superannuation fund and is unsure how her overseas expansion will affect her superannuation.

Elizabeth comes to your firm for advice. You have specialist knowledge in financial planning, superannuation (including self managed superannuation), derivatives and managed investments.

Note: You can access 'Suggested answers' for this activity at the end of this topic.

5 Planner conduct and disclosure provisions

ASIC is responsible for the administration of the relevant sections of the Corporations Act and the Competition and Consumer Act 2010 (Cth) (formerly Trade Practices Act 1974 (Cth)). Planner conduct and disclosure provisions prohibit conduct that is misleading, deceptive and unconscionable regarding the sale of financial products.

5.1 False or misleading statements

Under the Corporations Act, the making of a statement or the dissemination (i.e. spreading) of information by a planner that is false and likely to induce the sale or purchase of financial products is prohibited. To constitute an offence, it is not essential that somebody is in fact induced to sell or to buy; it is sufficient to show potential to induce.

5.2 Misleading or deceptive conduct

The rules on misleading or deceptive conduct administered by ASIC are modelled on the consumer protection provisions of the Competition and Consumer Act. Misleading or deceptive conduct can include both intentional and unintentional conduct, acts of commission (i.e. where a planner does something they should not) or acts of omission (i.e. where a planner fails to do something that they should do).

For example, where a planner does not tell a client about information that is important for the client's investment decisions, or misleads or deceives a client, they may be liable.

Liability can arise even where a planner makes a genuine mistake and does not intentionally mislead or deceive the client.

The three main types of liability are:

- civil penalties imposed by ASIC (e.g. fines or planner bans)
- criminal penalties levied by ASIC (e.g. imprisonment)
- civil liability for recovery of losses suffered by a client because of the planner's conduct.

Professional indemnity insurance will insure planners for many sources of financial liability that might arise in their normal business. However, planners will not normally be covered for liability that arises due to an intentional breach of the conduct provisions. Planners should check the precise level and scope of their professional indemnity cover, which will be clearly stated in the policy documentation.

To reduce the potential incidence of misleading or deceptive statements, the legislation places restrictions on the use of certain words or explanations in describing a financial service provider's business, including 'independent', 'impartial' or 'unbiased'.

Through its regulatory guides, ASIC gives guidance on when a licensee or authorised representative can advertise their advisory services as 'independent' to ensure that the word, and others with similar effect, are not used improperly by planners when they advertise or promote their services. Regulatory Guide RG 234 'Advertising financial products and advice services: Good practice guidance' provides clear instructions about the use of the term 'independent'.

Substantial financial penalties can be imposed on corporations and individuals for breaches of the consumer protection measures. The courts may also order the corporation to pay damages to compensate anyone who suffers a loss due to misleading conduct. They may also order the corporation to publish corrective advertising or order contracts to be adjusted or cancelled.

5.3 Fraudulent inducements to deal

The Corporations Act prohibits a planner from inducing, or attempting to induce, another person to deal in financial products by either:

- recklessly making or publishing any statement, promise or forecast that is misleading, false or deceptive, or
- dishonestly concealing material facts.

Contravention of any of the above provisions by a planner may result in severe penalties being imposed and/or the planner being liable to compensate a seller or buyer of securities.

5.4 Unconscionable conduct

The Corporations Act prohibits 'unconscionable conduct', which is conduct that treats another person unfairly, especially a person who suffers a disadvantage either in relation to the other party, or in relation to the community in general.

An example of unconscionable conduct could be the sale of an inappropriate life insurance policy to a person who is either illiterate or has a poor command of English, where insufficient effort is made to ensure their understanding of the policy being sold to them.

5.5 Common law principles

Financial product advisers are subject to laws enacted by Parliament (statute law), such as the Corporations Act, and also to the principles of **common law**.

Common law is the body of law built up through successive decisions made by the courts. In deciding cases, courts look to the principles established by past decisions and apply those to the case being heard. Common law extends and complements the requirements of the Corporations Act.

Duty of care

A financial product adviser is recognised through common law as having a duty of care to clients when providing financial advice. They have two distinct legal duties:

- to exercise as much care as the circumstances require
- to ensure the client is not misled.

If such care is not exercised, the planner may be liable in an action for negligence, damages or loss incurred by the client.

The Financial Planning Association's Code of Professional Practice defines the minimum benchmark for appropriate behaviour expected of its members. Any member whose conduct falls below the acceptable standard of care may be found to have been negligent.

Apply your knowledge 3: Financial planners and duty of care

Mr Scott Lee recommended financial products to more than 30 clients while acting as an authorised representative of XYZ Financial Planning Australia Pty Ltd between 25 July 2008 and 16 October 2012. In a number of cases, Mr Lee made recommendations to invest in various financial products and failed to consider the personal circumstances of his clients before making those recommendations. He also did not provide a number of his clients with SOAs or PDSs.

He also recommended that clients invest by utilising investment loans, including margin loans, by making statements based on inaccurate or incomplete information. He failed to adequately assess the clients' circumstances and objectives when recommending the investments, which resulted in most clients being over-geared and exposed to significant financial risk.

To which regulatory provisions has Mr Lee failed to adhere?

Note: You can access 'Suggested answers' for this activity at the end of this topic.

Resource 3 — ASIC

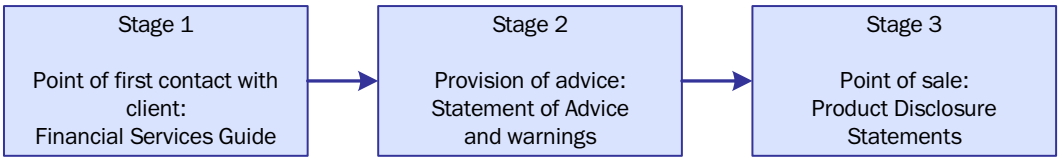
(Australian Investment and Securities Commission)

Go to <www.asic.gov.au> → Publications → Media centre → Media releases and advisories to view cases where ASIC has revoked or suspended licences or banned individuals from operating within the financial services industry (viewed 2 December 2013).

5.6 Disclosure documents

Key disclosure documents must be provided to financial planning clients and essentially align to the three stages outlined in Figure 1.

Figure 1 Disclosure requirements at three stages of financial service



5.7 Client warnings

Sometimes it is necessary for financial planners to provide warnings to clients. There are two key situations where this may occur:

- non-disclosure of personal information
- general advice.

Non-disclosure of personal information

When making a recommendation, a planner must have a reasonable basis for making it; this means obtaining all relevant qualitative and quantitative information about the client as deemed appropriate in the circumstances. If the client refuses to supply relevant personal information, or supplies only limited personal information, the client is required to be given certain warnings by the planner. The warning must enable the client to understand that:

- the planner has not obtained all information relevant to the client's personal circumstances
- there are limits on how appropriate the recommendations are because they are based on incomplete information
- they must carefully assess how appropriate these recommendations are to their individual circumstances due to the limited information obtained.

General advice

If general advice is provided to a client, an SOA is not required. An example of providing general advice could be a planner making the statement 'Investors requiring long-term capital growth should invest in listed Australian shares'.

Many personal investors do not readily appreciate the difference between general advice and advice tailored for their particular needs. Therefore, licensees and their representatives must give adequate warnings to retail investors about the limited nature of the general advice supplied.

5.8 Disclosure of remuneration, commissions and other benefits

At the time of providing advice, the financial planner will provide the client with an SOA that must include information about all remuneration, commission and other benefits, both monetary and non-monetary, to be received or expected to be received. This includes most initial (i.e. up-front) fees and commissions, ongoing (i.e. trailing) fees and commissions and all non-monetary (i.e. soft) dollar commissions or benefits which are deemed to be of a value greater than $300. Refer to RG 175 and RG 246 'Conflicted remuneration' for future reference and to the exemptions noted below for more details.

Although there has been a ban on conflicted remuneration for advice to new clients since the introduction of the FOFA obligations, there are still commissions that may be payable to advisers, such as those in insurance products held outside of the superannuation environment and commissions received for client advice occurring before the introduction of the reforms.

The main source of new income for advisers since FOFA is fees charged to clients. These can be charged in a variety of ways, such as flat dollar amounts based on a scale, as a percentage of assets under advice, or based on an hourly rate and time spent. Whatever method is used by planning firms and their planners, they must be disclosed and explained clearly to the client.

In the case of monetary benefits, a clear statement of the method of calculating each benefit is required, together with:

- the actual dollar amount of each such benefit where this can be ascertained at the time the SOA is provided
- worked dollar example(s) or percentages where the actual dollar amount of the benefit cannot be identified
- the total of all monetary benefits expressed as a single dollar amount, where again this can be identified when the SOA is provided.

In the case of non-monetary benefits required to be disclosed, a clear description of the benefits should be included, e.g. a free overseas trip provided by a product provider to a planner based on sales of the provider's products.

All information about remuneration, fees, commissions and other benefits must be presented in a clear, concise and effective manner in one place in the SOA. It must be presented so it is easy for the retail client to understand.

Exemptions to benefits disclosure

Exemptions to the requirement to provide written disclosure of benefits to be received include when:

- a fee based on time spent by a planner is payable by the client irrespective of whether the client acts on the advice
- the remuneration, commission or other benefit is rebated in full to the client, or
- the providing entity was not, and could not reasonably be expected to have been aware of the remuneration, commission or other benefit.

5.9 Ensuring compliance

Apply your knowledge 4: Monitoring compliance

Many organisations use processes and procedures to ensure that the work undertaken by their employees and representatives complies with legislative and regulatory requirements.

Using the information presented so far in this topic as the basis, identify how your organisation monitors compliance. Alternatively, create your own checklist or similar tool to monitor your compliance.

Note: This answer will be specific to your circumstances.

6 Ethics and professionalism in financial planning

Arguably, no single professional group has been affected more by professional ethics, nor received closer scrutiny from regulatory bodies and the media, than the financial services industry.

Historically, a number of organisations and individuals entered the industry to fill a gap in financial planning. Initially, the quality of planners varied considerably and the financial services industry attracted some individuals more intent on making quick profits than the ethical and technical considerations of the proper financial planning process. The level of service, research and range of products covered varied and continues to vary considerably.

Over the last few years, a more professional and responsible attitude has been adopted by the financial services industry. This has been brought about primarily by:

- a more concerted effort by planners to provide objective and research-based advice grounded in a clear financial planning method
- closer scrutiny by regulatory bodies such as ASIC
- a more participatory attitude by self-regulatory organisations representing the bulk of the advisory sector in the proper conduct of its members. The effectiveness of self-regulatory organisations has been enhanced by the willingness of government regulatory authorities such as ASIC to work more closely with these organisations, and to some extent to rely upon them, in the policing of codes of conduct and ethics for their members
- the exit of ‘quick profit’ oriented persons from the industry and their replacement by ethically minded professionals
- legislative changes that make planners more accountable for the advice they give
- greater interest from the media and consumer groups on the need for the industry to ensure a high degree of professional standards and integrity.

A number of professional organisations represent corporations and individuals within the financial services industry, including:

- Financial Planning Association of Australia (FPA)
- Association of Financial Advisers (AFA)
- Financial Services Council (FSC)
- Association of Superannuation Funds of Australia (ASFA)
- Institute of Chartered Accountants in Australia (ICAA)
- CPA Australia
- National Institute of Accountants (NIA).

As well as aiming to meet the needs of their members, these organisations work closely with ASIC about the regulation of corporations and individuals involved in giving financial advice. Each one has a code of conduct and/or statement of ethics with which members are required to comply.

The AFA code of ethics holds advisers to the following pledge:

> *The position of the Financial Adviser is unique. The Financial Adviser owes a professional duty towards clients and must act at all times in their best interest. By observing the highest ethical standards, the Financial Adviser can ensure their clients' mutual needs are satisfied.*
>
> - *Act in the best interest of my clients to extend their financial life and abide by the laws and regulations under which I conduct business.*
> - *Strive to achieve the highest standards of professional competence by maintaining and improving my knowledge and skills.*
> - *Hold in strictest confidence and consider privileged, all business and personal information pertaining to my clients' affairs.*
> - *Present accurately, honestly and completely, every fact known to me which is essential to my clients' decision making.*
> - *Use all ethical means to educate my clients about their present and future financial needs.*
> - *Provide an appropriate level of service to my clients and their beneficiaries.*
> - *Maintain high standards of personal and professional conduct to reflect favourably upon the profession of Financial Adviser and serve as an example to others.*

The FPA's Code of Ethics consists of eight principles:

Principle 1: Client first	Place the client's interests first
Principle 2: Integrity	Provide professional services with integrity
Principle 3: Objectivity	Provide professional services objectively
Principle 4: Fairness	Be fair and reasonable in all professional relationships. Disclose and manage conflicts of interest
Principle 5: Professionalism	Act in a manner that demonstrates exemplary professional conduct
Principle 6: Competence	Maintain the abilities, skills and knowledge necessary to provide professional services competently
Principle 7: Confidentiality	Protect the confidentiality of all client information
Principle 8: Diligence	Provide professional services diligently

For more information on the FPA Code of Ethics, visit <www.fpa.asn.au> → About the FPA → Code of Professional Practice → Code of Professional Practice (viewed 2 December 2013).

Resource 4 — Ontrack: CSI ethics and the advice process

(Kaplan Professional)

This article explores the application of ethics to a case study involving clients and an ethical dilemma.

Note: You can access this resource at KapLearn.

7 Fee-for-service versus commission

Traditionally, commission-based payments have been the most common form of planner remuneration, where a percentage of the money invested or premium on product sold is paid to the AFS licensee by the product provider. Because the commission is paid directly from the product provider to the AFS licensee, it appears that there is no cost to the client.

This approach has been popular previously due to the lack of administrative work and the perceived value for clients who do not have to pay separately for financial advice.

However, in light of the global financial crisis and highly publicised collapses of companies such as Opes Prime and Storm Financial, there is growing demand regarding transparency for payments that may create a conflict of interest. As a result, momentum for a fee-for-service approach has grown. In addition, the ban on conflicted remuneration that has been in effect since July 2013 has meant that the payment of commission from product providers has essentially stopped for most managed investments and superannuation. Insurance commissions are still payable for products not held within superannuation.

The main argument in favour of a fee-for-service approach is that it removes the perceived conflict of interest that planners may face when providing financial advice. This is because when remuneration is separated from product placement, there is less likelihood of clients being aligned with a product that is unsuitable for them. Under a fee-for-service model, the client is charged directly by the financial planner for the advice they receive according to the terms of their arrangement.

While the product provider may act as an intermediary to help facilitate payments, they have no influence over the amount a planner receives and therefore have little influence on the planner's decisions when making product recommendations.

Advantages of a fee-for-service model

Significantly, charging a fee for service reduces the perception of a conflict of interest by separating the amount a planner is paid from the investment recommendations they make.

Because the planner receives a fee based on a predetermined agreement regardless of which investment is selected, clients can see clearly the amount they are being charged and the advice received in return. This creates a greater degree of transparency and trust in the arrangement.

Given that clients have chosen to pay for advice, it can also mean they are more likely to attach greater weight to the advice they receive. It enables clients to effectively focus on the services that are important to them and pay a fee that will match the experience and expertise of the financial planner.

Example: Fee for simple advice

Where a young client with few assets needs advice on their superannuation arrangements, they can pay a lower fee for simple advice, ensuring they are not inadvertently paying for unsuitable products or a strategy they do not need.

For financial planners, in addition to the benefits of being perceived as transparent, a fee-for-service model enables them to create a more stable income for their financial planning practice.

Disadvantages of a fee-for-service model

One of the main criticisms of a fee-for-service approach is that it reduces the accessibility of financial advice for clients who cannot afford the fees.

As commission-based models effectively enable clients to receive financial advice without having to outlay any money up-front, it is thought that charging a fee will restrict the number of clients receiving financial advice further.

This argument, however, is often countered by the fact that the disadvantages of charging a fee are outweighed by the benefits of transparency and a greater focus on the advice rather than products.

Fee-for-service also places planners under greater scrutiny from their clients to ensure they have demonstrated and delivered value.

7.1 Different fee-for-service models

There is a range of different ways fees can be charged under a fee-for-service model.

The most common include:

- hourly rate
- service based
- value based
- percentage based
- hybrid style.

Hourly rate

Hourly rates are similar to those charged by an accountant or a solicitor, where a planner bills a client directly for the time spent working on the client's portfolio.

Planners often estimate the amount of time required to prepare an SOA and provide a quote based on that estimate. This requires some experience to provide accurate estimates of the time required and to ensure that the client is charged appropriately.

After the preparation and presentation of the SOA, the planner may then charge an ongoing hourly fee.

Service based

Service-based fees are usually packages based on the planner providing the client with a range of services. The service-based fee packages in Table 1 itemise possible service-based packages that a financial planning practice could provide, with the price based on the complexity of the service provided.

Table 1 Service-based financial planning packages

Package	Services within each package
Basic service	• questionnaire on financial position and goals • risk profile • financial plan and budget • one-hour meeting
Basic service-plus	• basic service • annual review • single-issue advice (e.g. salary packaging)
Investor service	• basic service-plus • six-monthly review • complex single-issue advice (e.g. transition to retirement)
Investor service-plus	• basic service-plus • quarterly financial reviews • two categories of complex-issue advice (e.g. transition to retirement and life insurance)
High-net-worth service	• annual full service plan • life insurance • investments • estate planning • quarterly financial reviews

Value based

Value-based charging is based on how much ‘value’ the planners give to their clients.

Example: Fee for added value

If a financial planner has saved a client a lot of money in tax, they might increase their fee to reflect the value added to their service.

Example: Service-based versus value-based fees

Clients that simply require advice on salary sacrifice but have no actual investments may be more suited to a service-based approach, while a value-based package might be suitable for high-net-worth investors.

Percentage based

The FOFA amendments have resulted in a ban on conflicted remuneration. Conflicted remuneration is where a planner may have or be perceived to have a conflict of interest. This may occur if a planner is working for commission or is receiving commission for the sale of a particular product.

This ban does not extend to 'asset-based fees' or 'assets under management fees', which are a percentage-based fee charged on assets under management. This is because the remuneration charged relates to the advice provided, or for providing a service package.

However, under the new legislation a client cannot be charged on the borrowed amount of any investment unless it is 'not reasonably apparent that the amount has been borrowed'.

In most cases, a service-based package or a value-based fee that caters to a client's specific needs would be more suitable.

Hybrid style

The hybrid fee-for-service model is another option for financial planners with a range of clients with different needs. A hybrid model may be a combination of any of the above fee-for-service options.

Example: Hybrid fee model

If a practice has clients that include DIY investors with SMSFs as well as young wealth accumulators who may need a lot of advice but few actual assets, a hybrid model might be suitable. Such an option could provide clients with the option of paying part of the fee up-front from their bank account, while the rest could be paid by instalments over a period.

Apply your knowledge 5: Fee-for-service model

Financial planning firm A Plus Planners has a client base of largely 'mum and dad' retail investors with simple advice requirements including budgeting, co-contributions, salary sacrifice and transition-to-retirement strategies. A Plus Planners has traditionally operated under a commission-based model and is worried that the introduction of fee for service would see them lose clients who have to pay an up-front fee for advice.

What fee-for-service model should they implement?

Note: You can access 'Suggested answers' for this activity at the end of this topic.

7.2 Determining fees

While fees will vary according to the location, services and types of clients a business is geared towards, generally fees will increase in line with the complexity of the service and the degree of risk and responsibility involved.

There may also be other expenses for the client, including asset management fees, entry or exit fees and other costs involved in administering the product.

As the fees charged will be crucial in determining profitability of the business, it is essential that practice owners and financial planners itemise their fees to ensure their fee-charging model is transparent, accessible and profitable.

Example: Matching the fee to the level of service

A business charges a standard $500 fee for a basic review of the client's situation one year after implementing the initial advice. This basic review involves meeting the client for half an hour, making a file note, following up with research and preparing a record of advice regarding some portfolio rebalancing.

When this time is added up, it comes to an average of 5.5hours work for the planner and their team.

If this time is divided by the fee charged, the hourly rate would be $91 per hour, which is relatively low for a professional where the fees have to cover salaries, business expenses, fixed costs, etc.

It would be more appropriate for a business to charge more for this type of service based on the time it takes.

7.3 Positioning and discussing fees with the client

Financial planners have to be able to clearly articulate their service offering, pricing model and value proposition.

A financial planner should have a system and process for positioning their fees, communicating their fees very clearly and obtaining client agreement to proceed. The first meeting should be used to gather information relating to goals and aspirations. Once these are determined, and the financial planner understands where they can add value, they are in a position to discuss fees.

When discussing fees with a client, it is important that a financial planner:

- does not procrastinate
- describes the fees with clarity
- clearly demonstrates how their service adds value
- provides context
- puts the fees in writing.

Fees and charges need to be explained to the client and the client's understanding of these must be confirmed before proceeding with delivery of service.

8 Working in the financial planning industry

Working effectively in the financial planning industry requires not only the application of relevant knowledge but also a variety of skills, such as communication, research, problem solving and self-management.

Self-management is particularly relevant when it is considered that planners must actively ensure they identify and comply with relevant legislation, and keep up-to-date with new financial product offerings. Systems and processes need to be implemented to ensure that quality of service and high standards of professional and ethical conduct are maintained.

Planners working within a financial planning practice, or as part of a financial planning network, will usually have access to a range of resources to help in meeting their compliance and regulatory obligations, and to further their professional development.

8.1 Identifying sources of information

Information and its application are imperative to the financial planning process. Topic 2 of this module discusses information gathering relevant to the needs of the client and product recommendations. This part of the topic examines information gathering in relation to compliance, regulation and the maintenance of professional competence. Its purpose is to help financial planners identify the various types and sources of information available to them in their various work situations.

Depending of their individual work situation, planners may have access to a range of internal and external sources of information. Internal sources will often comprise:

- documented policies and procedures
- databases
- templates
- forms
- access to experts on various topics.

External sources may include:

- government departments and authorities, such as the ATO and ASIC
- industry organisation and bodies, such as the AFA and FPA
- other related professionals, such as accountants and lawyers.

In some cases, the one source of information may meet a number of information needs.

For example, internal policies and procedures will probably have been developed with compliance and regulatory requirements in mind.

Apply your knowledge 6: Identifying sources of information

Take some time to consider the types of information you will need as part of your financial planning role and where you might access that information.

The table below lists categories of information common to most financial service roles. Add any others you can. Then list where you might source the information. Consider both internal and external sources.

	Sources of information	
Information type	**Internal**	**External**
Compliance and regulation		
Professional ethics		
Organisational requirements		
Standards of service		
Complaints management		
Professional development		

Note: You can access 'Suggested answers' for this activity at the end of this topic.

8.2 Applying legislation, codes of practice and guidelines

It is one thing to access information but another to use it in a meaningful way. A number of regulatory and compliance issues have been discussed in this topic. These include the responsibilities of licensees and authorised representatives, the need for a reasonable basis for advice, best-interest obligations, various legislative Acts, as well as codes of practice and industry guidelines.

As discussed above, organisational policies and procedures are nearly always developed with issues such as compliance and industry standards in mind. Financial planners following their organisation's procedures and using their organisation's templates and documentation are therefore likely to find that compliance with legal and industry requirements happens without undue consideration of the legislation. However, it is important to not simply rely on the internal policies and procedures to assume all compliance obligations are being met, and that all planners need to be aware of their legal obligations.

8.3 Accessing relevant expertise

There will be times when financial planners will need to access the professional expertise of others, either other planners with particular knowledge and skills or other professionals, such as accountants and lawyers. Issues surrounding working with other professionals are discussed later in this topic.

Compliance officer

One of the key people in any financial service organisation is the compliance officer. In fact, depending on the size of the organisation, compliance may be the responsibility of a department, a licensee or an external consultant engaged for the purpose.

Apply your knowledge 7: Identifying compliance expertise

Identify how compliance advice is provided within your organisation. It may be provided by an individual, department or outside resource. Note your findings below.

My primary contact for compliance related information and advice is:

Note: This answer will be specific to your circumstances.

Technical specialist

Within a financial planning organisation, a person or group will be responsible for providing technical guidance to planners. This may be required when clarification or guidance is required on technical and strategy matters, or to ensure that the outcomes for a particular client are maximised.

Example

Financial planner Sean has a client whom he determines will benefit from a transition-to-retirement income stream. Sean is unsure of the optimum level of salary sacrifice to recommend to maximise the benefits to the client over the long term. He approaches his technical specialist Paul and provides him with the relevant information about his client, such as age, superannuation balance, superannuation components, level of income, expenses, etc. Paul assesses the client's specific situation and determines the optimum outcomes and financial structure for the client. Sean then builds Paul's advice into his client's financial plan.

Technical specialists also deal with:

- dissemination of accurate technical information and advice
- research, preparation, review and distribution of technical bulletins and manuals
- ad hoc enquiries from planners
- analysing and reviewing legislative changes, and how they might be implemented to the best advantage of the client
- delivering presentations and client seminars
- identifying strategic opportunities that enhance the value of the advice being provided by the planner.

Apply your knowledge 8: Identifying technical expertise

Identify your primary provider of technical advice.

My primary contact for technical advice is:

Note: This answer will be specific to your circumstances.

Other sources of specialist information include:

- financial sections of newspapers
- industry journals
- subscription services, such as the Kaplan Financial Planning Guide
- internal and external presentations

8.4 Managing information

Effective information management is important to any business, particularly when the business is bound by legislation and compliance requirements.

Effectively managing client information ensures that recommendations can be justified and that there is a reasonable basis for advice. It can also serve as evidence that compliance obligations are being met within organisations that implement an audit regime.

Information management systems can vary greatly in their size and scope and will depend on the individual organisation. Client information may be stored in databases that may also serve to produce a compliant SOA, or be paper-based.

8.5 Procedures manual

What is a procedures manual?

A procedures manual is a file or document that details aspects of a business and how each situation or task is to be completed and by whom. It should standardise every aspect of the business.

The procedures manual should detail processes such as:

- client servicing
- client records
- research analysis
- selection and management of client portfolios
- marketing and business development
- accounting and financial management
- compliance.

An effective procedures manual should be a constantly evolving document while new efficiencies are developed and improved processes are put in place.

Why have a procedures manual?

The reasons for having a procedures manual are manifold. Some of the chief ones are:

- Every client enjoys a consistent service experience at each contact with the business, regardless of whether the contact is by telephone, written correspondence, or in person.
- Nothing in a process can be forgotten or missed.
- It assists management to plan the resources that will be required once growth targets are achieved.
- New staff members have a resource that shows how tasks are to be completed.

- All staff can find answers to procedural questions without having to ask others. This means fewer interruptions and allows staff to keep their flow of productivity and efficiency.
- Further tasks can be handled by junior staff.
- Key Performance Indicators can be designed and managed around activities in the procedures manual.
- The business can reduce the risk of compliance breaches because all processes are designed with compliance rules in mind.

8.6 Working with teams

Effectively communicating within teams

Having effective team communication skills is a crucial requirement for both leaders and team members alike. It allows them to establish harmonious relationships, fully understand the team's intention and share their ideas easily.

Developing effective team communication skills includes the following techniques:

- Apply basic manners, professional etiquette and keep an open mind. Always respect all fellow team members irrespective of whether you are a team member or a team leader.
- Ensure all team members understand the requirements thoroughly and are aware of the business targets. Ask questions or have discussions to clarify their understanding.
- Organise regular team meetings so that you understand the doubts and queries of every team member and provide solutions accordingly.
- Keep every team member informed with the latest business updates, procedural changes or issues.
- Define the role and responsibility of every team member clearly to avoid confusion or unnecessary rework.
- When in a meeting or discussion, let everyone have their turn to speak and make suggestions.
- Ask for feedback and suggestions from team members.
- Listen to others' feedback and opinions, and use their suggestions if they are likely to be effective. Listening plays a significant role in effective communication. Repeat others' words to acknowledge their points of view.
- Always speak clearly and slowly. Give sound and logical reasoning for your opinions. Always be polite in your behaviour and way of speaking. Using rude tone or body language may raise negative feelings among the team members.
- Clarify personal differences and misunderstandings by discussing them with the concerned person. Harbouring grudges against one another may affect the team spirit and have a direct impact on the quality of work.

- Make appropriate use of the professional etiquette for telephone greetings, writing emails, leaving voicemail messages and sending instant messages when communicating with fellow team members. Avoid using unpleasant words, expressions, disseminating sensitive and confidential information while using the above modes of communication.
- Display acknowledgement and appreciation through face-to-face interaction or electronic modes when a team member performs well. A pat on the back, a warm handshake or two lines in an appreciation mail can have a great impact on a team member's motivation.
- Avoid blaming others continuously when any work is not done. Instead, try to find out the root cause and see that it is not repeated in future. Discover if any team member is facing any problem and have a discussion with them to address the issue. Regular interaction with other team members helps to develop a healthy team spirit.

Providing effective feedback

Effective feedback needs to be specific and timely. Informal or formal feedback provides:

- an evaluation of how well the action or task was performed
- guidance as to how performance can be improved.

Feedback should be given on how individuals are contributing to the team's performance and how the team is performing.

Many people avoid giving feedback. This may happen for a number of reasons:

- Some people do not like confrontation.
- Some people just want to be liked and do not realise the value to others of constructive feedback. Most people want and will act on such feedback.
- Many people do not know how to give feedback.

Positive, negative and constructive feedback

Everyone welcomes positive feedback. People like to receive it and give it. Negative feedback, although potentially of equal or greater value, is more difficult to deal with.

Despite the resistance to negative feedback it is still more likely to be accepted and viewed as constructive and not just criticism if it:

- comes from a credible and respected source
- is accompanied by data to support the feedback
- is objective in the way it is presented
- comes with suggestions or a plan for improvement.

Feedback guidelines

It is useful to examine the feedback process in three distinct phases, as described below.

Preparing to give feedback

Plan the feedback you will give. Plan what you are going to say by reviewing documentation and preparing notes.

Giving feedback

- Ensure that your feedback contains positive aspects of the person's performance, not just the areas needing improvement.
- Ensure the feedback has a positive intent.
- Establish an appropriate environment in which to give the feedback where you both share information in a positive, objective, constructive and realistic way, with a view to the future rather than dwelling on the past.
- Be open, honest and tactful, focusing on the stated and documented requirements of the job.
- Describe specific issues and not just generalities.
- Do not make judgements about the individual's personality. Focus comments on observable, job-related skills and abilities.
- Listen actively to the person, using appropriate body language, paraphrasing and summarising key points.
- Be encouraging and end on an optimistic note with a clear action plan and action steps.

After the feedback

- Keep a record of the issues discussed during the feedback session and the agreed action plan.
- Take appropriate follow-up action and review progress against the action plan.

Addressing issues and concerns during feedback

Sometimes a feedback session will not go as well as you would wish. The person might disagree with your feedback or become upset. Good communication skills are essential in such situations. This includes using effective listening skills, and remaining calm and objective.

Sometimes people need to express their feelings and frustrations. Sometimes these feelings and frustrations may have little or nothing to do with the situation being discussed during the feedback session.

Other times, people may perceive your feedback as a comment on their personal values or professionalism. If this occurs, respond in a positive manner by refocusing on the underlying concerns.

8.7 Time and resource management

With the pace of change and the demands of work and personal life being as great as they are, a financial planner needs to use the limited time available to their best advantage. Unless they do this, they are at a significant personal and professional disadvantage.

Time management is a matter of establishing the discipline required to manage yourself.

Time management theory

Stephen Covey identified four different 'generations' of time management theory in his 1989 book *The Seven Habits of Highly Effective People*:

1. First generation — checklists
2. Second generation — diaries and calendars
3. Third generation — prioritising and goal setting
4. Fourth generation — self-management.

Many time management theories and strategies focus on the first and second generation with the assumption that being better organised, and doing things faster and smarter, will make us more time-efficient. This is partly true, but is not the whole story.

What also needs to be considered is whether time is being spent on the things that will generate the greatest benefit.

The Pareto principle

The Pareto principle, or 80/20 rule, was developed by a 19th-century economist and philosopher Vilfredo Pareto. The principle states that, based on statistical analysis, the vast proportion of results achieved by any work group or individual is achieved by a relatively small number of items of work. Hence the 80/20 rule — 80% of the results comes from 20% of the items or effort.

This idea is very useful when prioritising work and other issues and can be seen to apply in a variety of situations, for example:

- 80% of system failures arise from the same 20% of causes
- 80% of customer complaints are about 20% of the whole process
- 80% of your most constructive work is performed in 20% of your day.

Time management matrix

The matrix in Figure 2 below suggests a model to help us focus our attention on important issues based on four quadrants (I–IV), also identified by Covey.

Figure 2 Covey's time management matrix

	URGENT	NOT URGENT
IMPORTANT	**Quadrant I** ACTIVITIES Crises Pressing problems Deadline-driven projects Reactive activity **DO**	**Quadrant II** ACTIVITIES Prevention Relationship building Recognising new opportunities Building health and fitness Planning, recreation Learning new skills Proactive activity **DECIDE**
NOT IMPORTANT	**Quadrant III** ACTIVITIES Interruptions, some calls Some mail, some reports Some meetings Close pressing matters **DELEGATE**	**Quadrant IV** ACTIVITIES Trivia, busy work Some mail Some phone calls Time wasters Escapist activities (e.g. TV) **DUMP**

Source: Covey, S, 1989, The Seven Habits of Highly Effective People, Free Press, USA.

How the four quadrants affect you

Figure 3 shows the likely results of spending most of our time in any one of the quadrants of the time management matrix.

Figure 3 Results of the four quadrants of time management

Quadrant I Stress Burnout Crisis management Always 'putting out fires'	**Quadrant II** Vision, perspective Balance Discipline Control Fewer crises
Quadrant III Short-term focus Crisis management Reputation as changeable/directionless See goals and plans as worthless Feel victimised, out of control Shallow and broken relationships	**Quadrant IV** Irresponsibility Being dependent on others Seen as not credible

'Urgent' and 'important'

Two factors to consider about any activity are its urgency and importance. If a matter is urgent, it requires immediate attention. If it is important, it means that the activity has an impact on results and outcomes. If something is important, it contributes to your high-priority goals.

Because we usually need to react to urgent matters immediately, they can be a disrupting influence on our time management. Often urgent matters can be avoided with advance planning and consideration. At other times, they are unavoidable.

Important matters are not necessarily urgent and therefore you can demonstrate more initiative in their completion. By not attending to important matters in a timely and planned way, you can easily reach the undesirable situation of having to deal with an issue that is both urgent and important.

Moving to Quadrant II

To become an effective time manager, you need a system that will incorporate tools, such as diaries and management systems, to make time management easier. These tools should mesh with other systems, tools and networks within the organisation.

To move to Quadrant II, you need to address five important criteria that deal with how you manage yourself:

- Alignment
- Balance
- Quadrant II focus
- People
- Flexibility.

Alignment

There should be alignment, unity and integrity between your:

- vision and mission
- roles and goals
- priorities and plans
- desires and disciplines.

In your planning, there should be room for your personal mission and goals — you should refer to these constantly.

Balance

Your health, family, professional career and personal development must be included. True effectiveness requires balance. Life is more than just your 'work life'.

Quadrant II focus

You need to focus on prevention in preference to prioritising the particular crises you need to deal with each day. This can be done by organising on a regular basis, then adapting and prioritising as the need arises. If you can organise on a weekly basis this provides balance and context for decision making.

People and flexibility

Dealing with time leads to efficiency. Dealing with people leads to effectiveness. There are times when schedules will need to be put aside for people. You need to accept this reality to avoid feelings of guilt if a schedule is not followed.

Apply your knowledge 9: You and the time management matrix

Think of activities a financial planner will undertake on a weekly basis. Plot them on the time management matrix below.

Quadrant I	**Quadrant II**
Urgent and important tasks/issues:	Less urgent and important tasks/issues:
Quadrant III	**Quadrant IV**
Urgent and less important tasks/issues:	Less urgent and less important tasks/issues:

a. Where is most of their time spent?

b. What strategies can you think of to move yourself to Quadrant II, the ideal place in the matrix in which to spend most of your time?

Note: You can access 'Suggested answers' for this activity at the end of this topic.

'Better ways' of doing things

A financial planner should analyse the tasks they perform on daily and identify 'better ways' of doing things.

The better ways might include the following:

- Doing things in a different order
- Doing things differently
- Not doing them at all
- Looking at ways to use available resources and technology
- Looking at their priorities and managing their time effectively
- Gaining additional knowledge and skills to deal with certain tasks.

Things they should consider are:

- Efficiency: How effectively and efficiently am I doing this?
- Competency: How skilled am I to carry out this task?
- Focus and relevance: Is this something I am employed to do? Is it a core task?
- System and tools: Do I have the systems support and tools to carry out this task?

8.8 Managing your professional development

To keep ahead in the business world, a financial planner needs to be committed to a program of lifelong learning. A financial planner needs to be constantly aware of the opportunities for ongoing professional development.

Some of the ways in which a financial planner can stay in touch with trends and developments are:

- join a professional association appropriate to their area of work
- subscribe to a professional journal or newsletter
- volunteer for any strategic work committees where they might be able to contribute
- enrol in a further education program appropriate to their career plan
- undertake coaching and mentoring (as either coach or mentor).

A personal development action plan will assist a financial planner to build a plan for future professional development and:

- assess their current situation
- identify future goals
- determine how to achieve those goals, both in the short term and the long term.

Continuing professional development

Financial planners need to be constantly aware of the opportunities for ongoing professional development. It is a requirement of RG146 that financial planners maintain and update their industry knowledge and skills continuously, as well as develop new knowledge and skills.

There are a number of different professional organisations, such as the FPA, that have different continuing professional development (CPD) requirements. A financial planner who is a member of any of these organisations has an obligation to ensure they meet these requirements.

Apply your knowledge 10: My ongoing professional development plan

Develop a plan to manage your professional development over the next, say, six to 12 months. You need to consider:

- your current situation
- where you want to be in the future in terms of your professional career and skills and the knowledge you will need to keep up-to-date
- what you need to do to achieve your work goals and to keep up-to-date.

Document your plan below.

Factors to consider when preparing your development plan	Notes for my development plan
1. Assess your current work situation Examine sources of information about the requirements of your current position. For example: • Key performance indicators (KPIs) • Objectives • General work competencies • Job description	
2. Current and future skills and knowledge needs Consider your future work goals and the skills and knowledge you will need to achieve them and to keep up-to-date in your current role. What further education and training will you need to achieve your future goals? What skills and knowledge will you need to keep up-to-date in your current role?	
3. Training and development opportunities Now that you have identified the development goals and needs, consider how you might meet those needs. For example: • further training courses you might undertake • workplace learning opportunities, including making use of a workplace coach or mentor, and work-based learning opportunities • external professional development opportunities, such as workshops, seminars and conferences • participating in professional networking opportunities • joining a professional association or industry body.	

Note: This answer will be specific to your circumstances.

9 Working with other professionals

There are many advice areas where it is beneficial for a financial planner to work closely with other professionals. Professional referral relationships allow planners to offer their clients the full suite of financial services. If possible, planners should be able to recommend accounting or legal professionals to clients when required, as having referral relationships in place will assist in building good relationships and trust with clients.

Client retention levels may be higher for planners with referral relationships in place because a wider range of client needs can be addressed and planners spend less time and money on marketing. Some clients feel especially valued because their adviser is looking after them in many areas of their lives. This will build a trusted relationship and increased client loyalty. This loyalty, along with numerous contacts, means they are more likely to stay with you when things get tough.

Working with other professionals helps to ensure the best outcome for each client is achieved. In working together, it is likely that one party will have a longstanding relationship with the client, and therefore a wealth of knowledge to draw upon that can help determine the best solution for the client. Other benefits include a larger and more constant source of referrals. Planners may also find that when business is referred to them, it is easier to write as they can draw upon the existing relationship.

9.1 Building referral relationships

Many commentators have noted an increase in the number of financial planning practices that have implemented good professional relationships.

How do practices find these relationships?

A starting point is for a financial planner to examine their client base and ask:

- Which other professionals are existing clients currently using?
- Who are their accountants and solicitors?
- Are they in the same geographic area?
- Are their businesses similar to the financial planner's business?

It is important to ensure a service and cultural match between the businesses because the relationship is all about matching the needs and interests of the various parties.

Common referral relationships

While there is a great number of professional relationships planners can pursue, there are two that are an obvious fit: solicitors and accountants. Stockbrokers and specialist life insurance advisers may also appreciate the opportunity to build relationships with planners. Planners could also consider approaching human resources managers at various companies, sporting clubs or Rotary associations for more opportunities.

Accountants

On their own, accountants may lean towards providing tax-based strategies for clients because they are unable to advise on investments. With a financial planner on board, the accountant and client may be able to take advantage of other investment planning opportunities. Accountants can assist planners' clients from a tax perspective when required. Accountants who are involved in the establishment of SMSFs, but who are not licensed to provide financial advice, are also potential targets.

Accountants are likely to refer high-net-worth individuals with investment needs. Accountants may also be servicing an ageing client base, with many looking towards retirement. These clients will also need to be referred to a financial planner.

Solicitors

Solicitors who can structure estates and wills, but who cannot provide financial advice, are another possible fit. Many in the legal professional prefer to specialise, for example, on commercial or family law. Solicitors are likely to refer clients who come across a financial need, for example, a property settlement in a family law matter.

Formalities when developing referral relationships

The first contact may be a result of preparing or implementing a financial plan for a mutual client, or alternatively seeking other professionals who may be interested in developing referral relationships.

In most businesses, relationships are of high importance, and most professionals will be unlikely to risk their client relationships without some checks. They will want to see that the adviser is professional and ethical, and will be committed to their clients. Referrers will need to know they can trust the other party with their clients.

Gaining an understanding of each other's business is crucial in ensuring the relationship is successful. From a client services point of view, it may help to create a checklist of your services to give to your referral partner, reminding them of the services you offer. The checklist will enable the client services person, or even the accountant or solicitor, to have a trigger point in front of them, so they know exactly when to refer a client to a financial planner. If you specialise in an area, make sure they know about it.

It will generally be necessary to document the terms of the relationship in, for example, a letter of understanding that covers matters such as:

- how often you will give each other referrals
- whether or not money will change hands
- which recommended list the adviser will use
- professional indemnity insurance.

Complications may arise where one party has unrealistic expectations, such as about how many referrals they will receive. Having the letter of understanding or similar document to which you can refer if any conflicts arise will help defuse a problem.

Some licensees may place restrictions on advisers who are looking to build referral relationships. This will vary between licensees, so it is necessary to check with the compliance team. Planners must ensure the client, within their financial needs analysis, allows them to make contact with other professionals that may have an impact on the client's financial plan.

Similarly, any legal requirements surrounding privacy concerns must be addressed in the financial needs analysis.

Maintaining referral relationships

When building referral relationships, be patient. Do not try to make everything happen immediately; look for long-term solutions instead. Remember that these relationships take time to develop and rushing them unnecessarily may cause problems. It could take anywhere between three months to three years to establish and build a referral network.

In particular, take time to get to know the referral partners' businesses, their client base, how they operate and what they seek from a referral relationship. A key to keeping a referral relationship profitable and healthy is to maintain regular communication between parties. Keeping up the ongoing education to referral partners about your services and the need for financial planning is also important.

Payments for referrals

Many individual licensee requirements have specific requirements about payments for referrals. There is no legal barrier to paying for referrals. There is, however, a requirement to disclose to the client the payments made to the referrer. Provided the payment is disclosed, there is no specific requirement as to how much the payment should be or how it should be made; however, licensees may set their own standards about this. Refer also to the rules and guidelines of industry bodies and associations of which the referrer and adviser may be a member.

9.2 Controlling liability risk

All types of professional advisers can be held legally liable to their clients for breach of their obligations when rendering negligent advice that causes damage.

Advisers need to exercise reasonable care when ascertaining the facts and the client's instructions before formulating and implementing a plan. Recently, there have been some decisions where accountants and solicitors, through deficient advice and professional work, were held to be concurrently liable for the client's loss.

The following loss prevention procedures can assist in reducing the risk of liability to a client:

- A professional adviser should only provide advice in those areas in which they are competent.
- Adequate and detailed instructions should be obtained from the client before any party providing advice.
- An SOA should be issued outlining the advice that has been given to a client and reasons why it is suitable for them. It should also outline how much the adviser is paid and any interests, associations or relationships that could influence their advice.
- Instructions and telephone discussions should be diarised and filed.
- Significant matters should be confirmed in writing to the client.
- Matters should only be delegated to persons competent in the particular area.
- All employed staff should be supervised adequately.
- There should be adequate in-house training and involvement in continuing education in the areas relevant to the work of the professional adviser.
- The financial planner should maintain adequate professional liability insurance.

Key points

- Financial planning is the process of developing strategies to help clients with different needs manage their financial affairs so they can build wealth, enjoy life and achieve financial security.
- There are usually five main 'financial stages of life'. Each stage encompasses different financial and emotional concerns.
- The regulatory regime under the Corporations Act provides a single licensing framework, the AFS licence. This ensures uniform disclosure obligations for all financial products provided to retail clients, and minimum standards of conduct for financial services providers dealing with retail clients.
- The Corporations Act also establishes competency standards for the education and training of representatives detailed in a special ASIC Regulatory Guide RG 146.
- A person or entity provides financial services when they deal, make a market, or provide advice about a financial product. This also includes arranging for a financial product to be entered into, operating a registered managed investment scheme, and/or providing a custodial or depository service.
- A financial planner can provide holistic advice scaled advice or no advice.
- Disclosure documents and warnings must be provided to clients at various stages of the financial planning process.
- The FOFA reforms resulted in some important changes to the regulation of financial advice. These changes include 'opt-in' requirements for ongoing advice, a 'best interests' obligation for all advice, and a ban on payment and receipt of conflicted remuneration. These reforms have been mandatory since 1 July 2013.
- Advisers providing personal financial product advice must act in the best interests of the client, provide an FSG to clients in a timely manner, provide the client with appropriate advice, give clients an SOA (with some exceptions), warn the client if their advice is based on incomplete or inaccurate client information, prioritise the interest of the client, and provide a PDS to clients before they commit to the purchase of a financial product.
- Those advisers who provide general advice only have lower level of requirements placed on them.
- With the exception of commissions received on the sale of certain insurance products, the FOFA reforms have banned the receipt of conflicted remuneration payments, such as commissions on any advice to new clients from 1 July 2013.
- The Corporations Act and the ASIC Act 2001(Cth) prohibit providers of financial product advice from making false or misleading statements, undertaking misleading or deceptive conduct, conducting fraudulent inducements to deal, and/or engaging in unconscionable conduct.
- Planners are expected to observe high standards of honesty and integrity in conducting their financial planning business and in the provision of financial planning services. They must obey all laws and regulations, and avoid any conduct or activity unbecoming of a financial planner.

- The global financial crisis and a call for greater transparency of payments to financial planners has led to increasing support for the fee-for-service approach over the commission approach.
- In a financial planning practice, teamwork is enhanced by effective communication, feedback, time and resource management, ongoing professional development and strong networks with other professionals in the practice.

Review questions

You can access the ‘Review questions’ for this topic at KapLearn.

Suggested answers

Apply your knowledge 1: Financial stages of life

Season of life	General characteristics	Concerns, goals, objectives
Employed and single	• may have disposable income/savings capacity • usually no dependant commitments • beginning to accumulate material possessions • beginning to accumulate consumer debt • may be beginning to accumulate investment assets	• budgeting • managing consumer debt • begin to build investment assets • insurance needs — health, general and income protection • remuneration planning • need for will, enduring power of attorney • superannuation
Partnered with no children	• single or double income • may be heavily debt laden (mortgage, car) • may have some investment assets • may have savings capacity	• budgeting • debt reduction(e.g. repay mortgage) • continue to accumulate assets • insurance needs: health, general, income protection, mortgage and life • remuneration planning • need for will, enduring power of attorney • superannuation
Partnered with children	• significant family financial commitments • increased living costs due to children and education expenses • decrease in disposable income • debt (personal, investment and business)	• budgeting • debt reduction • continue to accumulate assets • increased liquidity needs • increased concern for security in retirement • insurance needs: health, general, income protection, mortgage, life and business • remuneration planning • need for will, enduring power of attorney • superannuation
Partnered, post-children (the 'empty nest')	• pre-retirees (single or married) • children grown up and left home • focused on security in retirement and retirement plans • usually reduced or no debt • significant level of disposable income	• budgeting • lifestyle requirements in retirement • continue to accumulate assets • increased liquidity needs • insurance needs: health, general, business • need for will, enduring power of attorney • superannuation
Retired	• single or married • no longer earning an income through employment • focused on maintaining lifestyle requirements in retirement using assets accumulated during working life	• budgeting • lifestyle requirements in retirement • conserve wealth/assets • insurance needs: health, general • need for will, enduring power of attorney, testamentary trusts • Centrelink entitlements • retirement income • superannuation benefit payments

Apply your knowledge 2: Which scope of advice is applicable?

Scenario 1: no advice

Scenario 2: holistic advice

Scenario 3: limited scope (scaled) advice (cannot advise on foreign exchange).

Apply your knowledge 3: Financial planners and duty of care

Mr Lee has failed to provide his clients with accurate and complete advice. He has not adequately communicated with his clients to ascertain their personal circumstances and objectives. This could be considered unethical behaviour.

The planner has also not been consistent in providing the required product advice and disclosure documentation. He has engaged in misleading and deceptive conduct and fraudulent inducements to deal.

Overall, he has exposed his clients to a significant level of risk.

Apply your knowledge 4: Monitoring compliance

This answer will be specific to your circumstances.

Apply your knowledge 5: Fee-for-service model

A Plus Planners should implement a hybrid fee-for-service model, allowing clients with basic advice requirements to pay small amounts for simple advice relating to their current situation. For instance, a client could pay $1000 for a basic plan, followed by $500 at a later date for advice on co-contributions. As their advice needs changed, they can increase their fees in accordance with the growing complexity of the advice. Electing to stagger the advice and the fees charged would allow clients to decide how quickly to move through the creation of their financial plan and receive advice at a pace commensurate with their budget.

Apply your knowledge 6: Identifying sources of information

The answers below are suggestions as to where information could be found. The list is not exhaustive and may vary in each organisation.

	Sources of information	
Information type	**Internal**	**External**
Compliance and regulation	• Usually business or practice standards, internal compliance policies.	• ASIC regulatory guides • APRA (supervision and policy information) • ATO • Legislation including the Corporations Act
Professional ethics	• Organisational values, mission, etc. • Possibly, company ethics.	• Associations such AFA, FPA, ACA, etc. all have Codes of Ethics • St James Ethics Centre publications
Organisational requirements	• Business practice guidelines, or planner rules. • Approved Product Lists (APLs).	• ASIC • APRA • ATO
Standards of service	• Value proposition • Internal business process and requirements documents	• Professional bodies: AFA, FPA, etc. • Corporations Act • ASIC RGs
Complaints management	• Internal complaints handling procedure • FSG	• ASIC • Financial Ombudsman Service (FOS) • Credit Ombudsman Service (COS) • Superannuation Complaints Tribunal (SCT)
Professional development	• Internal training: seminars, online training, technical articles or bulletins • CPD policy/training plans	• Education providers: private, universities, etc. • Industry publications and journals • Newspapers • Seminars

Apply your knowledge 7: Identifying compliance expertise

This answer will be specific to your circumstances.

Apply your knowledge 8: Identifying technical expertise

This answer will be specific to your circumstances.

Apply your knowledge 9: You and the time management matrix

Quadrant I	Quadrant II
Urgent and important tasks/issues: • client meetings • paraplanning	Less urgent and important tasks/issues: • marketing campaigns • creating file notes • fact-find data entry
Quadrant III	**Quadrant IV**
Urgent and less important tasks/issues: • contacting prospective clients • writing articles for practice newsletter to meet printing deadlines	Less urgent and less important tasks/issues: • IT issues • product research

a. Clients and compliance; meeting licensee expectations

b. Move what you can to Quadrant II to remove urgency

- Delegate where possible
- Don't over commit yourself
- Be realistic
- Improve systems, processes and level of organisation
- Prioritise realistically.

Apply your knowledge 10: My ongoing professional development plan

This answer will be specific to your circumstances.