






NAVIGATING THE ETHICAL PATH IN THE NEW ADVICE WORLD

Craig Day, Executive Manager, Technical Services,
Colonial First State,
Nidal Danoun, Principal Director, Prosperity Financial
Services, and
Tracy Wilcox, Associate Professor, UNSW Business
School

#NC2020

Disclaimer



This presentation is for general information only. Every effort has been made to ensure that it is accurate, however it is not intended to be a complete description of the matters described. The presentation has been prepared without taking into account any personal objectives, financial situation or needs. It does not contain and is not to be taken as containing any securities advice or securities recommendation. Furthermore, it is not intended that it be relied on by recipients for the purpose of making investment decisions and is not a replacement of the requirement for individual research or professional advice. Actions, reactions and interpretations cannot be relied upon.

The presentation is purely the opinion of the presenter on the day and this presentation is record of that opinion. This presentation was accompanied by an oral presentation, and is not a complete record of the discussion held. No part of this presentation should be used elsewhere without prior consent from the author.

© 2020 SMSF Association Ltd #NC2020

Craig Day

Executive Manager, Technical Services, Colonial First State





Craig is the Executive Manager of Colonial First State's highly regarded technical services team, FirstTech, and has over 20 years' experience in the financial services industry.

In his role Craig is responsible for leading a team that provides specialist technical support to financial advisers and to Colonial First State's superannuation and platform businesses. He also acts as a media spokesman for Colonial First State on superannuation and retirement planning issues and represents Colonial First State on a number of industry association committees. Craig is a sought after presenter at industry conferences and professional development events and is actively involved in providing ongoing specialist adviser education. Craig holds a Bachelor of Science, is completing his Masters of Taxation and is an SMSF Specialist Advisor.

Nidal Danoun

Principal Director, Prosperity Financial Services



Nidal Danoun, is the Principal Director of Prosperity Financial Services (PFS Consultancy), a practice he founded in 2002. Nidal provides training and advice to organisations, businesses and professionals in the areas of ethics and professional standards, financial planning advice assessment and remediation, financial services regulation compliance, and practice management. Nidal regularly works and consults with ASIC, large financial institutions, and large accounting firms. Nidal is also an adjunct lecturer at the University of NSW in the areas of financial planning advice, ethics and professional standards and estate planning. Nidal holds a Master of Commerce; he is a Chartered Accountant, a Fellow CPA, a Certified Financial Planner, Chartered Tax Adviser and a member of the CFA Institute and the SMSF Association. Nidal has over 20 years experience in the financial services industry.

Tracy Wilcox

Associate Professor, UNSW Business School



Craig is the Executive Manager of Colonial First State's highly regarded technical services team, FirstTech, and has over 20 years' experience in the financial services industry. In his role Craig is responsible for leading a team that provides specialist technical support to financial advisers and to Colonial First State's superannuation and platform businesses. He also acts as a media spokesman for Colonial First State on superannuation and retirement planning issues and represents Colonial First State on a number of industry association committees. Craig is a sought after presenter at industry conferences and professional development events and is actively involved in providing ongoing specialist adviser education. Craig holds a Bachelor of Science, is completing his Masters of Taxation and is an SMSF Specialist Advisor.



CASE STUDIES



#NC2020

Case study one

Kate



Situation

Separated from William.
Family home to be sold under property settlement.
Found perfect new home but can't afford until money from settlement comes through in 6-12 months
Seeking advice on ability of her SMSF to:

1. Purchase the property and lease to unrelated party for 12 months
2. After 12 months sell the property to herself for market value

Concerns

Each step individually permitted
Potential breach of sole purpose?
- Trustee's end in mind?
- Invest strategy / time-frame

What do you do?

- A. Ignore sole purpose and provide advice
- B. Decline to provide advice
- C. Break advice up:
 - Initial advice address step 1 only
 - Future advice address step 3



Case study two

Andrew



Situation

Andrew (60) has an SMSF with an account balance of \$1.2M (Preserved)
Desperately needs \$225k and has come to you seeking assistance on how he can get it out of his fund.

Concerns

Strategy fails the Dennis Denuto test and is an early access scheme
But client is desperately needs the money

What do you do?

SIS Regulations...

Allows a member to start a Transition To Retirement (TTR) pension from preservation age
TTR pension rules require member to receive income between:
- Min. (4%) - pro-rata in Year 1, and
- Max. 10% - no pro-rata applies in Year 1
Members also permitted to commute TTR pensions and transfer back to accumulation phase
Strategy: Start and stop a TTR twice in quick succession and take 10% of start value as pension payment each time (access \$228k)



Case study three

Harry



Situation

Harry (40) has an SMSF and wants to acquire and develop some vacant land within the fund.
Two potential strategies to achieve his objectives:
- **Option 1:** Relatively simple advice but requires large NCC which Harry not keen on
- **Option 2:** Complex advice involving 13 22C trust which would provide a better outcome

Concerns

Your licensee requires all complex advice to be reviewed for 'best interests'
From experience you know this will take months and there is no guarantee it will be approved
You are worried if advice is declined you will look bad in front of the client and their accountant and won't be able to recover your costs.

What do you do?

- A. Recommend Option 1 and Ignore Option 2
- B. Tell the client you can't help them



Ethical frameworks and theories


Framework

Purpose – why? Values – what? Principles – how?

Theory

<p>Consequentialism</p> <p>Outcome dependent</p> <p>Utilitarianism:</p> <ul style="list-style-type: none"> - maximising happiness, justice (minimise pain) - Greatest good for the greater number of people <p>...(Bentham, Mill)</p>	<p>Deontology</p> <p><i>Deon</i> or duty</p> <p>Fulfilling duties, meeting obligations, following a set of rules or principles</p> <p>...(Kant)</p>	<p>Virtue Ethics</p> <p>End goal is human flourishing</p> <p>Focus on character – what our actions tell us about who we are</p> <p>What virtues do we aspire to have?</p> <p>...(Aristotle)</p>
--	--	--

Need to consider the usefulness & limitations of each of the theories when dealing with ethical dilemmas



Behavioural Biases


Conscious and unconscious Bias

Recognising and dealing with biases:

Rationalisation

Partisanship

Take the time to question, analyse and reflect





CASE STUDIES – ETHICAL PERSPECTIVE

#NC2020



Case study one

Kate



Situation

Separated from William.
Family home to be sold under property settlement.
Found perfect new home but can't afford until money from settlement comes through in 6-12 months
Seeking advice on ability of her SMSF to:

1. Purchase the property and lease to unrelated party for 12 months
2. After 12 months sell the property to herself for market value

Concerns

Each step individually permitted
Potential breach of sole purpose?
- Trustee's end in mind?
- Invest strategy / time-frame

What do you do?

- A. Ignore sole purpose and provide advice
- B. Decline to provide advice
- C. Break advice up:
 - Initial advice address step 1 only
 - Future advice address step 3



Case study two

Andrew



Situation

Andrew (60) has an SMSF with an account balance of \$1.2M (Preserved)
Desperately needs \$225k and has come to you seeking assistance on how he can get it out of his fund.

Concerns

Strategy fails the Dennis Denuto test and is an early access scheme
But client is desperately needs the money

What do you do?

SIS Regulations...

Allows a member to start a Transition To Retirement (TTR) pension from preservation age
TTR pension rules require member to receive income between:
- Min. (4%) - pro-rata in Year 1, and
- Max. 10% - no pro-rata applies in Year 1
Members also permitted to commute TTR pensions and transfer back to accumulation phase
Strategy: Start and stop a TTR twice in quick succession and take 10% of start value as pension payment each time (access \$228k)



Case study three

Harry



Situation

Harry (40) has an SMSF and wants to acquire and develop some vacant land within the fund.
Two potential strategies to achieve his objectives:
- **Option 1:** Relatively simple advice but requires large NCC which Harry not keen on
- **Option 2:** Complex advice involving 13 22C trust which would provide a better outcome

Concerns

Your licensee requires all complex advice to be reviewed for 'best interests'
From experience you know this will take months and there is no guarantee it will be approved
You are worried if advice is declined you will look bad in front of the client and their accountant and won't be able to recover your costs.

What do you do?

- A. Recommend Option 1 and Ignore Option 2
- B. Tell the client you can't help them







FASEA CODE OF ETHICS


#NC2020

FASEA Code of Ethics

The Values

Always act in a way that demonstrates, realises and promotes the following values:

1. Trustworthiness
2. Competence
3. Honesty
4. Fairness
5. Diligence



FASEA Code of Ethics

The Standards


Ethical Behaviour → Standards 1-3

Client Care → Standards 4 -6

Quality Process → Standards 7-9

Professional Commitment → Standards 10-12

<https://www.legislation.gov.au/Details/F2019L00117/01cc9bcd-2a7c-45d2-a4c5-4bc44669b051>






THANKS



#NC2020

Disclaimers



© 2020 SMSF Association Ltd

This presentation is for general information only. Every effort has been made to ensure that it is accurate, however it is not intended to be a complete description of the matters described. The presentation has been prepared without taking into account any personal objectives, financial situation or needs. It does not contain and is not to be taken as containing any securities advice or securities recommendation. Furthermore, it is not intended that it be relied on by recipients for the purpose of making investment decisions and is not a replacement of the requirement for individual research or professional advice. Actions, reactions and interpretations cannot be relied upon.

The presentation is purely the opinion of the presenter on the day and this presentation is a record of that opinion. This presentation was accompanied by an oral presentation, and is not a complete record of the discussion held. No part of this presentation should be used elsewhere without prior consent from the author.

This presentation is given by a representative of Colonial First State Investments Limited ABN 98 002 348 352, AFSL licence 232468 (Colonial First State). It is based on its understanding of current regulatory requirements and laws as at the presentation date. As these laws are subject to change you should talk to a professional adviser for the most up-to-date information. The information is for adviser use only.

You should form your own opinion and take your own legal, taxation and financial advice on the application of the information to your business. While all care has been taken in the preparation of this document (using sources believed to be reliable and accurate), to the maximum extent permitted by law, no person including Colonial First State or any member of the Commonwealth Bank group of companies, accepts responsibility for any loss suffered by any person arising from reliance on this information.

This document does not take into account any person's individual objectives, financial situation or needs.

Colonial First State is a wholly owned subsidiary of Commonwealth Bank of Australia ABN 45 312 121 124 (the Bank). This presentation cannot be used or copied in whole or part without our express written consent.

This presentation is for adviser training purposes only and must not be made available to any client.

© Colonial First State Investments Limited 2020.

#NC2020
