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Advisers should take such independent legal advice as they consider appropriate, regarding their obligations as licensed immigration advisers.

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Purpose

The Immigration Advisers Authority (the Authority) has developed this *Ethics Toolkit* to assist licensed immigration advisers (advisers) to:

- understand the distinction between the personal values and ethics that they hold as individuals, and the professional ethics that they must adhere to as members of the licensed immigration advice profession
- identify and resolve professional ethical issues.

Advisers may encounter professional ethical issues in:

- their day-to-day business interactions
- complying with their professional responsibilities in accordance with the law and the *Licensed Immigration Advisers Code of Conduct* (the Code).

By elaborating on the professional responsibilities of advisers, the Authority seeks to:

- **foster transparency, consistency and professionalism**
- **encourage meaningful discussion that will contribute positively to the on-going development of the immigration advice profession**
- **contribute to better overall outcomes for the New Zealand immigration system**
- **encourage the sharing of information to enhance the continuing professional development of advisers.**

The importance of ethics



Each day advisers are called upon to make decisions about how they should act in a particular situation. Every time you ask yourself ‘what should I do?’ or ‘how should I act?’ or ‘is this right?’ you are making an ethical decision. Examples include decisions as to:

- who your client is, and what duties you owe them
- whether you should take on a client
- whether you should tell a third party about information you have received about your client
- whether you should stop acting for a client
- whether you should lodge a particular document when you are unsure about its authenticity
- whether you should complain to the Authority about the actions of another adviser.

All of these questions contain an ethical dimension, and how you answer them will have ramifications both for your clients, and for your reputation as a professional.

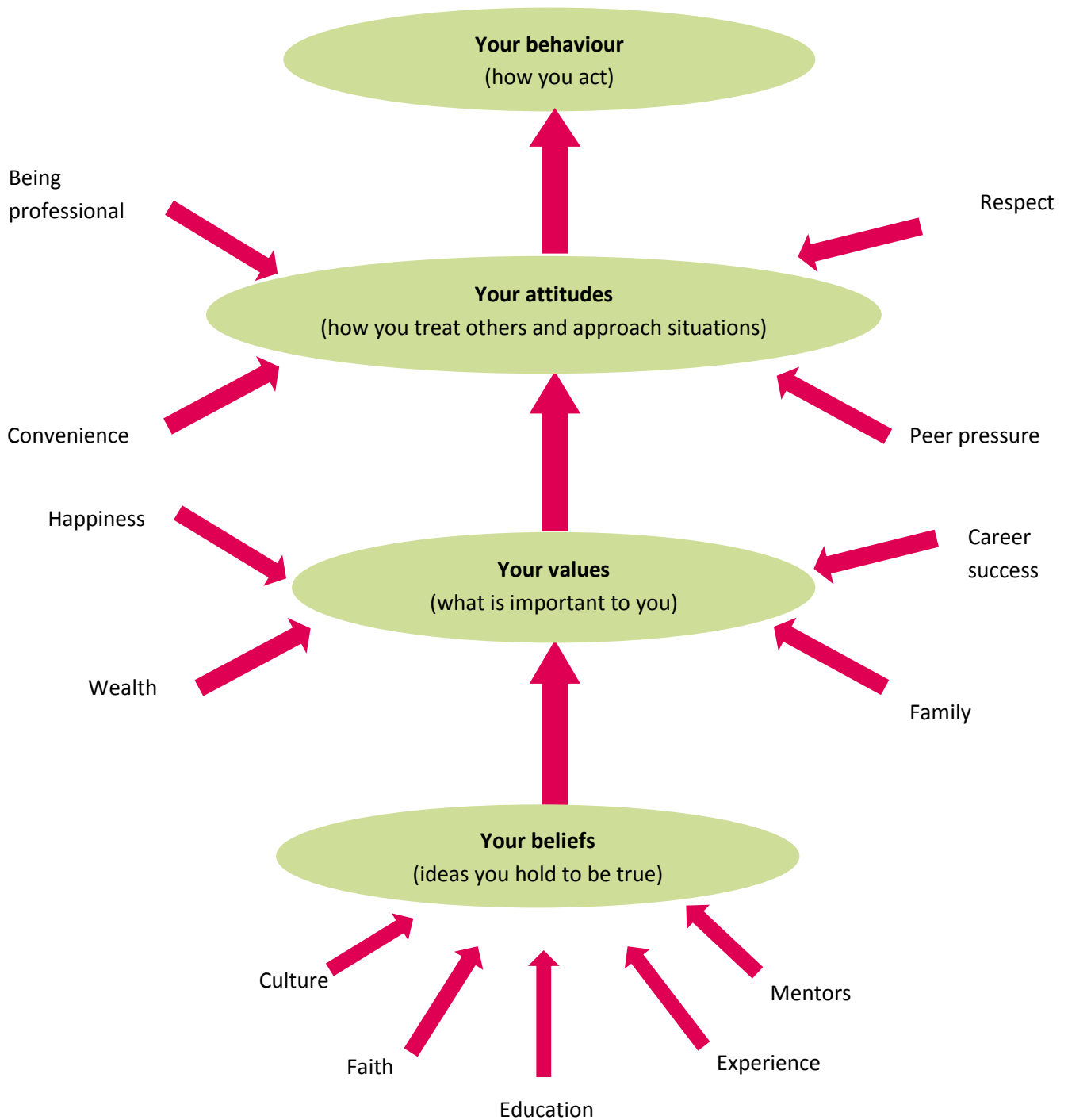
Your clients place a great deal of trust in you. They rely on you to act competently and to use your best endeavours to help them achieve the result they want. Yet they also expect that you will act ethically: that you will be honest and fair and act with integrity in your dealings with them.

Others within the New Zealand immigration system, including the Authority, Immigration New Zealand, the Immigration and Protection Tribunal, the Immigration Advisers Complaints and Disciplinary Tribunal, the courts, other government bodies, and your adviser colleagues, are also entitled to expect that you will treat them with respect and that they can rely on your integrity as a professional.

The Australian Office of the Migration Agents Registration Authority has developed online interactive modules called *Ethics Bytes* available at <https://www.mara.gov.au/news-and-publications/publications/ethics-bytes/>.

Personal beliefs, values, attitudes and behaviour

The diagram below illustrates the influences on us that result in our behaviour and whether that resulting behaviour is ethical. The diagram first outlines the sources of our beliefs. It then shows the relationship between the beliefs and values to our attitudes and our resulting behaviour.



What is a belief?

A belief is an idea that a person holds as being true.

A person can base a belief upon certainties (e.g. mathematical principles), probabilities or matters of faith.

A belief can come from different sources, including:

- a person's own experiences or experiments
- the acceptance of cultural and societal norms (e.g. religion)
- what other people say (e.g. education or mentoring).



A potential belief sits with the person until they accept it as truth, and adopt it as part of their individual belief system.

Each person evaluates and seeks sound reasons or evidence for these potential beliefs in their own way.

Once a person accepts a belief as a truth they are willing to defend, it can be said to form part of their belief system.

What is a personal value?

Values are stable long-lasting beliefs about what is important to a person. They become standards by which people order their lives and make their choices.

A belief will develop into a value when the person's commitment to it grows and they see it as being important.

It is possible to categorise beliefs into different types of values – examples include values that relate to happiness, wealth, career success or family.

A person must be able to articulate their values in order to make clear, rational, responsible and consistent decisions.



What is an attitude?

Attitudes are the mental dispositions people have towards others and the current circumstances before making decisions that result in behaviour. People primarily form their attitudes from underlying values and beliefs.

However, factors which may not have been internalised as beliefs and values can still influence a person's attitudes at the point of decision-making. Typical influences include the desire to please, political correctness, convenience, peer pressure, and psychological stressors.

The potential for these influences to sway attitudes will be greater if the person has not clearly thought through their beliefs and values. This process includes considering the principles by which they might reconcile or prioritise competing values.

A lack of self-awareness or critical insight, or the presence of ambivalence or uncertainty about values, can lead to a less rational attitude to choices, and ultimately to undesirable behaviour.

Personal ethics



As with beliefs and values, personal ethics can differ widely from person to person.

As mentioned already, beliefs and values often motivate a person by defining what they see as being important. In turn, they influence a person's attitudes, and how they behave.

Ethical expectations constrain a person's behaviour by providing expectations on how to behave. In other words, personal ethics are standards by which a person judges behaviour as being 'right' or 'wrong'.

Ethical expectations often take the form of principles such as:

- concern for the well-being of others
- respect for others
- trustworthiness and honesty
- compliance with the law
- preventing harm to others.



The difference between personal and professional ethics

Personal ethics refers to the ethics that a person identifies with in respect to people and situations that they deal with in everyday life.

Professional ethics refers to the ethics that a person must adhere to in respect of their interactions and business dealings in their professional life.

In some cases, personal and professional ethics may clash and cause a moral conflict. For example:

- A police officer may personally believe that a law that he is required to enforce is wrong. However, under the Code of Conduct for the New Zealand Police, he is required to obey all lawful and reasonable instructions to enforce that law unless there is good and sufficient cause to do otherwise.
- A doctor may not personally believe that the course of medical treatment chosen by a patient is the right one. However, under the Code of Ethics for the New Zealand Medical Association, she must respect the rights, autonomy and freedom of choice of the patient.

More often than not people at work resolve moral conflicts by drawing a line between their professional and individual roles.

In other words, they separate their work from their personal life and follow their professional code of conduct.



Professional ethics and codes of conduct

Professional ethics are principles that govern the behaviour of a person or group in a business environment. Like values, professional ethics provide rules on how a person should act towards other people and institutions in such an environment.



Unlike values, professional ethics are often codified as a set of rules, which a particular group of people use.

This means that all those in a particular group will use the same professional ethics, even though their values may be unique to each person.

The Code is an example of a codified set of professional ethics for those who choose to enter the immigration advice profession.

Ethical principles

Ethical principles underpin all professional codes of conduct. Ethical principles may differ depending on the profession; for example, professional ethics that relate to medical practitioners will differ from those that relate to lawyers or real estate agents.

However, there are some universal ethical principles that apply across all professions, including:

- honesty
- trustworthiness
- loyalty
- respect for others
- adherence to the law
- doing good and avoiding harm to others
- accountability.

Codes of conduct

Professional codes of conduct draw on these professional ethical principles as the basis for prescribing required standards of behaviour for members of a profession. They also seek to set out the expectations that the profession and society have of its members.

The intention of codes of conduct is to provide guidelines for the minimum standard of appropriate behaviour in a professional context. Codes of conduct sit alongside the general law of the land and the personal values of members of the profession.



The primary value of a professional code of conduct is not as a checklist for disciplining non-conforming members, although breaches of a code of conduct usually do carry a professional disciplinary consequence.

Rather, its primary value is to act as a prompt sheet for the promotion of ethical decision-making by members of that profession.

Professional codes of conduct provide benefits to:

- the public, as they build confidence in the profession's trustworthiness
- clients, as they provide greater transparency and certainty about how their affairs will be handled
- members of the profession, as they provide a supporting framework for resisting pressure to act inappropriately, and for making acceptable decisions in what may be 'grey areas'
- the profession as a whole, as they provide a common understanding of acceptable practice which builds collegiality and allows for fairer disciplinary procedures
- others dealing with the profession, as the profession will be seen as more reliable and easier to deal with.

Other contributors to professional ethics

Fiduciary duties

When an adviser agrees to assist a client, they agree to take on a level of responsibility for that person and their immigration matter. The client becomes dependent on the adviser in relation to that assistance. This is a fiduciary relationship between the fiduciary (the adviser) and a principal (the client). Even without a Code this fiduciary relationship means the adviser has certain obligations to their client.

Contractual obligations

When an adviser enters into a contract (or written agreement) with a client this creates legally binding obligations to perform the terms of the contract in a particular way. This includes a duty to act with diligence, due care and skill, and also implies obligations such as confidentiality and honesty, even if they are not specifically set out in the contract.

Many ethical issues are likely to stem from advisers' relationships with clients. Most of these can be overcome by having clear terms in a written agreement about how certain matters will be dealt with, such as the sharing of confidential information, the use of interpreters, refunds and invoicing. More information on written agreements can be found in the ***Code of Conduct Toolkit***.

Other laws

As well as New Zealand immigration legislation, advisers should also be aware of other relevant laws that seek to regulate how service providers must behave. In New Zealand this could include the *Consumer Guarantees Act 1993*. Advisers operating outside of New Zealand should make sure that they are familiar with any equivalent legislation that governs the behaviour of service providers there.

Solving ethical problems

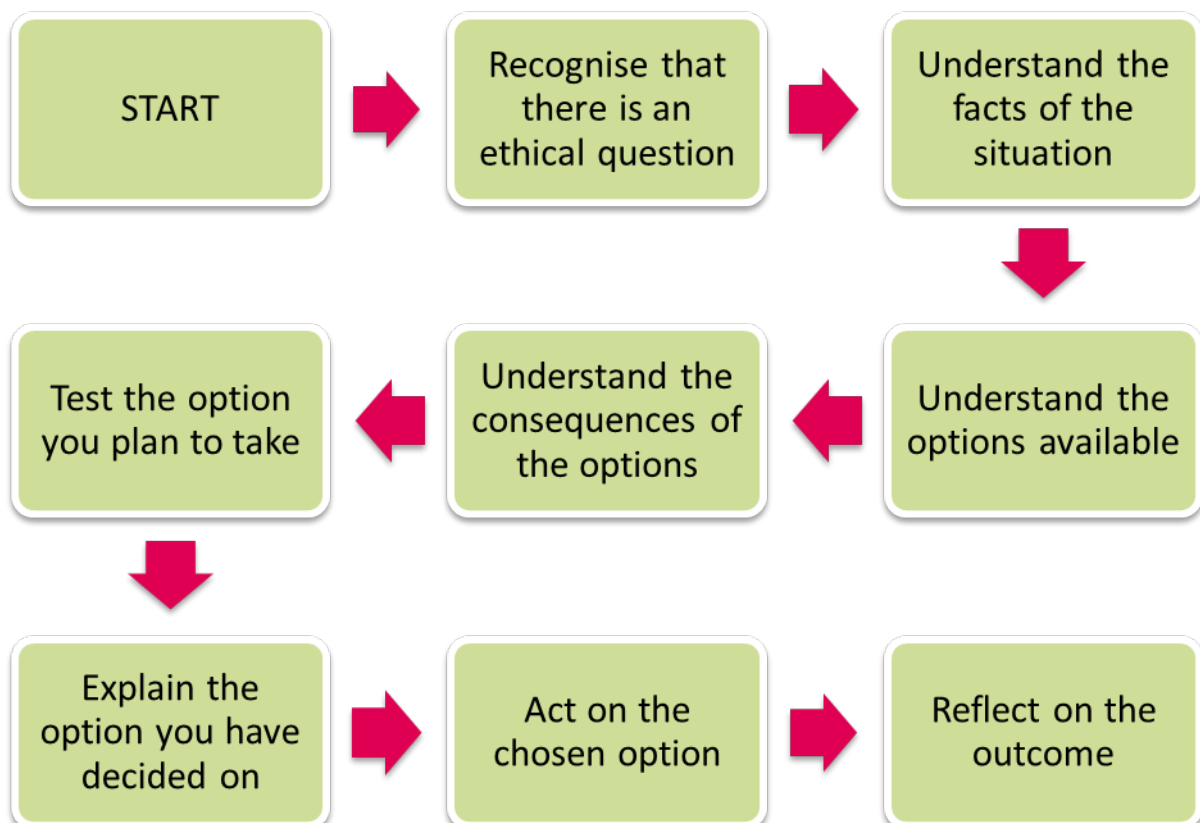
When faced with an ethical issue, it is important to remember that there is seldom only one correct way in which to act. The information provided below, however, is intended as a guide to assist you to make professional and ethically responsible decisions.

Making good ethical decisions requires a method for exploring the ethical aspects of a decision, and weighing up the considerations that could influence your choice of action.

The following framework provides a method for exploring ethical dilemmas and identifying ethical courses of action. A Worksheet for Ethical Deliberation has also been developed for advisers, and is attached at page 20.

Ethical decision-making framework

The flowchart below outlines the steps in the ethical decision-making process. Each step is described in further detail below.



Recognising that there is an ethical question:

- requires you to think about how you should act and what you should do in a given situation
- could relate to a situation and/or a decision that you make, which could be potentially damaging to a client or a stakeholder
- could involve a choice between a good and a bad outcome – e.g. a situation where Immigration New Zealand would decline your client’s visa application because of certain information that the client has disclosed to you, but of which Immigration New Zealand is unaware.

Understanding the facts of the situation:

- requires you to consider how you can learn more about the situation including making enquiries and finding additional facts to ensure you have the best possible understanding of the situation.

Understanding the options available to you:

- requires you to identify and understand each option available to you
- requires you to take into account any legislative requirements, professional standards (such as the Code), immigration law and instructions, as these may influence your options.

Understanding the consequences of the options:

- requires you to work out how different parties will be affected by each option - these parties can include the client, stakeholders within the New Zealand immigration system, your employer and other advisers
- requires you to be aware that your overriding duty is always to act in the lawful and legitimate interests of your client
- requires you to ask yourself some searching questions, for example:



- If I am going to act in a way that is adverse to my client’s interests in any way, am I justified in doing so?
- Which option will produce the most good for my client even if it will upset another person or cause me discomfort or loss?
- Will this require me to act in a way that will harm someone else or go against my personal beliefs or ethics?
- Is there a way to act that will not damage my client’s interests but will reduce or prevent harm to another person or institution?

- Is there a way to act that will not damage my client's interests and will allow me to act in the way I believe is consistent with the type of adviser that I want to be?

Testing the option you plan to take:

- requires you to consider the possible effects of all the different options
- requires you to reflect on and thoroughly review the option that you plan to take – in doing so, you should ask yourself the following questions:
 - Am I feeling uncomfortable with what I am about to do?
 - If so, why am I feeling uncomfortable about this option?
 - Why am I making this decision?
 - Would I be happy if this was done to me?
 - Would I be happy explaining this to different parties within the New Zealand immigration system and explaining why I did what I am planning to do?



Explaining the option you have decided on to those affected and to other interested parties:

- requires you to act in a way that your client, or another party, may not like or may find difficult to understand
- requires you to be able to justify your actions in a logical and straightforward manner - if you cannot explain your actions, then it is more likely that you are acting on the basis of your feelings or prejudices
- will often require you to have kept excellent records that note the essentials of what the issue was, what you did to resolve it, the options you considered and how you communicated your decision to those affected.

Acting on the chosen option:

- requires you to consider how you will go about implementing your decision
- requires you to actually carry through with the action you decided to take.

Reflecting on the outcome:

- requires you to assess how your decision turned out and what you learnt from this specific situation - to objectively evaluate what has happened and whether the option you took worked.

What if things go wrong?

Just like anyone else, advisers may occasionally make a bad decision. In these circumstances an adviser will be judged as much on how they react and decide to act next as by the mistake they made in the first place.

Deciding what to do in these circumstances is hard. Acting ethically will often involve you acting directly against your own interests and against a natural instinct of self-preservation.

If you are dealing with this type of situation, you may need to revise some areas of the above methodology. For example:

- there would be little point in asking 'am I feeling uncomfortable about what I am about to do?' so instead you should ask 'I know that this is uncomfortable for me but what is the right thing to do by my client?'
- you may obtain advice about the situation you are in and may also recommend your client seek independent advice, or at least think about it.

When a person makes a mistake, they are liable to panic and want to protect themselves and their business. This is a natural and normal reaction. However, this natural reaction can impair judgement. It may be important for you to ask someone else to look at the case to see if a mistake has been made, and if so, what can be done to resolve it.

The advice you receive may be that you cannot, or should not, continue to act for your client. This may be the best option for the client at that point and other options for representation could be made available to the client. It may also be that this is not necessary, or that your client does not want you to cease acting for them.

You may wish to consider the option of taking out professional indemnity insurance; however, it is important that you review any company's policy carefully before doing so as the scope of cover can sometimes be limited.

Applying ethics in the New Zealand immigration system

The importance of the licensing regime to New Zealand

The work advisers do is part of the New Zealand immigration system that is designed to improve international flows of people, ideas, investment and trade. There will be people who are simply not eligible under New Zealand immigration legislation for visas and who you will need to advise that there is nothing that can be done to assist them to come to New Zealand.

This is a difficult aspect of an adviser's job and one that can place pressure on you to 'try to find a way'. There is no duty for an adviser to take on every client and there will be situations when you need to tell a client there is nothing that can be done.

History of the licensing regime

In 2005 the Department of Labour (DoL) reported in their final *Regulatory Impact Statement* that complaints were being made to the Minister of Immigration, the DoL and industry associations about immigration advisers, both onshore and offshore. The reasons for these complaints included 'lodging unfounded or abusive refugee status claims without the knowledge of the client, inaccurate advice about immigration policy leading to poor and costly decisions, failing to pass on information from the DoL to the client, knowingly submitting false or fraudulent documents to the DoL, and failure to provide services for which the member has been paid.' The cumulative harm caused by these cases was significant.

It was recommended that a licensing regime, 'requiring immigration advisers to meet minimum competence standards and comply with a code of conduct is likely to enhance the overall quality of advice provided by immigration advisers...Together with removing unethical and incompetent advisers from the industry, this will enhance the credibility and reputation of the industry as a whole.'

The *Immigration Advisers Licensing Act* was passed in 2007 and onshore licensing became mandatory from May 2009, with offshore licensing following from May 2010.

This history shows why the development of professional ethics in the immigration advice profession is so important. Each licensed immigration adviser needs to play a role in building a positive reputation for the profession – one of trusted partners in the wider New Zealand immigration system.

The nature of an adviser's practice

Sole advisers

Many New Zealand immigration advisers work alone and may be at some disadvantage when it comes to acting ethically, because they may have no colleagues that they can turn to for guidance or for another view about how to act.



As mentioned in the ethical decision-making framework above, it is important that advisers discuss difficult ethical problems with others. Advisers who have not already done so should develop some strategies to overcome the limitations of working alone.

Some options could be:

- joining a professional association
- forming a group of like-minded advisers with similar interests or practices
- asking an experienced adviser to provide mentoring.

Advisers working with others



If an adviser works with others they may have the advantage of numbers and the ability to share experiences (remembering confidentiality obligations), but they may find that there are other impacts on their ability to act ethically.

Some advisers may have obligations or loyalties to an employer or business partners. Although important, these can never override a duty to act ethically. This can be difficult and will inevitably impact on an adviser's decision-making. However, wanting to please others is never a defence for unethical behaviour.

Advisers are responsible for ensuring that they can personally meet all obligations under the Code.

Worksheet for Ethical Deliberation

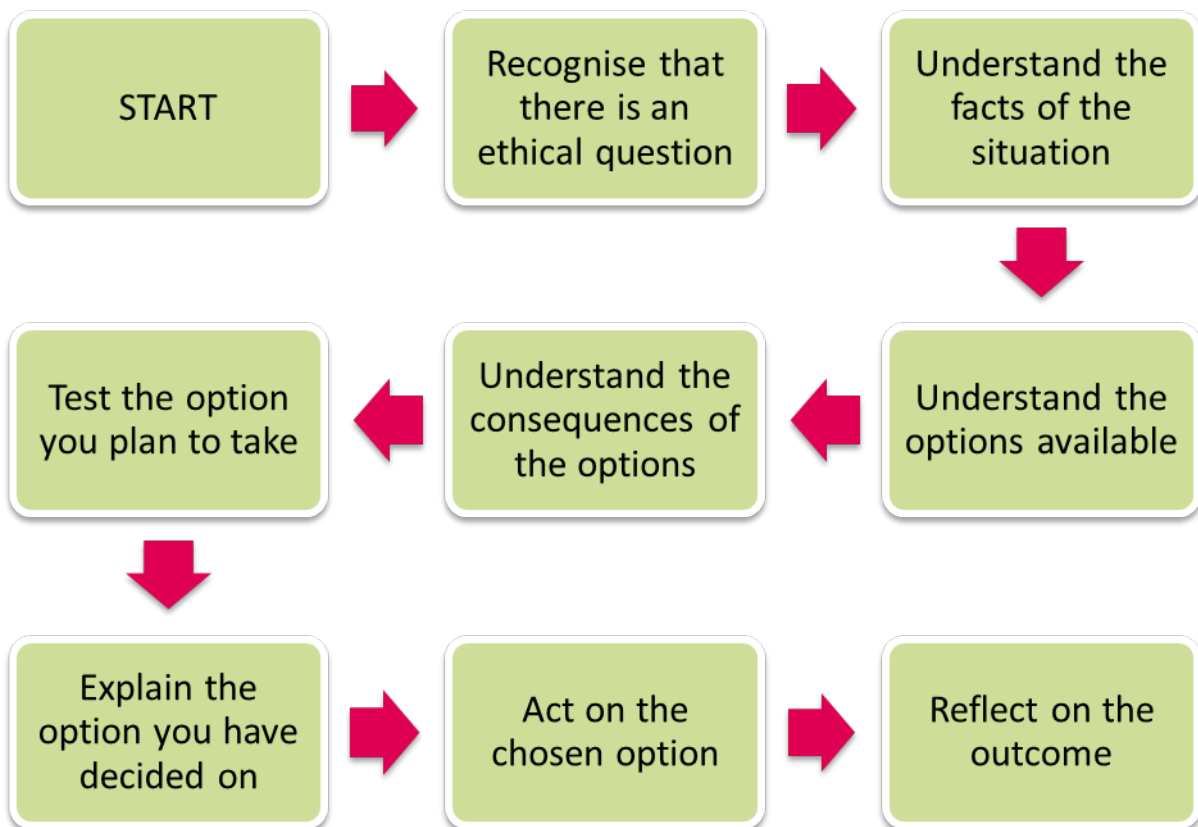
This worksheet has been designed to assist advisers to make professional and ethically responsible decisions, by encouraging them to think about their own ethical standards in a professional context, and reflecting on the following questions:

- What are ethics? Why are they important?
- What ethical behaviours do I think are important to display as an adviser?
- How do my decisions affect my clients and others?



Methodology

With reference to the flowchart below, write under each heading the relevant points that apply to the ethical situation that you are trying to resolve.



1. Recognise that there is an ethical dilemma

What is the situation?

Do I have choices?

What is at stake?

2. Understand the facts of the situation

What are the facts?

Do I need to find anything out?

3. Understand the options available

What are my options?

Do any laws/professional ethics influence my options?

4. Understand the consequences of the options

What are the consequences of each option?

Who will be affected by each option?

How will the parties be affected by each option?

5. Test the option you plan to take

Which is the best option?

Thoroughly review the preferred option:

Will the preferred option be difficult for others to understand?

Can I justify my actions?

How will I implement the decision?

6. Explain the option you have decided upon

Explain my actions – I should be able to justify them in a logical and straightforward manner

I should have kept records of my decision – now also keep a record of how I communicate my decision to those affected

7. Act on the chosen option

How will I implement my decision?

8. Reflect on the outcome

How did my decision turn out?

Who was affected and how?