

Quarterly Complaints and Discipline Report

– December 2015 to March 2016 –

The Financial Planning Association (FPA) is committed to informing members and the community of the trends and outcomes of complaints and disciplinary action in the financial planning profession. It is important for members and the community to be confident that the profession takes a strong position on the protection of the reputation of financial planners by responding to breaches of its professional expectations.

As well as communicating the activities of professional accountability, our goal is to assist members in appreciating the types of complaints received, to encourage members to consider their own practices, and to provide guidance for complaint protection.

Disciplinary activity summary

In the four months from 1 December 2015 until 31 March 2016, the FPA received eight new complaints, finalised nine complaints and has four ongoing complaints. Of those ongoing complaints:

- A hearing date is to be set for a Disciplinary Hearing before a Conduct Review Commission (CRC) panel.
- We are awaiting further information from a member in one matter.
- One matter is in the process of being finalised after discussions with the member.
- One matter is in the process of being reported to the CRC chair.

COMPLAINTS AND DISCIPLINARY REPORT	
01 December 2015 to 31 March 2016	
Complaints ongoing as at 1 December 2015	5
New complaints	8
Complaints closed	9
Complaints ongoing as at 31 March 2016	4
Members suspended	0
Members expelled (CRC)	0
Members terminated (Constitution)	3
• Craig Read	
• Associates (2)	
Other Sanctions (CRC)	0
Referred to Professional Designations Committee for sanction	4

Complaints

Terms of engagement

The FPA received a complaint about a member who is a principal of a financial planning business. The complaint consisted of various different elements and stemmed from, and was complicated by, the acrimonious breakdown of business relationships and the resulting separation of clients.

One of the elements related to the member's decision to decline client requests for a pro-rata refund, in varying amounts, of 12-months' financial planning fees paid in advance. The decision was made on the basis that clients agreed to pay those fees on a non-refundable basis.

While clients had agreed in writing at engagement to pay fees in advance, it was not on the

basis of being non-refundable at that time. The member was of the view clients had been informed of, and agreed to, a subsequent decision to make the fees non-refundable by the practice's representatives providing a copy of an updated Financial Services Guide (FSG) to them at the time of their most recent ongoing review. There was contention around whether the clients were referred to the particular variation in the FSG and there was no written variation to previously agreed terms of engagement.

As a result of seeking external advice in response to a number of clients complaining about this decision, the member was of the view the approach was adequate for the purposes of consumer law. However, other than where there is a conflict with a legal obligation, members have a duty to abide

by the professional obligations of FPA membership. In this particular case there was not considered to be any such conflict. (Where such conflicts may arise, the FPA encourages members to seek guidance from FPA Professional Standards Team from suitably experienced peers, or from other qualified professionals).

The FPA Code of Professional Practice July 2013 requires a member to provide a copy of the documented terms of the engagement to a client prior to providing any professional services. A written document ensures mutual understanding and agreement between the member and the client about the terms of the financial planning engagement. Mutually defining the engagement establishes realistic expectations for both the client and the member.

The code also identifies a number of elements that must be included in (but not limited to) the written terms of engagement, including duration of the engagement, remuneration, fees and billing arrangements. Significantly to this particular matter, circumstances may change after the commencement of the engagement and there must be provision for terminating the agreement, or for varying the agreement. (The code also sets out professional obligations that may be of relevance).

In consideration of the above, would you consider that providing a client a copy of

an FSG is consistent with the expected professional norms for varying an engagement?

For further information, refer to *Practice Standard 1* and associated rules of the code relating to engagement, as well as more broadly *Practice Standard 7* and related rules relating to professional obligations.

Academic misconduct

With the increased emphasis on education, the FPA has seen a growth in enrolments in the CERTIFIED FINANCIAL PLANNER® Certification Program. This means it is even more important for the FPA to maintain the high standards expected of those completing the CFP program.

In the current financial year we have investigated concerns of academic misconduct relating to six individuals involving collusion, plagiarism and cheating (all of which are defined in the *Academic Misconduct Policy*). This compares to investigating three individuals in the previous financial year.

The findings of each of the six investigations have been reported to the Professional Designations Committee, two of which have been considered and four of which will be considered in the near future.

The committee is board-appointed. Its purpose includes maintaining the integrity of FPA designations, programs and certification. In circumstances where the committee does not dismiss an academic misconduct matter it can impose one or more of a range of sanctions, including:

- Reprimanding the student.
- Recording a failure, for all, or any part of the assessment.
- Requiring the student to repeat the unit.
- Suspending the student from enrolling for a certain period.
- Suspending the student from enrolling in a certain course.
- Advising that a student discontinue the program.

The committee may also be of the view that the complaint should be further investigated for potential breach of the FPA's *Code of Professional Practice*, which if proven may result in broader sanctions.

For the two matters that have been considered by the committee, sanctions were imposed and the matters referred for further investigation. One individual subsequently had their association with the FPA terminated and one matter is ongoing.

Following are some tips for members when completing studies, not necessarily limited to the CFP Certification Program:

Generally:

1. Make sure you are familiar with the *Academic Misconduct Policy* (don't just sign the declaration).

More specifically:

2. First and foremost, ensure any work you submit is your own.
3. To avoid possible plagiarism, all sources should be referenced at the appropriate point in the text, as well as form part of a list of references or a bibliography at the end of the assignment.
4. Study groups form an important part of distance education and are encouraged to facilitate

discussion of the topics.

However, you should never share answers you have prepared for an assignment with other members of a study group.

5. If you encounter personal problems that impede your ability to adequately complete an assignment or prepare for an examination, speak to the FPA Education Team immediately. They are here to help you.

Feedback and guidance – statements of advice

The Professional Accountability Team will be providing members with additional feedback and guidance from the many advice documents reviewed in the course of its activities.

It is intended to build on feedback provided in our most recent Annual Report on Professional Standards (www.fpa.com.au/professionalism/professional-accountability) and to provide participants with a different and practical perspective to those they may be familiar with from non-FPA compliance activities. One of our key observations is that while there are legal obligations about when to provide a statement of advice and what to include, these obligations don't need to drive the advice document. Ironically, over-emphasis on legal obligations may not only result in the risk of not meeting legal obligations but also be counter-productive to the aim of placing the client(s) in a position to understand the advice and to make an informed decision.

It is intended that one of the forums will be a webinar accredited for CPD, including ethics.

First and foremost, ensure any work you submit is your own.