

Complaints and Discipline Report

1 October 2016 to 31 December 2016

Disciplinary Activity Summary

In the October to December 2016 quarter, the FPA received one new complaint, finalised 13 complaints and had three ongoing complaints. Of those ongoing complaints, the Conduct Review Commission Disciplinary Panel (the Panel) issued its determination and reasons in respect to two, finding all alleged breaches proven.

The Panel has now imposed sanctions in respect of both matters, resulting in both members being expelled from membership. One of these matters is discussed below and the other will be discussed in a subsequent report. Panel determinations can be found on the FPA website at fpa.com.au/professionalism/professional-accountability/. The remaining ongoing complaint is in the investigative phase.

CRC Determinations 2016_02 (Breaches) and CRC 2017_01 (Sanction)

These determinations are the culmination of the FPA's investigation, and the Panel's independent consideration of alleged serious breaches of the FPA Code of Professional Practice (the Code) by AFP® member, Darren Tindall.

The investigation originated from a complaint made by another member of the FPA (the Complainant), who was one of two directors of the small self-licensed financial planning practice that had authorised Mr Tindall until recently, prior

to the complaint. It should be noted that complainant refers to the person who makes a complaint to the FPA rather than the extent of the material evidence they may have.

The complaint arose after the other director (the Director) located, during a file review, a hard copy print-out of an online insurance application for one of Mr Tindall's clients (the Client). The print-out revealed that personal insurance policies Mr Tindall had led the director and the complainant to believe were in place before he met with the client had instead been obtained since becoming a client of Mr Tindall's. An electronic copy of the application was subsequently located in Mr Tindall's deleted emails.

The FPA's investigation revealed that the client first met Mr Tindall at a stand at a local field day in October 2013, where they briefly discussed exploring the client's personal insurance needs. The client was unsure about what superannuation and personal insurance they held at the time.

Later in the same month, there was an initial meeting where the client disclosed, and Mr Tindall recorded, specific detail of the client's pre-existing medical conditions, including a serious congenital cardiac condition that resulted in recent surgery. The client was significantly underinsured and had concerns about the financial situation their spouse may be left with. The client took some records to the meeting in relation to superannuation accounts held with two separate funds, one with default death and TPD insurance in the amount of \$226,000 and the other (U fund) without any insurance.

A few days later, the client 'dropped in' to see Mr Tindall, at the request of Mr Tindall. Both directors were away for a few days on leave. It was the client's evidence that Mr Tindall ushered the client into an office and outlined his idea to apply, on behalf of the client, for \$500,000 in death and TPD insurance through the existing U fund, by pretending the client was not sick, then immediately have that insurance taken over by another insurer.

Furthermore, it was the client's evidence that Mr Tindall:

- gave re-assurance that it would not be a problem and that's why people seek professional help;
- obtained logon details to the client's superannuation accounts (with consent) prior to their meeting that day;
- logged onto the client's U account and may have already logged in before the meeting;
- at all times controlled the keyboard and obtained \$500,000 death and TPD insurance, as well as income protection, for the client within the existing U fund account, by deliberately giving false answers to some medical questions; and
- Mr Tindall later recommended and facilitated the roll-over of that insurance (and U superannuation) to another fund.

The breaches alleged by the FPA relied not only on the client's version but also by documentary evidence and evidence given by four other witnesses. All witnesses, including the client, were separately interviewed by the FPA investigators and all made signed witness statements.

Additionally, it was also alleged by the

FPA that Mr Tindall had sent an email to a former colleague in the financial services industry that said, “Hi Mate, You tell me if I made the right decision.” The email included a spreadsheet with confidential information of 59 current clients of Mr Tindall’s licensee, including client names, as well as confidential revenue related information of the licensee. It was alleged that this was without the knowledge of Mr Tindall’s licensee and contrary to conditions of collection and disclosure.

Mr Tindall denied any knowledge of or involvement in the U insurance application and of non-disclosure in rolling-over that insurance to another insurer. Mr Tindall did not deny sending the email and information, however, did not admit that doing so amounted to a Breach of the Code.

Accordingly, all allegations of breach were heard before the disciplinary panel over one full day and three part days. Mr Tindall was given the opportunity to be heard and also granted leave to be legally represented and for his legal representative to cross examine the FPA witnesses.

In its written Determination the Panel stated:

“The Panel does prefer the evidence of the client to that of Mr Tindall concerning the making of the online insurance application. The Panel considers the client, who was subjected to extensive questioning, did her best to recollect events. In contrast, Mr Tindall was an evasive and unconvincing witness, whose evidence was at times inconsistent or implausible. Instances of inconsistency and implausibility have already been recounted. However, the Panel disagrees that the issue simply comes down to credit. The Panel has also been assisted by the documents available to it concerning the surrounding circumstances. The Panel considers the client’s recollection of events is consistent with the evidence of the surrounding circumstances; Mr Tindall’s much less so.”

... *“The Panel is satisfied on the balance of probabilities that Mr Tindall made the online application for insurance.”*

In finding all breaches proven on 21 December 2016, the CRC found that in respect to both the online insurance

application and the insurance roll-over, Mr Tindall engaged in an act of a misleading, deceptive, dishonest and fraudulent nature (Rule 7.2), failed to conduct himself in accordance with a high standard of professional conduct or ethical conduct (PS7.1), and failed to provide professional services with integrity (Ethics Principle 2). The Panel also found a breach of Ethics Principle 7 (Confidentiality), for which the CRC panel noted *Mr Tindall’s regret at having sent the information appears to be based only on having subsequently been subjected to the disciplinary proceedings.*

The Panel imposed sanctions intended for the protection of the public: immediate expulsion, fines totalling \$16,000, as well as determining that Mr Tindall pay the FPA \$12,423.39 in reasonable costs and expenses.

Mr Tindall did not avail himself of his right to seek a review (appeal) of the findings of breach or of the sanctions imposed, and in fact, Mr Tindall’s submissions accepted that he should be expelled from membership.

Importantly, the protection of the public has been facilitated through a professional regulatory model, including:

- the complainant meeting professional responsibilities (and all that goes with it) as an FPA member to report the matter to the FPA to investigate; and
- the FPA Disciplinary Regulation allowing for the investigation and subsequent disciplinary proceedings to proceed, notwithstanding the member had submitted his resignation to the FPA shortly after the FPA received notice from the complainant of the intention to lodge a complaint.

Guidance, reassurance or dilemmas

You may contact the FPA’s Professional Accountability team directly, either by email at professional.standards@fpa.com.au or by telephoning Mark on (02) 9220 4523 or Kate on (02) 9920 4520.

COMPLAINTS AND DISCIPLINARY REPORT

Complaints ongoing as at 01 October 2016 **13**

New Complaints 1

Complaints Closed 11

Complaints ongoing as at 31 December 2016 **3**

Members Suspended 1

Members Expelled (CRC) 1

- Shylesh Sriranjani

Members Terminated (Constitution) 2

- James Gibbs
- Andrew Tambyrajah

Other Sanctions (CRC) 0

Referred to Professional Designations Committee for Sanction 7