

Complaints and Discipline Report

1 January 2017 to 31 March 2017

The FPA is committed to informing members and the community of the trends and outcomes of complaints and disciplinary action in the financial planning profession.

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 practises, and to provide guidance for complaint protection.

Complaint activity summary this quarter

In the January to March 2017 quarter, the FPA received eight new complaints, finalised eight complaints and had three ongoing complaints.

Of the new complaints:

- four related to alleged unethical and/or general conduct. All of these matters were summarily dismissed by the Investigating Officer – two due to the complaint not being about an FPA member, one due to the person complained about not being a member at the time of the alleged conduct, and one due to the Investigating Officer's assessment that the conduct complained about did not constitute a breach of the Code;
- three related to financial planning recommendations, of which two remain ongoing and one was summarily dismissed due to the complaint not being about an FPA member; and

- one related to a privacy complaint and was summarily dismissed due to the complaint not being about an FPA member.

Although summarily dismissed, particular complainants were given guidance about other avenues that may be available to them, such as internal dispute resolution (IDR), external dispute resolution (EDR) and the Office of the Australian Information Commissioner.

It was pleasing to note there have not been any academic misconduct matters investigated in this quarter.

Other than the six new complaints that were finalised within the quarter, there were two matters that were finalised following Conduct Review Commission (CRC) determinations issued in December 2016 and January 2017. (You can read about these matters on the FPA website at fpa.com.au/wp-content/uploads/2017/04/ProfessionalAccountability-Actions-Outcomes_April-2017.pdf)

Each of the three ongoing complaints are in varying stages of investigation phase.

In one matter, the FPA is awaiting further information from the complainant before the Investigating Officer notifies the member of the fact of the complaint in writing, provides a copy of the complaint and all supporting material, directing the member to any areas of concern identified by the Investigating Officer, and informing the member that they have the right to provide information to the investigation and make submissions in respect of the alleged conduct and any material

obtained by the Investigating Officer. (Refer Section 3.2 of FPA Disciplinary Regulation 2016 fpa.com.au/wp-content/uploads/2016/11/2016_09_28_Disciplinary-Regulation-2016.pdf)

In another matter, the FPA recently received the member's submission to the complaint and will now consider whether any further investigation is required or whether the Investigating Officer is in a position to prepare a report on the matter to the Chair of the CRC, setting out, among other things, whether the member has a case to answer in respect of committing one or more breaches of the FPA Code and recommending an appropriate course of action for the matter. A copy of the report is also given to the member at the same time. (Refer Sections 3.2 and Part 5 of the Regulation.)

In the final matter, the FPA has written to the complainant setting out the grounds upon which the FPA is minded to summarily dismiss their complaint and affording a final opportunity for the complainant to provide any additional information or material to the FPA, or to inform the FPA of any potential mistake of fact upon which the Investigating Officer may be relying in their assessment of the complaint.

While the FPA may summarily dismiss a complaint without providing a final opportunity to the complainant, in some cases it can be helpful to do so where it may assist the complainant to feel assured that their complaint has been properly considered. (Refer Sections 3.3 and 3.5 of the Regulation.)

Complaint activity this financial year

So far this financial year, the FPA has received 22 new complaints, which is comparable to the previous financial year. Nine complaints have been in relation to academic misconduct, seven of which related to sanctions imposed by the Professional Designations Committee and in two cases, there was no finding of misconduct. It is pleasing that there were no such matters in this quarter.

There were also two complaints about the failure to provide review services, however, these were both summarily dismissed and may have been vexatious.

Life Insurance Code of Practice: Tips to transition

The Life Insurance Code sets out the life insurance industry's key commitments and obligations to clients on standards of practice, disclosure and principles of conduct for their life insurance services, such as being open, fair and honest.

Dr June Smith, former CRC Chair and current Lead Ombudsman, Investments and Advice at the Financial Ombudsman Service, recently provided a number of 'Tips to Transition to the Life Insurance Code' at a forum to financial services providers.

Some of these tips may be helpful in providing insight to members around interpretation of the Life Insurance Code in various areas of member day-to-day practise, particularly in assisting clients with claims handling.

The full 10 tips are:

1. Consider section 7 obligations when designing claims handling compliance framework together with Principles 1.5 and 1.6.
2. Section 7.2 and 7.5 are also relevant to the obligations to section 8.
3. Section 8.24-8.26 will be considered in conjunction with other standards when assessing compliance.

4. Financial services providers (FSPs) will need to demonstrate how they formed reasonable belief under clauses 8.1(d), 8.12(b), 8.15 and 8.28.

5. FSPs should consider how they will ensure third party providers and agents will be appropriately skilled and trained to comply with code obligations (e.g. see 8.11, 8.12 and 8.20).

6. Communication is critical to successful compliance, including compliance with timelines, provision of information, handling requests for information and reviewing decisions.

7. FSPs will need to demonstrate how requests for information or assessment are relevant and reasonable.

8. FSPs will need clear links to an objective 'review framework' and lines of reporting (see 8.5, 8.9(e), 8.16, 8.17 and 8.30).

9. It is likely that the obligation to provide reasons for a decision to decline a claim in writing under 8.19 will be interpreted in light of clause 8.24-8.26 and the principles in 1.5 and 1.6.

10. The Code's objective under 1.4 is also likely to be taken in to account when interpreting whether a code subscriber has complied with a particular standard.

Guidance, reassurance or dilemmas

The FPA's Professional Accountability team enjoys hearing from members in relation to guidance, reassurance or dilemma.

If the team is unable to assist you yourself, it will likely be able to assist you to find someone who can. You may contact the team 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 January 2017	3
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New Complaints	8
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Complaints Closed	8
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Complaints ongoing as at 31 March 2017	3
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Members Suspended	0
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Members Expelled (CRC)	1
• Darren Tindall	

Members Terminated (Constitution)	0
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Other Sanctions (CRC)	1
• Darren Tindall (Fine and costs)	

Referred to Professional Designations Committee for Sanction	0
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