

**financial  
counselling  
australia**



FINANCIAL COUNSELLING ASSOCIATIONS:

# Disciplinary Process: Policy and Procedures



June 2017

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# Agreement by State and Territory Financial Counselling Associations

The following State and Territory financial counselling associations (Association) have agreed to this Financial Counsellor Disciplinary Process - Policy and Procedures.

- Financial Counselling Tasmania (FCT)
- Financial and Consumer Rights Council Victoria (FCRC)
- Financial Counsellors Association of NSW (FCAN)
- Financial Counsellors ACT (FC-ACT)
- Financial Counsellors Association of QLD (FCAQ)
- South Australian Financial Counsellors Association (SAFCA)
- Financial Counsellors Association of WA (FCAWA)

## **The agreement encompasses the following commitments:**

1. The Association will ensure that its Rules give it the right to institute an investigation where a complaint is made about one of its Members that suggests unsatisfactory professional conduct on the part of the Member.
2. The Association will ensure that its membership conditions include consent to the Association sharing and obtaining information from the Member's employer for the purposes of assessing and investigation a complaint that suggests unsatisfactory professional conduct on the part of the Member.
3. The Association will deal with complaints in accordance with this Policy and Procedures - which are intended to promote professionalism whilst ensuring fairness and transparency for Members.

All Financial Counselling Associations will have implemented this policy by the end of 2018.

The Financial Counselling Associations will jointly undertake a review of this process in three years (end of 2021) – see Schedule.

# Overview

## **Where a complaint is received about a financial counsellor, it is possible that:**

1. The client deserves compensation eg where poor advice has adversely affected their financial situation;
2. Some action by the financial counsellor's employer is appropriate eg improving the supervision or training of the financial counsellor; and/ or
3. Some professional disciplinary action is appropriate – to maintain standards in the financial counselling profession.

The first two matters—compensation and employee management—are not within the power of a State/ Territory Associations to address. To assist clients in these situations, FCA has put together a one-page flyer that explains their rights and how to complain.

The third matter—professional disciplinary action—is squarely within the power of State/ Territory Associations and is the subject of this document. This reflects the commitment by financial counselling associations to professionalism within financial counselling.

The process ensures that complaints are fairly assessed and only investigated where the circumstances warrant this. For example, it would not be appropriate to investigate trivial complaints or complaints that are little more than rumours or are motivated by personality issues or malice.

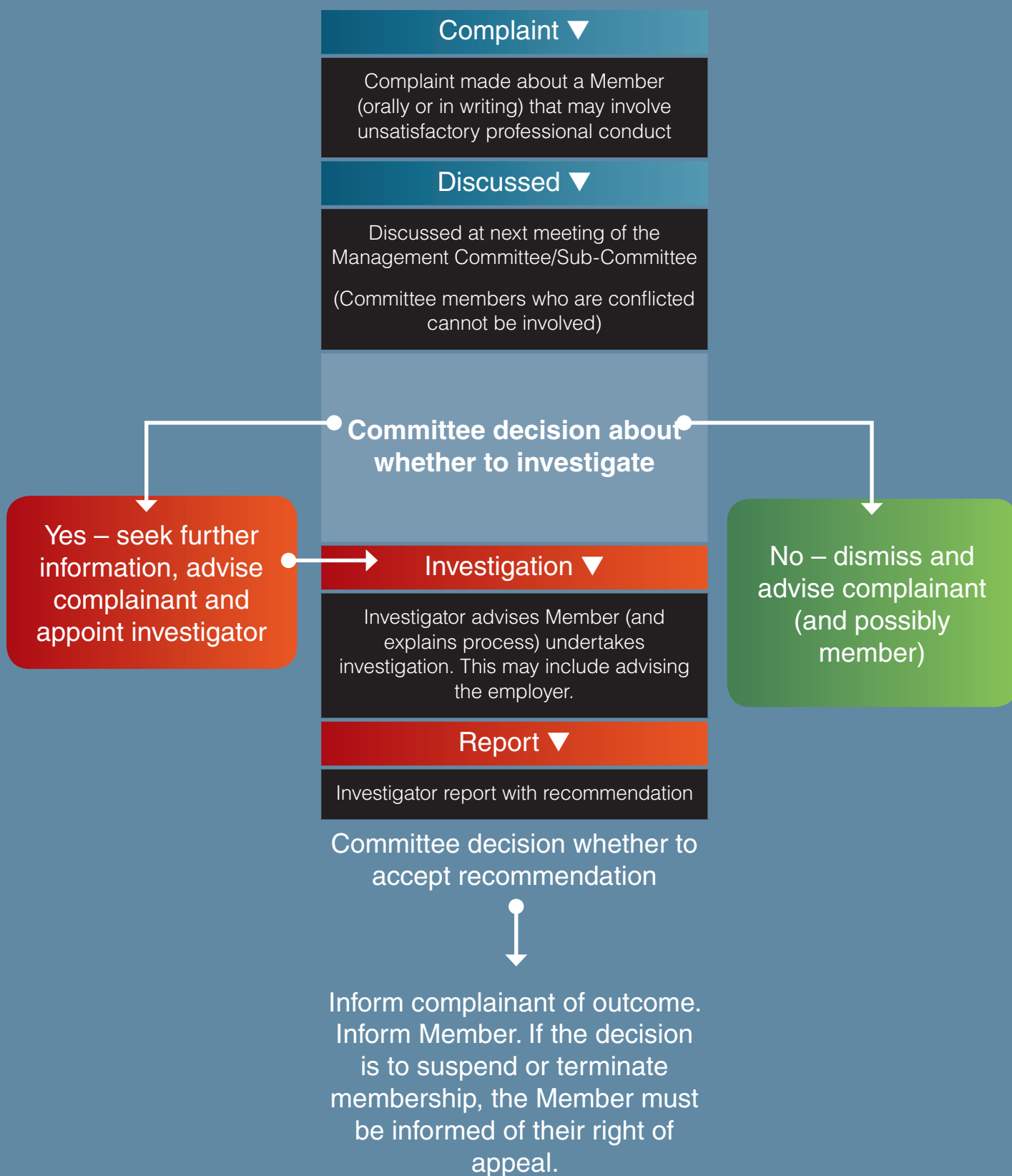
Where a complaint does warrant investigating, the investigation must be carried out in a way that ensures fairness for the Member. Fairness requires a competent investigator(s) with the skills to gather all relevant information, to resolve conflicting information and to make findings and formulate recommendations in a balanced and sensitive way. An investigator(s) must not have any interest which might be thought to create bias and so undermine confidence in the fairness of the investigation. The Member must also be provided with a fair opportunity to put their perspective to the investigator(s).

Likewise the decision makers in relation to the complaint – usually the Association's Management Committee – must be fair and free from conflict of interest. Any action taken in relation to a complaint must be fair and proportionate to the misconduct if, in fact, that is found to have occurred.

It is recognised that this is a sensitive area. Whilst a professional association disciplinary process has the potential to enhance consumer protection, a complaint may unfairly attack the reputation of a Member and, if handled poorly, unfairly put the Member's livelihood at risk, as well as cause a Member considerable personal anguish. For this reason, it is vital that the proceedings are conducted in a way that protects privacy and maintains confidentiality for the Member and also any other person or organisation involved in the complaint.

Financial Counselling Australia is available on request to help Associations through the disciplinary process.

# Flowchart of the Process



# Section 1. Making a complaint

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## **Key issues**

This section aims to minimize barriers to the making of complaints.

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### **1.1. How a complaint can be made**

- 1.1.1. A complaint may be made orally or in writing.
- 1.1.2. Where a complaint is made orally, the Association will assist if possible in reducing the complaint to writing.

### **1.2. Who can make a complaint**

- 1.2.1. A potential unsatisfactory professional conduct issue may come to the attention of an Association in a range of ways, including as a result of information provided:
  - a. anonymously;
  - b. by a Member's client, employer or co-worker;
  - c. by another member of the Association;
  - d. a financial institution;
  - e. a regulator; or
  - f. via a media report.

## Section 2. Investigating a Complaint

### 2.1. When an investigation may be instituted

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#### Key issues

This part aims to ensure that there is a robust process to assess information that comes to the Management Committee that could suggest unsatisfactory professional conduct on the part of a Member.

- Information needs to be promptly assessed to determine the appropriate action.
  - The assessment process needs to filter out matters that are not of substance or constitute an abuse of the disciplinary process.
- 

- 2.1.1. Where a member of the Association's Management Committee becomes aware of an event, complaint, allegation or anything else that may constitute unsatisfactory professional conduct on the part of a Member, the Management Committee member is expected to raise the matter at the next meeting of the Management Committee (or if the matter is urgent to seek an extraordinary meeting to address the issue).
- 2.1.2. At that next Management Committee meeting or extraordinary meeting, the Management Committee must consider the matter.
- 2.1.3. Management Committee members must disclose any conflict of interest and, if they are conflicted, they must exclude themselves from any further involvement. If all Management Committee members are conflicted, the complaint must be passed on to the Financial Counselling Association which will assume all of the obligations under the Policy and Procedure that would otherwise rest with the Management Committee.

#### Example of a conflict

- The Management Committee member has initiated the complaint or is mentioned in the complaint.
- The Management Committee member has a close personal relationship with the Member implicated in the matter, for example, close friend, a family member or is co-worker at the same employer agency.
- The Management Committee member has a close personal relationship with the complainant, for example, close friend or a family member.

### **Example of something that is not a conflict**

- The Management Committee member knows the Member implicated in the matter, for example, previously worked for the same employer agency.

- 2.1.4. The Management Committee must then assess the information and decide what action to take. This may include:
- a. dismissing the matter on the basis that it does not warrant investigation, for example, because the matter appears not to be of substance or to be little more than a rumour or to have been motivated by personality issues or malice;
  - b. seeking further information about the matter; or
  - c. deciding that an investigation should be instituted.
- 2.1.5. Factors that will be relevant for the Management Committee in this initial assessment will include:
- a. the seriousness of the matters involved;
  - b. the extent of specification and substantiation of the allegations that have been made;
  - c. whether or not a complaint is made in writing and whether or not on an anonymous basis; and
  - d. whether or not the complainant has a vested interest that may affect the credibility of the complaint.

### **Examples of matters that would warrant instituting an investigation:**

- A Member's employer provides the Association with information that a Member is being dismissed on the basis of repeated failures to provide responsible advice to clients.
- A Member's client complains to the Association that the Member's behavior was aggressive to the client and that the Member swore at them.
- A Management Committee member becomes aware that a Member has been charged with theft or fraud.


### **Examples of matters that would warrant seeking further information**

- An allegation by an employer or client that the Member behaved unprofessionally without specification of the nature of the unprofessional behavior.
- An allegation by a co-worker of the Member that the Member lacks the knowledge base to provide responsible advice.
- An anonymous complaint (presumed to be from a co-worker of the Member) that the Member is encouraging clients to provide false or incomplete information to a creditor.

### **Examples of matters that would warrant no further action**

- A personality clash between the Member and another person.
- Information that a Member's employer is providing the Member with remedial training or has restricted their scope of work pending upskilling.
- Information that a Member has been repeatedly late to work or has failed to meet other employment terms of this type.



 Attachment A is a checklist that can be used to help determine whether a complaint should be investigated

- 2.1.6. Where the Management Committee assesses a complaint made to it, the Management Committee will, if appropriate and practical in the circumstances, advise the complainant of what the Management Committee has decided to do in response to the complaint. (If the complaint is made anonymously for example, this would not be practical.)
- 2.1.7. Where the Management Committee has decided not to investigate a complaint, the Management Committee will tell the Member except if:
- a. doing so would disclose the identity of the complainant; or
  - b. the Management Committee considers the complaint to be trivial, vexatious or disclosure would cause unnecessary stress to the Member.

## 2.2. How an investigation may be instituted

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### Key issues

This part aims to ensure that, where a decision is made to institute an investigation, an appropriate person(s) is appointed to investigate the factual issues and the Member is given early notice and a chance to respond.

- The investigating person(s) needs to be independent and have appropriate skills.
  - An efficient investigative process needs to be established, whilst recognising that a more extensive process is appropriate for very serious allegations.
  - The Member must be promptly and adequately informed of the allegations and given sufficient time to respond to the allegations.
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- 2.2.1. If the Management Committee decides that an investigation should be instituted, the Management Committee must appoint one or more persons to investigate and consider the matter on the Association's behalf (the Investigator).

- 2.2.2. The Investigator must have the skills necessary to carry out the investigation competently and sensitively. This includes the skills:
- a. to identify and gather relevant information;
  - b. to conduct the investigation without pre-judging the issues;
  - c. to assess probity where there is conflicting information;
  - d. to interview relevant people in a way that enables the truth to emerge;
  - e. to understand and comply with privacy and confidentiality obligations; and
  - f. to make findings and formulate recommendations in an unbiased and balanced way.
- 2.2.3. So as to accord natural justice to the Member, an Investigator must be independent. This will be the case if the person does not have an involvement in the events the subject of the complaint or a connection with the complainant or the person being complained about that would give rise to a reasonable suspicion of bias on the part of the Investigator.
- 2.2.4. An Investigator may be:
- a. a Management Committee member who is independent of the matter;
  - b. an independent external person, for example, a Financial Counsellor who is not a member of the Association or an executive of Financial Counselling Australia (FCA) or a lawyer; or
  - c. a Panel comprising two or more persons both of whom must be independent; or
  - d. a Management Committee member of another State or Territory financial counselling association who is independent of the matter.
- 2.2.5. Where a Management Committee is considering the appointment of an external person, the Management Committee may want to ask the FCA to recommend someone, for example, a person who has fulfilled a similar role for other FCA member associations.


#### **Examples of factors that would be relevant in deciding who to appoint**

- Whether all members of the Management Committee are independent so far as the matter is concerned

If a Management Committee member has a close relationship with the Member or is involved in any way in the matter, that Management Committee member is conflicted and cannot be involved at all in the choice of Investigator or in the progress of the matter. Depending on the nature of the Management Committee member's conflict, it may be appropriate to utilize an external person as Investigator (not just an independent member of the Management Committee).

- The seriousness of the allegations

Where there are very serious allegations that may warrant dismissal of the Member from the Association or even referral of the matter to the police, the Investigator will need to have appropriate expertise and authority. A lawyer or a 2 person Panel that includes a lawyer may be appropriate in this kind of matter.

 *Attachment B is a checklist that can be used to help determine whether the proposed investigator has the skills and independence to investigate the complaint*

 *Attachment C is a checklist that the management committee can ask the proposed investigator to complete to confirm their eligibility for the role*

- 2.2.6. The Investigator must notify the Member in writing of the following:
- a. that the Investigator has been appointed by the Management Committee to investigate and make recommendations in relation to the matter;
  - b. the conduct that is of concern and a brief explanation of why this may constitute unsatisfactory professional conduct;
  - c. that the Member is invited to provide the Investigator with their written explanation and submissions in relation to the issues raised and the timeframe for this (usually 28 days must be provided to the Member but more or less time may be given where the Investigator deems that the circumstances make this appropriate);
  - d. that the Member may instead (or as well) talk with the Investigator to discuss the situation within the timeframe specified for written submissions; and
  - e. the disciplinary options available under the Association's Rules.

### 2.3. Ensuring the Investigation is Fair and Efficient

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#### **Key issues**

This part aims to ensure that the investigative process is fair and progressed with efficiency so that a timely result is obtained.

- Information may need to be collected from the complainant or someone else.
  - The Member needs to be provided with any significant new information and provided with a fair opportunity to respond to that information.
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- 2.3.1. The Investigator may gather more information by contacting the employer of the Member. If so, the complainant's permission to disclose information about the complainant will usually be required. Contact with an employer can only occur after the Member has provided his or her response to the matters raised, or if the Member has failed to respond within the timeframe set by the Investigator.

Attachment D is a template that the management committee can use to obtain consent from the complainant to release information about the complaint

- 2.3.2. The Investigator may also take other steps to gather more information about the relevant matter. This may occur either before or after (or both before and after) the Member provides the Investigator with his or her response to the matters raised with him or her. Depending on the nature of the complaint, steps may include:

- a. obtaining further information from the person who raised the concerns about the Member with the Association;
- b. reviewing any documents that pertain to the matter; and
- c. contacting the Member by telephone to clarify relevant issues or otherwise discuss the matter.

Attachment E is a template that the management committee can use to seek information from a third party about the complaint

- 2.3.3. If the Investigator gathers new information, the Investigator cannot rely upon this information in making their recommendations to the Management Committee, unless the Investigator first provides the information to the Member and gives a reasonable opportunity to him or her to respond to that information. This is to ensure natural justice is provided to the Member.
- 2.3.4. The Investigator must speak by phone with the Member if the Member so wishes and the Member makes themselves available within the timeframe specified in the notification referred to in section 2.2.6.
- 2.3.5. If the Investigator wishes, the Investigator may as well or instead meet with the Member in person to discuss the issues. The Investigator is not, however, obliged to comply with a request by the Member for an in-person meeting.

## 2.4. Recommendation by the Investigator

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### Key issues

This part aims to ensure that an investigation leads to appropriate action being taken.

- The Management Committee needs to be responsible for deciding the action to be taken.
  - The action to be taken needs to be proportionate to the seriousness of the matters that are made out.
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- 2.4.1. When the Investigator has concluded the information gathering that the Investigator considers is reasonable in the circumstances, the Investigator must make a report as to the facts of the matter as they understand them and recommend to the Management Committee what action, if any, should be taken. This must not occur before the Member has responded to the Investigator, unless the Member fails to respond before the expiry of the timeframe for response specified in the notification referred to in paragraph 14.
- 2.4.2. The Investigator's recommendation may be:
- a. that no further action should be taken;
  - b. that the Member is counselled about the matter;
  - c. that a formal warning is provided to the Member;
  - d. that the Member is required to undertake remedial action such as provide an apology to the client or employer agency or complete specified training;
  - e. that the Member is suspended from membership of the Association for a defined period or until defined action is undertaken;
  - f. that the Member's membership of the Association is terminated; or
  - g. any other action the Investigator thinks appropriate.
- 2.4.3. The cost of any training or remedial action is not the responsibility of the Association.

## Section 3. How the Management Committee Responds to an Investigation

### 3.1. Consideration of the Investigator's Report

- 3.1.1. The Management Committee must consider the Investigator's report at the next meeting of the Management Committee (which may be a specially convened meeting for that purpose). The Management Committee may decide:
- a. to follow the course of action in relation to the Member that is recommended by the Investigator; or
  - b. to take different action in relation to the Member from that recommended by the Investigator.

#### **Example of a matter that would warrant no further action**

- An allegation that has not been able to be confirmed or rejected despite the Investigator's best endeavours, because the Investigator has been unable to gain access to relevant information (for example, because the client and/ or the employer of the Member has not been prepared to provide access to relevant material).

#### **Example of a matter that would warrant counselling or formal warning**


- A Member who has belittled a client to an extent that has caused significant client distress.

#### **Example of a matter that would warrant a request that the Member commits to undertaken further training**

- A Member who has provided advice that demonstrates a significant lack of understanding of a key technical issue, thereby causing the client to incur additional expense.

#### **Example of a matter that would warrant termination of membership**

- A Member who has committed fraud eg stolen money from a client or employer or provided fraudulent information to a bank to obtain a loan.

 *Note: Termination of membership has the potential to affect a Member's ability to work as a financial counsellor and is only appropriate in the most serious cases.*

## 3.2. Notification of the decision to the Member

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### Key issues

This part aims to ensure that a Member is properly notified of the outcome of the complaint.

- The Management Committee needs to notify the Member promptly and in writing.
  - Where formal remedial action is decided upon, reasons need to be given.
  - Where appeal rights exist, the Member needs to be told of these rights.
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3.2.1. The Management Committee must promptly notify the Member in writing of their decision in relation to the matters investigated.

3.2.2. Where the Management Committee decides to issue a formal warning, to require the Member to undertake a remedial action or to suspend or terminate the Member's membership of the Association, the Management Committee must provide reasons as to why the Committee considers this course of action to be appropriate.

Attachment F is a template that the management committee can use for this purpose

3.2.3. If the Management Committee decides to require the Member to undertake any remedial action or decides to suspend or terminate the Member's membership of the Association, the Management Committee must in its notification to the Member provide information about his or her appeal rights.

## Section 4. Appeal rights

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### Key issues

This part aims to ensure that a Member has the benefit of a fair right of appeal where the Management Committee requires the Member to undertake any remedial action or to suspend or terminate the Member's membership of the Association. This is because action of this kind has the potential to affect the Member's reputation and livelihood. The appeal process needs to be timely, fair and respectful.

- The matter needs to be brought to an appropriately timely conclusion so there needs to be a time limit for the exercise of appeal rights.
- To ensure a breadth of perspective, the appeal needs to be decided by a Panel rather than a single person decision maker.
- To provide independence, the appeal needs to be considered by those who have not previously been involved in the decision.
- To maximise fairness, the Member needs to be able to make oral and written submissions to the Panel.
- Again to maximise fairness, the Panel needs to provide written reasons for its decision.
- To prevent a person effectively circumventing a suspension or membership termination by moving State and joining another FCA member association, all FCA member associations need to have access to the names of all Members whose membership is suspended or terminated.

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- 4.2.1. Where a Member is notified that the Management Committee has decided to require the Member to undertake remedial action or to suspend or terminate their membership of the Association, the Member is entitled in the 28 days after receipt of that notification to appeal that decision.
- 4.2.2. The Management Committee must appoint a Panel comprising three persons to consider an appeal. The Panel must not include the Investigator who investigated the matter or any member of the Management Committee. Apart from these restrictions, the Management Committee may choose any independent person they consider to have the appropriate skills and experience to be a part of the Panel so that they approach their task without pre-judgement.
- 4.2.3. A Panel must offer to meet with a Member to hear in person why the Member believes that the Management Committee's decision is not appropriate. In addition, the Panel must provide the Member with 14 days to provide a written submission (additional time may be given if the Panel considers this appropriate).

- 4.2.4. The Panel may if it wishes collect further information from any other person. If the Panel gathers new information, the Panel cannot rely upon this information in making their decision unless the Panel first provides the information to the Member and gives a reasonable opportunity to him or her to respond to that information. This is to ensure natural justice is provided to the Member.
- 4.2.5. The Panel may decide:
- a. to uphold the Management Committee's decision to require the Member to undertake remedial action or to suspend or terminate the Member's membership of the Association (as applicable); or
  - b. to substitute a different decision for that made by the Management Committee.
- 4.2.6. The Panel must promptly notify the Member and the Management Committee in writing of their decision in relation to the matters appealed, giving reasons for their decision. A Panel decision is final.
- 4.2.7. Once a Panel has determined an appeal, or time has elapsed within which an appeal can be sought, the Management Committee may record in a suspensions and terminations register the details of the person who has been suspended and terminated. This register may be available to other associations that are FCA members.



## Section 5. Other Matters

### 5.1. Providing Information to complainants

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#### **Key issues**

This part aims to ensure that where a complainant is told that their complaint about a Member will be investigated, the complainant's legitimate interest in the matter is recognised, whilst recognising privacy constraints.

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Attachment G is a checklist that the management committee can use to check that privacy procedures are adequate

- 5.1.1. Where the Management Committee informs the complainant that it has decided to investigate a complaint (see paragraph 8), the Management Committee must take reasonable steps to keep the complainant informed of the progress of the matter (if the complainant so wishes). This does not, however, override the Management Committee's privacy and confidentiality obligations.

### 5.2. Management Committee role

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#### **Key issues**

This part recognises the Management Committee's responsibility to ensure a fair disciplinary process that complies with confidentiality and privacy requirements.

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- 5.2.1. The Management Committee must implement this Policy and Procedure in a way that recognises the responsibilities of professionalism, whilst ensuring compliance with confidentiality and privacy obligations and fairness to the Member. Where the Management Committee have reasonably tried to carry out their responsibilities in this way, the Management Committee cannot be held liable for any loss of reputation, loss of income, hurt or other consequences of this Policy and Procedure.
- 5.2.2. Management Committee members must disclose any conflict of interest in relation to a complaint and, if they are conflicted, must exclude themselves from involvement in the matter.

- 5.2.3. The Management Committee may delegate to a sub-committee any or all of their responsibilities under this Policy and Procedure including:
- a. assessing an event, complaint, allegation or anything else that may constitute unsatisfactory professional conduct on the part of a Member and deciding whether an investigation should be instituted and, if so, who the Investigator should be;
  - b. considering the report and recommendations of an Investigator and deciding whether any action should be taken and if so what action;
  - c. where an appeal right exists and is exercised, appointing a Panel to consider the appeal; and
  - d. keeping complainants informed in accordance with paragraphs 8 and 32.
- 5.2.4. In no circumstance is the Management Committee entitled to recover any costs from the Member the subject of a complaint, for example, costs of investigation or the costs of an appeal Panel.
- 5.2.5. The Management Committee must maintain a register of all matters that are assessed under paragraph 6 and whether an investigation was instituted. The register must record the name and details of the relevant Member and the name of any Management Committee Member who was excluded from involvement in the matter on the basis that they were conflicted. The register must also record the outcome of the matter, for example, dismissal of the matter, formal warning of the Member, termination of the Member's membership of the Association etc.
- 5.2.6. Where a Member has had their membership of the Association suspended or terminated, the Management Committee must provide this information to the FCA so that this information can be made available to other financial counselling associations.

# Attachment A

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A checklist that can be used to help determine whether a complaint should be investigated.

	<b>Issue</b>	<b>Response – giving brief reasons</b>
	1. Does the complaint raise matters that if true are serious?	
	2. Does the complaint have a level of specification or substantiation that give it credibility?	
	3. Does the complainant have a vested interest or is there a prior history that creates reasonable doubt about the credibility of the complaint?	
	4. If the complaint is oral or anonymous, is this suggestive of rumour-mongering or malice – or are there special circumstances that suggest that despite this the complaint should be investigated?	

## Attachment B

A checklist that can be used to help determine whether the proposed investigator has the skills and independence to investigate the complaint.

<i>Issue</i>	<b>Response – giving brief reasons</b>
1. Does the person have any connection with the relevant events, the complainant or the person being investigated?	
2. Is the person sensitive to the significant ramifications for the person being investigated and possibly others involved in the matter?	
3. Has the person experience in identifying and gathering relevant information for the purposes of an investigation?	
4. Has the person experience in interviewing people for the purposes of an investigation?	
5. Has the person experience in assessing probity where gathered information is conflicting?	
6. Does the person understand their legal obligations ie natural justice, privacy and confidentiality, obligation not to defame?	
7. Has the person experience in making investigation findings and recommendations?	
8. Does the person have good judgement?	
9. Does the person have the time to pursue the investigation in a timely way?	
10. Does the person have coverage under a professional indemnity insurance policy for their work in carrying out the investigation?	

## Attachment C

A checklist that the management committee can ask the proposed investigator to complete to confirm their eligibility for the role.

<i>Issue</i>	<b>Response – where you indicate you have previous experience please provide brief details</b>
1. Do you have any connection with the relevant events, the complainant or the person being investigated?	
2. Are you aware of the significant ramifications for the person being investigated and possibly others involved in the matter?	
3. Do you have previous experience in identifying and gathering relevant information for the purposes of an investigation?	
4. Do you have previous experience in interviewing people for the purposes of an investigation?	
5. Do you have previous experience in assessing probity where gathered information is conflicting?	
6. Do you understand an investigator's legal obligations ie natural justice, privacy and confidentiality, obligation not to defame? 7. See <a href="http://www.liv.asn.au/PDF/News/Journal/Write/2011DefamationFactSheet">http://www.liv.asn.au/PDF/News/</a> 8. Journal/Write/2011DefamationFactSheet	
9. Do you have previous experience in making investigation findings and recommendations that require good judgement?	
10. Do you have the time to pursue the investigation in a timely way?	
11. Do you have coverage under a professional indemnity insurance policy for your work in carrying out this investigation?	

# Attachment D

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A template document that the management committee can use to obtain consent from the complainant to release information about the complaint

I have made a complaint to [name of Association] about a Financial Counsellor that is one of the Association's Members.

The Association has advised me that to investigate this complaint, it will need to seek information from [set out who will need to be approached eg the Financial Counsellor's employer].

I consent to the Association providing details of my complaint to [insert name of the person/ organisation that will be approached] for that purpose.

.....  
Name of complainant

.....  
Date

## Attachment E

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A template that the management committee can use to seek information from a third party about the complaint

[Name  
Address]

Dear [name]

I am writing to you to inform you about a complaint that we have received in relation to [insert name of Member eg Ms XYZ], one of our Members, who is employed/ was employed by you at the time of the events the subject of the complaint.

Our Association takes complaints about our Members very seriously. To do so is consistent with our commitment to a high level of professionalism.

We are writing to you to seek access to information that we think you probably hold about the events the subject of the complaint. Ms XYZ has given her consent to us disclosing to you details of the complaint and obtaining information from you that is about her – now attached is a copy of her Membership Application that includes this consent.

If you are in fact willing to provide information to us for the purposes of handling the complaint, we would be happy to first discuss with you arrangements to protect your confidentiality and the privacy of the client or anyone else. We would then disclose to you particulars of the complaint so that you can identify what information you hold is relevant to the complaint.

We propose to call you to discuss this request with you, but thought it might work best if we gave you a chance to consider the issues in advance of our call.

Yours sincerely

# Attachment F

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A template document that the management committee can use to frame their reasons

Management Committee Reasons for Decision in relation to the Complaint made against Member [*insert name*]

## **1. Complaint**

Briefly set out here the complaint

## **2. Background**

Briefly set out here the Association's responsibility to investigate the complaint under its Constitution and this Policy and Procedure.

## **3. Investigation steps**

Set out who investigated and the key steps that they took ie what documents were collected and to whom the investigator spoke.

 There is no need to set out what the investigator concluded and recommended. This is overtaken by the Management Committee's decision ie the Management Committee may reject some findings of fact or investigator recommendations on the basis that they are not persuaded by the evidence the investigator marshalled.

## **4. Member's response to complaint**

Set out the Member's response to each aspect of the complaint. Reasonable detail should be provided to evidence that the Member was given a fair chance to respond and this was properly taken into account.

## **5. Findings**

Set out the findings of fact.

## **6. Decision**

Set out what the Management Committee considers is appropriate remedial action in light of the findings of fact. Need to ensure that there is discussion of proportionality ie why the remedial action decided upon is necessary to protect future clients of the financial counsellor. In the case of a suspension or termination, it should be made clear why this was appropriate and other remedial action eg training, counselling would not address the identified problems.

## **7. Conclusion**

For clarity, briefly state at the end of the reasons the Management Committee's decision.



## Attachment G

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A checklist that the management committee can use to check that privacy procedures are adequate

<b>Issue</b>	<b>Response – where you indicate you have previous experience please provide brief details</b>
1. Are all Committee members aware that they must not tell anyone about the investigation even on a no-names basis?	
2. Are there suitable controls in place to ensure that the confidentiality of the investigator's report is maintained (eg report marked confidential, for particularly sensitive investigations the report could perhaps be distributed in hard copy and these copies collected at the close of the management committee meeting)?	
3. Are there suitable controls in place to protect the security of any papers/ emails/ minutes of meetings pertaining to the investigation (eg hard copy kept in locked drawer, personalised password to access online information)?	
4. Are Management Committee discussions about the investigation only conducted in a private place where other people cannot overhear (ie not in corridors or in a café)?	

# Schedule

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The Financial Counselling Associations will jointly undertake a review of this disciplinary process after there is reasonable experience of how it is working in practice. The review will be directed to assessing the following:

1. Does the process provide enough flexibility to cater for the broad range of complaints that may arise ie from trivial complaints to quite serious complaints?
2. Does the process provide sufficient guidance for Management Committees?
3. Are there further or better examples that could be incorporated into the document to enhance the guidance for Management Committees?
4. Is there further support that the Management Committees need to carry out their responsibilities under the process eg training, additional checklists or other tools?
5. Are Management Committees able to find complaint investigators who are independent and meet the skills requirements set out in the process?
6. Are investigators providing Management Committees with good quality investigation reports in a timely way?
7. Are the remedial actions taken in relation to complaints enhancing the professionalism of financial counsellors?
8. Does the process provide an appropriate balance such that that investigated financial counsellors' reputation and ability to earn a livelihood are not prejudiced where not absolutely necessary to protect future financial counselling clients and the reputation of the financial counselling profession as a whole?
9. Are Management Committees able to find Panel appointees with appropriate skills at a reasonable cost?
10. Are there other practical problems or other weaknesses in relation to the process that have been identified and if so how should they be addressed?