

FCVic Board Complaints Policy

Adopted 30 April 2019

Introduction

A client of a financial counsellor, if dissatisfied with the service they receive, may lodge a complaint with FCVic as the professional body. Other stakeholders, such as agency employers, legal representatives or industry organisations may also lodge a complaint with FCVic if they observe conduct or behaviour by a financial counsellor that seems inconsistent with appropriate professional standards.¹

Financial counsellors are required under the terms of the ASIC licence exemption to be employed by an agency that does not charge clients for their service (in effect, a not for profit entity). Normally that entity is the responsible service provider which should have complaint processes in place, and be in a position to address client complaints in a direct manner. However, an agency entity has no direct responsibility or obligations with regard to professional standards in financial counselling, and may not be in a position to meaningfully support a financial counsellor in their practice or address professional issues raised by a complaint (for example where there is only a sole financial counsellor in the agency).

As financial counselling is a self-regulated profession, the professional body has an obligation to establish appropriate processes to address professional issues raised by client, or other stakeholder, complaints.

A review of the FCVic Constitution is currently underway. The review is considering a range of issues, including amendment of the provisions in clauses 10 (discipline), 11 (appeals) and 12 (disputes), and the potential for referencing the FCA Disciplinary Process in relevant parts of the constitution.

Pending possible amendments to the constitution, and in the absence of much detail apart from brief mention of a Board process in relation to restricting practice in clause 10, it is appropriate for the Board to consider adopting a policy that articulates the processes that should apply in relation to a complaint received about a financial counsellor from an agency or client or other stakeholder.

FCVic Principles in relation to client or stakeholder complaints

Two principles - one primary and one secondary - underpin this policy and FCVic decision making in relation to complaints.

Primary Principle

The FCVic Board and Professional Standards Committee have a duty of care to current and potential future clients, ensuring as far as possible they will receive ethical and effective services from financial counsellors practising to a sound professional standard, and they will not be put at risk of experiencing detriment from poor advice, advocacy or professional assistance.

¹ A complaint from another financial counsellor could also be considered for action in this process; depending on the circumstances, it may be more appropriate to deal with under Constitution clause 12 as a dispute between members.

In the context of financial counselling work, where clients are by definition in a vulnerable position, the profession through its peak body is committed to maintaining the highest standards of ethics, probity and professionalism on the part of financial counsellors.

In accordance with this principle, in the event of a complaint from a client, FCVic will notify the financial counsellor's employing agency of the existence and circumstances of the complaint and any process it is adopting to look into the matter. This notification should enable the employing agency to appropriately manage client risk in those circumstances, and provide appropriate supports as an employer to a financial counsellor subject to a complaint process.

Secondary Principle

The Board and Professional Standards Committee work to support financial counsellors, both individually and collectively. Wherever possible and consistent with the primary principle, they will support learning and improvement in professional practice of financial counsellors, and act to help financial counsellors address professional standards issues constructively and non-punitively.

In the event that action is taken to investigate a complaint, or consider possible restrictions on practice, the Board will offer assistance to the financial counsellor in the form of organising the provision of (arm's length) collegial or professional support.

Receipt of complaint

Contact with the FCVic office from a stakeholder expressing concern about the work of a financial counsellor may be in person or by phone or mail or email. Stakeholders or clients with complaints will be referred to the Executive Officer (EO) to respond to in the first instance.

Complaints will be treated confidentially, subject to policy requirements concerning notification of employer agency.

Complainants will be briefed on the relevant roles of FCVic and the employing agency, and clients with a complaint will generally be referred to the agency responsible for the service if they have not already approached the agency. Where appropriate, the EO may assist the client or stakeholder to contact the relevant agency manager to raise their complaint with the agency.

Where the complainant is concerned that professional issues about the financial counsellor's practice need to be addressed, this should be acknowledged as a legitimate issue to raise with FCVic, and the complainant will be briefed on the applicable process.

Where there is a clear request from the client/stakeholder to proceed with a complaint to FCVic, or where it is otherwise in the interests of the profession and consistent with the primary principle to consider the issues raised, the EO will prepare a **complaint brief**.

Where a complainant requests anonymity, this will be respected, but the complainant should be warned that this may prevent further action being taken on the complaint in some circumstances.

Complaint brief

A summary will be prepared of the complainant's concerns. This may be done by the complainant themselves, or by the EO in consultation with the complainant. The identity of the financial counsellor concerned will be kept strictly confidential.

Steps to deal with the matter

The Executive Officer will consult with the chair of the professional standards committee (or if that person has a conflict, with either the FCVic Board Chair or Secretary) about the complaint brief. The following action paths will be chosen from in that consultation:

1. **No Further Action** – the EO will write to the financial counsellor concerned with a copy of the complaint brief, and advise that after review of the issues raised, FCVic does not intend to take further action. In the correspondence, the EO will invite the financial counsellor to make a response to the complaint brief to be appended to it for completeness' sake, and advise that the material will be filed confidentially.
2. **Professional Standards at Issue** – the EO will write to the financial counsellor concerned with a copy of the complaint brief, and invite the financial counsellor to make a response to the complaint brief. This response should include comment on/response to professional standards issues raised by the complaint.
3. The brief and response will be referred to the professional standards committee for consideration, and decision on any further action, and the committee may invite the financial counsellor to meet with it, or its representatives to discuss the matter. If in the view of the professional standards committee there is a prima facie case for the financial counsellor to have restrictions placed on their practice, this should be put to the Board and the financial counsellor as a recommendation, and the Board should then consider further action in accordance with clause 10 of the Constitution.
4. **Potential Serious Misconduct** – The EO will brief the Board, and the Board will consider whether to take action in accordance with clause 10 of the constitution. In making such consideration the Board may initiate an investigation, delegate management of an investigative process or assessment of the issues to the professional standards committee, or take other preliminary steps to inform it whether a meeting under subclause 10.2 is warranted.

Where matters of concern involve risks for clients of a sufficiently serious nature, the Board may contemplate a temporary suspension of membership, pending a full investigation and consideration of disciplinary action. This would require a Board meeting under clause 10.2 to initiate as an action, but should be undertaken as soon as possible.

For the Board to consider temporary suspension pending full investigation, the clause 10.2 meeting will require the member to *show cause* as to why they should not be suspended in the circumstances.²

5. Action under clause 10 of the Constitution may result in a decision to place conditions on membership, or suspension or cancellation of membership. Under clause 11, a Board decision on such matters is appealable to a general meeting.

Outcomes

In pathway 1: closure of file, no further action.

In pathway 2: Professional Standards Committee reaches agreed resolution with the member on the basis of no further action, or remedial actions to improve the member's professional practice OR Committee refers unresolved matters to the Board with recommendations on possible further actions. In the latter case, further actions will be as for pathway 3.

In pathway 3: The Board considers briefing from EO (or in the case of matters unresolved from pathway 2, the Professional Standards Committee) and decides between:

- a) Initiating an investigation to inform consideration of further action under clause 10, OR
- b) Delegating initial examination of issues to the Professional Standards Committee (pathway 3 matters only – resulting in a pathway 2 process), OR
- c) Initiating a meeting pursuant to clause 10.2 of the Constitution, OR
- d) Advising the member of the complaint and inviting their response, and undertaking further consultation with the member in order to clarify issues of concern, OR
- e) Taking no further action

In all cases, the member will be notified in writing of the outcome. The Professional Standards Committee as a Board Committee should submit reports on its actions under this policy to the Board.

Natural Justice

Any financial counsellor member subject to a complaint has the right to be informed of the details of the complaint, and any views or concerns the complaint raises for FCVic about their professional standing, and be given an opportunity to respond to this before FCVic makes any decision in relation to the matter that is detrimental to the member.

² AHPRA defines this as follows: When a Board proposes to take immediate action, a 'show cause' process is involved. This ensures that there is natural justice for the practitioner.

'Show cause' means that the Board gives the practitioner notice that it proposes to take immediate action, including the specific action that the Board is proposing. The practitioner has the opportunity to respond to this notice.

The time given to the practitioner for a response will vary based on the degree of risk to the community, but the practitioner is always afforded natural justice, including the right to understand the concerns that have been raised about them and the right to be heard (or 'show cause').

Communication

As a condition of membership, members must accept that the disclosures provided for in this policy may occur.

- The client/stakeholder who raised the complaint is entitled to be informed about the outcome of the matter on a confidential basis.
- The financial counsellor subject to the complaint should be informed of all decisions taken in relation to their membership and professional standing.
- An agency employer should be informed about any complaints subject to action paths 2 or 3, and the steps being followed by the Board, as well as any outcomes of the Board process. Where a complaint is referred to the agency to respond to under its own complaint processes, but is also dealt with by FCVic under this process, FCVic and the agency may agree to share information about how the matter is dealt with under their respective processes. All such information sharing should occur on a confidential basis.
- If the Board determines it is a matter of interest to the membership or to a wider audience, the issues raised in a complaint, and decisions made in response to it may be disclosed to the FCVic membership, and to a wider array of stakeholders. Wider information sharing would de-identify the specific financial counsellor and agency concerned.

FCVic Board Complaints Policy – Flowchart

