

**Professional Conduct Policy
(including Appeals)
CP006**

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Policy Title Professional Conduct POLICY (Including Appeals)

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1. INTRODUCING - PROFESSIONAL CONDUCT POLICY

Financial Counselling Victoria Inc. (FCVic), as the peak body for financial counsellors (FCs) in Victoria, has a responsibility to ensure that the professional practice of FCs in Victoria is maintained at the highest possible standard. Recognising the FC client cohort is vulnerable, strong professional standards are essential to protect vulnerable Victorians from detriment, as well as advancing the standing of the profession.

2. PURPOSE

This policy is adopted as required by clause 10 of the **FCVic Constitution** to deal with professional conduct complaints. The Constitution allows for anyone to make a complaint about the professional conduct. It is expected that complaints may come from

- a) financial counselling clients, another financial counsellor or an employing agency; or
- b) other stakeholders such as legal representatives or industry organisations.

For the purposes of the FCVic Constitution Clause 10, the Professional Standards Committee (PSC) should be regarded as a delegated **Decision-Making Body**.

3. SCOPE

This Policy applies to all Board Members, officers and to all categories of practising membership of FCVic.

4. DEFINITIONS

ASIC refers to Australian Securities and Investments Commission.

ASIC legislative instruments refers to ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792 and ASIC Credit (Financial Counselling Agencies) Instrument 2017/793.

Association refers to Financial Counselling Victoria Inc.

Australian Financial Counselling Code of Ethical Practice - the Code of Ethical Practice expresses the values and responsibilities that are an important aspect of the financial counselling profession. It is intended to assist financial counsellors to act ethically in the performance of their professional practice and to protect the rights and responsibilities of clients, other financial counsellors, colleagues, workplaces and the community.

Continuous Professional Development (“CPD”) is the reinforcement or acquisition of skills or knowledge relevant to the workplace.

Conflict of Interest occurs when a person’s personal interests conflict with their responsibility to act in the best interests of a client, their employer or Financial Counselling Victoria. Personal interests include direct interests, as well as those of family, friends, or other organisations a person may be

involved with or have an interest in. A conflict of interest may be actual, potential or perceived and may be financial or non-financial.

FCVic Member refers to a natural person registered as a practising member of FCVic (Student, Associate or Full Member).

Financial Counselling National Standards for Membership and Accreditation sets out national standards for membership and accreditation of financial counsellors in Australia. The standards have been agreed by the eight State and Territory financial counselling associations:

Independent Appeals Panel

An independent appeals panel is based on selection of individuals who have subject matter expertise and have had no prior dealings with the issue that is the subject of the appeal.

Natural Justice Any FCVic 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.

Non-profit Organisation is an organisation that does not operate for the profit, personal gain or other benefit of particular people (for example, its members, the people who run it or their friends or relatives).

Professional Standards Committee is a sub-committee of the FCVic Board established to consider and undertake assessments of professional standards issues, make relevant policy recommendations to the Board on professional issues, and to take any other actions in relation to professional issues delegated to it by the Board.

5. AGENCY EMPLOYER CONTEXT

5.1 Responsibilities of employing Agencies and FCVic in relation to complaints received.

Financial counsellors are required under the terms of the ASIC legislative instruments to be employed by a 'financial counselling Agency' (Agency). The Agency is responsible for Financial Counselling service provision in connection with employment of one or more Financial Counsellors (FCs) and as such is required to 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 an FC in their practice or address wider professional issues raised by a complaint. Where a complaint involves a former staff member, an Agency has little or no capacity to deal with such matters. Where an agency dismisses a FC for poor performance without professional body oversight, the FC may be free to continue practising and thereby risk client detriment.

Also, an Agency may be subject to a conflict of interest where there is a client complaint, as they are the service entity most likely to bear legal and financial liability for any detriment allegedly caused to a client.

FCVic as the professional body for FCs in Victoria alone has the role of establishing and maintaining professional standards. It must do so in order to protect clients from poor practice, and advance the

standing and reputation of the profession. With this role comes the obligation to establish appropriate processes to address complaints in relation to professional standards issues raised by a client, or other stakeholder.

5.2 FCVic agency liaison over complaints

Where a complaint of substance is made to FCVic, the employing agency will be notified to enable it to manage client risk. In some complaint situations, the agency may be in a position to address professional/performance issues of an FC, and the FCVic complaint process is designed flexibly to take account of this.

At any point in the complaints process, where actions are being considered by the Board or Professional Standards Committee, the decision making body will take into account actions by an agency in its capacity as the employer of the financial counsellor pertinent to the complaint issues. Where an agency has addressed professional conduct issues through its performance management processes, FCVic will consider whether any further action on its part has been rendered superfluous or unnecessary, and will not take further action where it considers the agency response has sufficiently addressed the conduct issues raised by the complaint.

6. PROFESSIONAL STANDARDS COMMITTEE

6.1 Role of the Professional Standards Committee

The Professional Standards Committee (PSC) has been established by the Board as a sub-committee with additional senior financial counsellors as members. Its terms of reference state it is to consider professional standards matters, including professional conduct where so delegated by the Board or this policy (**See Attachment 1: PSC Terms of Reference**).

The PSC should be regarded as the default designated decision-making body for the purposes of the FCVic Constitution.

7. COMPLAINTS PROCESS

7.1 How to make a complaint about a Financial Counsellor

7.1.1 Public Advice

Financial Counselling Australia has initiated a national communication process to guide any financial counselling client, professional body or any other stakeholder on how to make a complaint about a Financial Counsellor. The abovementioned public notification can be viewed at:-

- Weblink to advice.
<https://financialcounsellors.org/wp-content/uploads/2018/07/Making-a-Complaint-About-a-Financial-Counsellor-v4.pdf>
- Attachment 2: FCA Advice – What to do if you have a Complaint about a Financial Counsellor.

7.1.2 Lodgement of a Complaint

Any person or organisation may lodge a Professional Conduct Complaint with the Executive Officer (EO) of the Association. This includes complaints lodged in the following circumstances:

- a) A client of a financial counsellor (FC), if dissatisfied with the service they receive, may lodge a complaint with FCVic as the professional body.
- b) 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 an FC that seems inconsistent with appropriate professional standards.

A complaint from another FC could also be considered for action in this process; however depending on the circumstances, and the nature of the complaint, it may be recommended by the EO that a more appropriate course of action would be for the matter to be considered under the Disputes and Grievances Policy.

Complaints may be received in person, by phone, mail or email. In each instance the complainant will be referred to the Executive Officer (EO) to respond in the first instance.

7.2 FCVic Complaints Handling Procedure.

7.2.1 *Receipt of a Complaint*

The EO will inform the complainant about the relevant roles of FCVic and the employing agency. In some instances clients with a complaint will be referred to the agency responsible for the service if they have not already approached the agency, as a first step to resolution. 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 the financial counsellor's professional conduct has been deficient with regard to their obligations as an FCVic member, the complainant will be briefed on the process applying under this policy.

It is open to the EO (alone or in consultation with the PSC Chair or Board Chair) to take a complaint forward in this process, even if the initial complainant does not wish to, where they suspect a serious professional conduct issue has been raised.

Other Channels: Any complaints that are received through other channels (i.e. not lodged directly with FCVic) must be treated as strictly confidential and forwarded to the EO of FCVic within one working day of the complaint being received.

7.2.2 *Grounds for Responding to a Complaint*

The Association will commence a complaint process against a member in accordance with this Professional Conduct Policy if, on reasonable grounds, the EO considers that the member may have materially:

- (a) failed to comply with the Association's Professional Standards;
- (b) failed or refused to support the Association's Objectives and Purposes as stated in this Constitution; or
- (c) engaged in conduct that is seriously prejudicial to the Association, to the profession of Financial Counselling generally, or to the collective interests of the Association's members.

7.2.3 *Complaints that are deemed to lack substance*

If following the EO's initial assessment of the complaint it is deemed to lack substance, or be frivolous or vexatious, the EO will inform the complainant of the decision to take no further action.

The EO will provide a confidential briefing of such matters to the Board Chair, or Board Deputy Chair in the event of a conflict of interest on the part of the Chair.

7.3. Complaints Management Process

7.3.1 FCVic Complaints Process – Initiation

The complaints process will commence where there is a clear request from the client/stakeholder to proceed with a complaint about a Financial Counsellor (FC) to FCVic, and where the EO identifies that the matter raised may involve a breach of professional standards.

- a) The EO will prepare a complaint brief summarising the details of the complaint. The identity of the FC concerned will be kept strictly confidential.
- b) The EO will consult with the Chair of the Board or Chair of the PSC in the event the Board Chair has a conflict (or an appropriate senior Board member/office bearer in the event both are conflicted) about the appropriate process to follow in dealing with the complaint.
- c) Depending on the complexity and seriousness of the matter, it may be appropriate to initiate an investigation, or to simply communicate directly with the complainant on the complaint issues. An investigation can only be initiated by resolution of the Board. All other decision making may be delegated to the decision-making body (in most circumstances the PSC).
- d) In some serious circumstances, involving potential immediate risks to clients, the Board may consider an interim or immediate suspension of the member. In that situation, the Board may convene a ‘show cause meeting’ with the member.¹

7.3.2. Initial consideration of complaint

The Board will decide whether an investigation is warranted, and if so, delegate to the EO arrangements to appoint an independent, suitably qualified investigator, and ensure the investigation takes place in accordance with the Constitution’s requirements for natural justice. The Board may delegate receipt of the investigator’s report and findings to the PSC.

Alternatively, the Board Chair in consultation with the EO, or the Board as a whole may decide an investigation is not warranted and delegate consideration and decision making in relation to the complaint to a designated decision-making body (in most circumstances the PSC).

7.3.3 Steps following initial consideration

- a) The EO will write to the FC concerned with a copy of the complaint, and advise of the process being followed to manage the complaint.

¹ 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’).

- i. Where there is to be an investigation, the EO will advise the FC of this, and invite them to respond to and engage with the investigator. The EO will also advise the FC of Board policy to organise support for an individual subject to a complaint, and assist the member to access appropriate supports. The EO will also appoint an investigator on behalf of the Board, who will be appointed to seek evidence, interview witnesses, afford the member natural justice in the process and provide a summary of his or her findings in relation to any allegations or issues raised in the complaint.
- ii. Where no investigation is warranted, the EO will invite the FC to provide a written, confidential response to the complaint brief.
- iii. Where later in the process the need for an investigation becomes apparent, the pertinent investigative steps will be followed.

Where there is an investigation

An independent and suitably qualified investigator will be appointed and provided with the complaint information and the means to access the complainant, the member. The investigator will provide a summary of his or her findings in relation to the allegations or elements of the complaint, while according the member opportunities to respond to all allegations and evidence that may suggest a finding against them.

On completion of the investigation, the investigator will provide a report on a confidential basis to the designated decision-making body.

Where there is no investigation

- b) An FC response to the complaint brief should:-
 - i. Include a detailed response that specifically addresses the professional standards issues raised by the complaint.
 - ii. Include evidence supporting their position where they dispute some or all of the complaint.
 - iii. Advise if they (the FC) would like to address the designated decision-making body to personally respond to the matters identified in the complaint brief.
 - iv. Advise how the FC intends to address the issues and if applicable learn from the complaint.
 - v. If appropriate, identify any training or support the FC could receive from FcVic in relation to the complaint to improve their practice.
- c) The FC is requested to confidentially submit their response to the complaint brief to the EO of FcVic within 5 working days of receipt of request (reasonable requests for extension will be granted).
- d) The EO will respond to the FC confirming receipt of the response and will advise the FC of the following steps:-
 - i. The Complaint Brief and FC response will be submitted to the Decision-Making Body, which will consider all information in the complaint brief and the response from the FC in their determination of an outcome.

- ii Where the FC wishes to address the decision-making body, arrangements for that to occur.

7.3.4. Role of the Professional Standards Committee (PSC) in relation to Complaints.

In most circumstances the Professional Standards Committee (PSC) will act as the designated decision-making body. These provisions should be taken to apply to any other decision-making body designated by the Board.

7.3.4.1 Where there is no investigation

The PSC will undertake a detailed review of the complaint brief and the FC's submitted response.

The PSC's review process includes extending an invitation to the FC to meet with the PSC, or its representatives. If the FC chooses to meet with the PSC this meeting may be undertaken in person or via dial-in telephone, the chosen meeting mechanism to be agreed in consultation between PSC representative and the FC.

The FC has the right to have a support person with them at any agreed face to face meetings or dial-in discussion with the PSC relating to the complaint.

The PSC's review of the complaint will be undertaken under the following principles.

- (a) The PSC will ensure that any member who is subject to a complaint is accorded natural justice and procedural fairness;
- (b) Any members of the PSC who have, or might reasonably be perceived to have, a conflict of interest, will remove themselves from participation in the complaint process; and
- (c) The complaint process will be treated as strictly private and confidential, subject only to disclosures as required by law and to the reasonable need to:
 - i. inform an employee's agency so it can manage client risk;
 - ii. inform the complainant of the outcomes of the process;
 - iii. inform other state peak bodies of the outcomes of the process.

7.3.4.2 Where there is an investigation

The EO will write to the member with a copy of the investigator's report and findings (redacted where necessary to protect third party confidentiality, subject to such redactions not affecting the respondent's right to know of the allegations against them).

The member will be invited to respond to the investigator's report in writing and offered the opportunity to attend in person the PSC meeting at which the report and complaint is being considered.

The FC has the right to have a support person with them at any agreed face to face meetings or dial-in discussion with the PSC relating to the complaint.

The PSC's consideration of the complaint and investigator's report will be undertaken under the following principles.

- a. The PSC will ensure that any member who is subject to a complaint is accorded natural justice and procedural fairness;
- b. Any members of the PSC who have, or might reasonably be perceived to have, a conflict of interest, will remove themselves from participation in the complaint process; and
- c. The complaint process will be treated as strictly private and confidential, subject only to disclosures as required by law and to the reasonable need to:
 - i. inform an employee's agency so it can manage client risk;
 - ii. inform the complainant of the outcomes of the process;
 - iii. inform other state peak bodies of the outcomes of the process.

7.3.4 PSC Complaint Review Timeframe

The timeframe allocated to the PSC to undertake a review will vary depending on:-

- a) The complexity of the complaint
- b) The vulnerability of the complainant
- c) Geographical considerations
- d) If there is an identified need for an investigation to be undertaken by an independent person

As a general principle, all complaints should be dealt with as quickly as possible with due regard to the impacts on the complainant and member of timeframes.

7.3.5 PSC Complaints Review Decision Options

The PSC after due consideration of the complaint will make one of the following determinations:

- (i) no further action is required against the Member;
- (ii) the Member shall be counselled, or required to undergo additional training or supervision;
- (iii) the Member's membership rights shall be suspended for a specified period, and/or made subject to specific requirements; or
- (v) the Member shall be expelled from the Association.

The PSC will provide brief written reasons for all decisions, with sufficient detail for the parties to understand how and why it arrived at its determination. The PSC will report to the Board on the outcomes of its process.

7.3.6 Scope of the PSC Decisions related to Complaints

- a) The PSC cannot impose any form of monetary penalty on a Member.
- b) The PSC cannot order the Member to pay any form of compensation to the complainant.

- c) Where a decision is made to expel a member, suspension can be made effective immediately by the PSC, with expulsion subsequently being either confirmed or denied through the workings of the appeal process.

7.3.7 Board review of PSC Decisions regarding Complaints

Decisions made by the PSC will be submitted to the Board for minuting at the next Board meeting. The Board may refer a complaints matter to the appropriate authorities if it believes it to be warranted.

7.3.8 Complaints process Communication and Disclosure

As a condition of membership, members are advised 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 FC 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 matters of potential serious misconduct, 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, however, due to professional standards concerns, it 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 normally involve de-identifying the specific FC and agency concerned.

7.4 Anonymous complaints

Anonymous or unidentified complaints will be investigated at the discretion of FCVic. FCVic decision to investigate such a complaint will be guided by:-

- the nature of the complaint,
- the potential seriousness of any alleged breach of Professional Standards
- the fairness of the process for the member subject to the complaint, and
- availability of sufficient information to enable a meaningful investigation or assessment of the complaint.

There is no obligation for FCVic to send a response to an anonymous complainant on the investigation process or outcome.

8. APPEAL RIGHTS

8.1 Scope

8.1.1 Complaints Appeals

A Member who receives an adverse finding at the conclusion of Complaint review process, may formally initiate an appeal in relation to the decision, to the FCVic Board.

8.1.2 Other Appeals

A member may appeal a Board decision in relation to the Board's powers under Clause 7 of the Constitution (Membership).

8.2 Purpose

This Appeals policy outlines the FCVic procedures guided by the Constitution in relation to any appeals initiated by FCVic members.

8.3 Appeals Process

8.3.1 Appeals Process

Appeals must be lodged **within ten working days** of written notification of the PSC or Board decision that is being appealed.

The appellant must lodge their appeal in writing, addressed to the Executive Officer (EO) of FCVic.

The appeal must include:

- a) Name and contact information of appellant
- b) Clearly state what decision the appeal relates to
- c) Define the grounds for appeal
- d) Provide all relevant information to substantiate grounds for appeal.
- e) Articulate the desired outcome

All appeals applications received by the EO will be treated as strictly confidential.

On receipt of an appeal the EO will within ten working days establish an Independent Appeals Panel to undertake the appeal review.

8.3.2 Independent Appeals Panel

The Independent Appeals Panel will comprise individuals who have subject matter expertise and have had no prior dealings with the issue that is the subject of the appeal and no conflicts of interest.

An Independent Appeals Panel will be constituted by:

- 1 Board Member (Chair) OR, where the appeal is against a decision of the Board, a suitably qualified independent Chair.
- 2 Independent Members

The EO will notify the appellant in writing, within three working days of establishing the panel, of the names of the panel members and the contact details of the chair of the independent panel who will be reviewing the appeal and the timeframe for conduct of the appeal process. With this advice the EO will request the appellant to promptly respond to any requests for further information that may be requested by the appeals panel.

8.3.3 Independent Appeals Panel review process

The independent appeals panel will be provided with:-

- All original documentation relating the matter that is the subject of the appeal.
- Documentation provided by the Appellant forming their grounds of appeal.

The independent panel will be granted 10 working days to review the appeal, from the date they received appeals documentation.

As part of the appeals review process the Independent Appeals Panel will contact the appellant to invite them to address the appeal panel or its representative. This communication can be undertaken in person or via dial-in telephone option. The appellant has the right to have a support person with them at any agreed meetings or dial-in discussion with the independent appeals panel relating to the appeal.

8.3.4 Decision and Communication of outcome of Appeals Panel Review

The appeal panel will make a final decision (majority ruling) on the matter that is the subject of the appeal.

The final decision of the Independent Appeals Panel will be formally communicated to the appellant in writing by the EO.

9. RELEVANT DOCUMENTS

Australian Financial Counselling Code of Ethical Practice

ASIC Corporations (Financial Counselling Agencies) Instrument 2017/792

FCVic Constitution

FCVic Membership Policy

FCVic Professional Standing Policy

Financial Counselling National Standards for Membership and Accreditation (“National Standards”)

10. IMPLEMENTATION

The Executive Officer for FCVic is responsible for the implementation and management of this policy.

11. APPROVED

Approved by FCVic Board:

Enquiry Contacts

For questions about this policy, contact the FCVic Executive Officer.

Dr Sandy Ross

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