

# DISCIPLINARY BYLAWS

**Financial Advice**  
NEW ZEALAND

1 July 2018

## CONTENTS

1. GENERAL.....	1
2. COMPLAINTS.....	2
3. DISMISSAL OF COMPLAINT AT PRELIMINARY STAGE.....	3
4. INVESTIGATION .....	3
5. ROLE OF PROFESSIONAL CONDUCT COMMITTEE.....	4
6. ROLE OF THE BOARD OF FINANCIAL ADVICE NEW ZEALAND .....	6
7. GROUNDS FOR DISCIPLINARY ACTION.....	7
8. NOTICE OF CHARGE(S).....	8
9. NOTIFIABLE EVENTS .....	8
10. PUBLIC ACCESS TO HEARINGS.....	9
11. PUBLICATION OF FINDINGS.....	9
12. RULES OF EVIDENCE AND PROCEEDINGS GENERALLY.....	10
14. REINSTATEMENT OF MEMBERSHIP .....	11
15. REGULATORY COOPERATION .....	12
16. OTHER.....	12

## DEFINITIONS

<b>Board</b>	means the Board of Financial Advice New Zealand.
<b>Constitution</b>	means Financial Advice New Zealand's constitution adopted on 26 <sup>th</sup> September 2017 and as amended from time to time.
<b>Financial Advice New Zealand</b>	means Financial Advice New Zealand Incorporated.
<b>Member</b>	means a Member of Financial Advice New Zealand as defined in the Constitution.
<b>Professional Conduct Committee</b>	means up to [number] people (who may be Board members or otherwise) appointed by the Board from time to time to act as Financial Advice New Zealand's Professional Conduct Committee.

## 1. GENERAL

### 1.1. Constitution

Under clause 11.3 of the Constitution, Financial Advice New Zealand has the following Disciplinary bodies:

- (a) Professional Conduct Committee;
- (b) The Board of Financial Advice New Zealand.

### 1.2. Commencement

- (a) These bylaws take effect from 1<sup>st</sup> July 2018 and apply in respect of matters of professional conduct of Members on and after that date.
- (b) Matters of professional conduct taking place before 1<sup>st</sup> July 2018 of Members of Financial Advice New Zealand who were members of IFA, PAA and NZFAA Members before that date will be subject to the jurisdiction of the Professional Conduct Committee. But will be governed by the bylaws of the IFA, PAA and NZFAA that applied at the relevant time.

### 1.3. Purpose and Objective of Disciplinary Process

- (a) The purpose of the disciplinary process is to reinforce Financial Advice New Zealand's commitment to high ethical standards and engender public confidence by:
  - (i) ensuring the delivery of accepted high standards by Members of Financial Advice New Zealand;
  - (ii) providing protection to the members of the public seeking advice from Members of the Association;
  - (iii) Deterring other Members from committing breaches of the bylaws of the Association, in particular its Code of Ethics, Practice Standards and its Rules of Conduct;

- (iv) enabling those Members who are disciplined, but who remain a Member of Financial Advice New Zealand, to improve and to deliver the accepted standards expected from them;
  - (v) enhancing and promoting the standing of Financial Advice New Zealand in the financial advisory community.
- (b) The objective of the disciplinary process is to ensure that any complaint about the conduct of a Member is fully and fairly heard and, if the complaint is upheld, appropriate disciplinary action is promptly taken.

#### **1.4. Status of Complainant and Financial Advice New Zealand**

A complainant is not a party to, or prosecutor of, disciplinary action under these bylaws. The status of a complainant is that of deponent or witness, or potential deponent or witness.

#### **1.5. Conflict of Interest**

Where any member of the Professional Conduct Committee or any Financial Advice New Zealand employee, or member of the Board if it is investigating an appeal, has any interest in a matter being considered by one of those bodies that could be seen or perceived as conflicting, or having the potential to conflict, with the proper performance of that person's responsibilities in relation to the matter, the person shall:

- (a) disclose the nature of the interest to the Chair of the particular disciplinary body or Board; and
- (b) not participate in the matter, unless that Chair is satisfied that no conflict of interest exists, or it is so tenuous that it does not exist to all intents and purpose A vacancy arising as a result of a conflict of interest will immediately be filled by another eligible member, appointed by the Chair or an acting Chair of the particular body.

## **2. COMPLAINTS**

### **2.1. Compliance Manager**

Financial Advice New Zealand will appoint a person (who may be an employee of Financial Advice New Zealand) to act as Compliance Manager to assist the disciplinary bodies with all matters relating to the processing, investigation and prosecution of complaints, and the maintenance of professional standards. The Compliance Manager will conduct initial investigations and take actions as specified in 3.1.

### **2.2. Making a Complaint**

Any person may make a complaint to Financial Advice New Zealand about a Member. Every complaint must be:

- (a) in writing and addressed to the Compliance Manager;
- (b) state clearly and in sufficient detail the basis of the complaint;
- (c) be accompanied by any additional information or sworn statement that may be required by Financial Advice New Zealand, the Board or any of the disciplinary bodies.

### **2.3. The Association can Initiate Action**

Financial Advice New Zealand itself may initiate a complaint, or take over a complaint, against a Member if it considers that the Member's conduct warrants investigation, further investigation or other action on the grounds described in Bylaw 7.

### **2.4. Recording of Complaints**

The Compliance Manager will maintain a complaints register and record details of all complaints received. The Compliance Manager will acknowledge receipt of complaints in writing within five working days.

### **2.5. Notification**

The Compliance Manager will, within seven days of the receipt of a complaint, notify the Member concerned about the complaint and provide copies of any supporting material.

## **3. DISMISSAL OF COMPLAINT AT PRELIMINARY STAGE**

### **3.1. Grounds**

The Compliance Manager will be entitled to:

- (a) Dismiss a complaint if the Compliance Manager considers it is frivolous, vexatious or trivial.
- (b) Temporarily suspend investigation of the complaint process if the matter is the subject of any disciplinary, regulatory, criminal or civil investigation or proceedings. Such suspension must be notified to the Chair of the Professional Conduct Committee for approval and must be reviewed by the Professional Conduct Committee on a regular basis.

### **3.2. Approval of Dismissal and Notification**

Any action taken under bylaw 3.1 will be subject to the prior approval of the Chairman of the Professional Conduct Committee. The Member and the complainant will be informed accordingly with reasons. The Professional Conduct Committee will similarly be kept informed of action taken under bylaw 3.1(b).

## **4. INVESTIGATION**

### **4.1. Forms of Investigative Action**

Subject to Bylaw 3, the Professional Conduct Committee (with the assistance of the Compliance Manager or any other person authorised by the Chair of the Professional Conduct Committee) will conduct a full investigation of the complaint and may take such action as appropriate, including (but not confined to):

- (a) making, or employing any other person authorised by the Chair of the Professional Conduct Committee to make, such preliminary inquiries as is considered necessary;
- (b) seeking further information from the complainant or other witnesses, together with information in the form of a sworn statement;
- (c) requesting the complainant to attend at a time and place specified to confer regarding the complaint (subject to the giving of reasonable notice);

- (d) requiring the Member:
  - (i) to respond in writing to the matters raised by the complaint or any other matters required by the Professional Conduct Committee;
  - (ii) to provide documents or information;
  - (iii) to attend (at the Member's own cost) at a time and place specified to confer regarding the complaint;
  - (iv) for these purposes, to meet any reasonable timeframes that may be set by the Professional Conduct Committee;
- (e) taking and retaining copies of any documents or other information produced or made available in the course of the investigation;
- (f) obtaining any other reports or undertaking any other investigation considered to be necessary.
- (g) acting as a facilitator to mediate any dispute between the member and the complainant.

## **5. ROLE OF PROFESSIONAL CONDUCT COMMITTEE**

### **5.1. Determination following Investigation**

On completion of the investigation (such to be conducted as expeditiously as possible), the Professional Conduct Committee may:

- (a) dismiss the complaint if it considers that the evidence does not support the making of a charge or charges against the Member (with or without an order for costs);
- (b) decide that the evidence is sufficient to warrant the making of a charge or charges against the Member for a hearing before the Professional Conduct Committee;
- (c) decide that the evidence is sufficiently serious to warrant the making of a charge or charges against the Member for a hearing before the Board of Financial Advice New Zealand;
- (d) require the Member to enter into mediation discussions with the complainant if the complaint is a dispute between the member and the complainant and confirm or reject the result of any such mediation as full and final settlement of the complaint on such terms as the Committee sees fit and which are within its authority under the other terms of these Bylaws

In the event of action taken under bylaw 5.1(b) or (c), the Compliance Manager will prepare a Notice of Charge(s) for service on the Member and thereafter will ensure prosecution of the action through to final determination.

### **5.2. Hearing and Decision**

The Professional Conduct Committee will hold a hearing in order to decide whether a charge or charges before it has or have been substantiated. It will determine how the hearing should be conducted, and any procedures around it, having due regard to the rules of natural justice. After completion of the hearing, the Professional Conduct Committee shall exercise one or more of the following courses of action:

- (a) dismiss or find the charge or charges proven without further action;
- (b) find the charge or charges proven and:
  - (i) require the Member to provide a written apology to the complainant;
  - (ii) censure the Member;

- (iii) require the Member to complete professional development or other remedial training at the cost of the Member;
- (iv) order the Member to take advice in relation to the management of the Member's practice at the cost of the Member;
- (v) require the Member to make reports on the Member's practice in such manner and at such times as specified;
- (vi) require the Member to provide an undertaking relating to the conduct of the Member's practice in such form as the Professional Conduct Committee considers appropriate;
- (vii) make such order for costs as the Professional Conduct Committee considers appropriate;
- (viii) order publication of its findings in conformity with bylaw 11.1;
- (ix) refer the matter to the Board of Financial Advice New Zealand for adjudication under bylaw 6.

### **5.3. Appeal**

- (a) A Member may appeal to the Board of Financial Advice New Zealand against all or any part of a decision of the Professional Conduct Committee under bylaw 5.2 (save for a decision under bylaw 5.2(b)(viii)). The appeal must be in writing and lodged with the Association within 15 working days of the decision of the Professional Conduct Committee.
- (b) A Member will be responsible for all costs incurred with the appeal unless the appeal is upheld to a significant extent or in its entirety. Such costs may include but not be limited to, external legal costs; Financial Advice New Zealand Board member time, travel and accommodation; expert witness costs and other relevant costs. The Board of Financial Advice New Zealand may request lodgement of a bond, in such amount as determined in the sole discretion of the Board of Financial Advice New Zealand, to cover some or all of the appeal costs. Should the appeal be upheld to a significant extent or in its entirety the bond will be returned to the Member, otherwise it will be used to offset appeal costs with any balance returned to the Member.
- (c) The decision of the Professional Conduct Committee will not take effect until:
  - (i) the expiry of the 15 working days; or
  - (ii) if the right of appeal has been exercised, the appeal has been determined by the Board of Financial Advice New Zealand.

### **5.4. Other Referrals to the Board of Financial Advice New Zealand**

The Professional Conduct Committee may at any time refer a complaint or a matter to the Board of Financial Advice New Zealand if:

- (a) a Member:
  - (i) fails to respond in writing to matters raised;
  - (ii) fails to provide documents or information;
  - (iii) fails to attend as required (whether under bylaw 4.1(d)(iii) or as otherwise required by the Professional Conduct Committee);
  - (iv) is otherwise uncooperative or obstructive;
- (b) it considers that:
  - (i) interim suspension of membership is urgently required in terms of bylaw 6.2(a);
  - (ii) matters have emerged or are discovered which justify the consideration of more serious disciplinary action under bylaw 7.1(a)-(f).

There will be no right of appeal to the Board of Financial Advice New Zealand in respect of decisions of the Professional Conduct Committee under bylaw 5.4.

## **6. ROLE OF THE BOARD OF FINANCIAL ADVICE NEW ZEALAND**

### **6.1. Referrals from Professional Conduct Committee**

The Board of Financial Advice New Zealand will adjudicate on referrals to it by the Professional Conduct Committee. Subject to bylaw 6.2, the Board of Financial Advice New Zealand will hold a hearing in order to decide whether a charge or charges or matter before it has or have been substantiated. It will determine how the hearing, and any procedures around it, should be conducted having due regard to the rules of natural justice. After completion of the hearing, the Board of Financial Advice New Zealand shall exercise one or more of the following courses of action:

- (a) dismiss or find the charge or charges or matter proven without further action;
- (b) find the charge or charges or matter proven; and:
  - (i) terminate the membership (or any class of membership) of the Member;
  - (ii) suspend the membership of the Member for a period up to five years;
  - (iii) impose a monetary penalty on the Member, not exceeding \$20,000;
  - (iv) order publication of its findings in conformity with bylaw 11.2;
  - (v) impose any of the sanctions that can be imposed by the Professional Conduct Committee under bylaw 5.2(b)(i)-(vi);
  - (vi) make such order for costs as the Board of Financial Advice New Zealand considers appropriate.

### **6.2. Interim Suspension**

- (a) Where the Board of Financial Advice New Zealand is called on by the Professional Conduct Committee to deal with a complaint or matter where the Board of Financial Advice New Zealand considers it necessary or desirable to act promptly in the interests of the public, or the financial interest of any person, it may (without a hearing and without notice to the Member) make an order:
  - (i) suspending the membership of the Member until further order of the Board of Financial Advice New Zealand ; and
  - (ii) directing that after five working days has elapsed, notice of the suspension be published as contemplated under bylaw 11.3.
- (b) A Member who is suspended under bylaw 6.2(a) shall be immediately notified of the decision by the Compliance Manager and the Member may, within five working days of the date of receipt of such notification, apply in writing to the Board of Financial Advice New Zealand for revocation of the suspension order and the order directing publication.
- (c) On receipt of an application for revocation, the Board of Financial Advice New Zealand will convene a hearing and will provide an opportunity for the Member to be heard.
- (d) Where a Member makes an application for revocation under bylaw 6.2(b), publication shall be delayed until the application has been determined by the Board of Financial Advice New Zealand.



### **6.3. Appeal**

Save for a decision under bylaw 5.2(b)(ix):

- (a) The Board of Financial Advice New Zealand will be responsible for determining any appeal by a Member against all or any part of a decision of the Professional Conduct Committee made under bylaw 5.2, whether by way of re-hearing or in such other manner as it may decide.
- (b) The Board of Financial Advice New Zealand may affirm, reverse or vary any decision, or any part of a decision, of the Professional Conduct Committee.

## **7. GROUNDS FOR DISCIPLINARY ACTION**

### **7.1. Grounds for Complaint**

Disciplinary action under these bylaws may be exercised on one or more of the following grounds where a Member has:

- (a) been convicted of an offence punishable by imprisonment or a fine and the conviction reflects on the Member's fitness to practice as a financial adviser and/or tends to bring the profession into disrepute;
- (b) been found guilty by a professional body, regulatory body or court of misconduct in a professional capacity;
- (c) been found guilty by a professional body, regulatory body or court of unsatisfactory conduct;
- (d) been found guilty by a professional body, regulatory body or court of conduct deemed prejudicial to the interests of the Association.
- (e) been the subject of adverse findings of negligence or incompetence under civil proceedings, and this has been of such a degree or so frequent as to reflect on the Member's fitness to practise as a financial adviser or tends to bring the profession into disrepute
- (f) been adjudicated bankrupt or made a composition with creditors;
- (g) failed to comply with the Constitution and any bylaws made under the Constitution (including the Code of Ethics, the Practice Standards and the Rules of Conduct);
- (h) failed to comply with a written undertaking, or any of its terms;
- (i) failed to notify the Association of the occurrence of a notifiable event (as set out in 9) within ten working days of the occurrence of the event;
- (j) at any time supplied any information to the Association, or to the disciplinary bodies, which is false or misleading;
- (k) failed to cooperate with the Association, or the disciplinary bodies, without good cause or has obstructed the performance or furtherance of their work;
- (l) failed to pay any sum due to the Association other than subscriptions for membership;
- (m) failed to comply with any order made by the disciplinary bodies.

Charges laid under bylaw 7.1 will in general be dealt with first by the Professional Conduct Committee which may refer the complaints made to the Board of Financial Advice New Zealand if the Committee considers that the charges are of sufficient seriousness and/or may warrant sanctions outside the scope of the Professional Conduct Committee under bylaw 5.2.

## **8. NOTICE OF CHARGE(S)**

### **8.1. Particulars**

A Notice of Charge(s) to a Member (as required under bylaw 5.1) should:

- (a) contain details of the charge or charges and the grounds relied on;
- (b) make reference to the determination (of the Professional Conduct Committee) and advise whether the charge or charges will be heard before the Professional Conduct Committee or the Board of Financial Advice New Zealand ;
- (c) give (where practical) the proposed date, time and place of the hearing;
- (d) state that the Member may make written representations in advance of the hearing, together with an appropriate time period.
- (e) state that the Member has the right to attend and be heard at the hearing (either in person or through a representative), such matters to be notified to the Compliance Manager at least ten working days before the hearing;
- (f) state that the Member has the right to call witnesses or produce other evidence, such matters to be notified to the Compliance Manager at least ten working days before the hearing;
- (g) state that the hearing of the Professional Conduct Committee or Board of Financial Advice New Zealand can take place on the papers, if the Member does not make an appearance;
- (h) state that (in the event of the upholding of the complaint) sanctions may be imposed under the disciplinary bylaws and the more grave the offence the greater the likelihood of a more severe sanction;
- (i) state that an order for costs may be made against a Member.
- (j) state that a bond may be payable by the Member in respect of costs of any appeal as set out in Bylaw 5.3(b). and 6.4 (b).
- (k) state that, in the case of proceedings before the Board of Financial Advice New Zealand , these will be heard in public unless decided otherwise and as such the Member should make an application for a privacy order if that is required (to be done not less than 10 working days before the hearing).
- (l) state that a Member may appeal any part or all of any decision.

At least 20 working days' notice shall be given to a Member about a hearing.

## **9. NOTIFIABLE EVENTS**

### **9.1. Obligation to Notify Certain Events**

Every Member shall be under a duty to inform the Association of the occurrence of any of the following events:

- (a) where the Member has been convicted of an offence punishable by imprisonment or a fine, or is the subject of an adverse finding by an external regulatory body or in civil proceedings, and the conviction or finding reflects adversely on the Member's fitness to practise as a financial adviser and/or tends to bring the profession into disrepute;
- (b) where the Member has been refused membership of any other professional body;
- (c) where the Member is being investigated or has been found guilty in respect of disciplinary action by any other professional body or regulatory body or court;
- (d) where the Member is the subject of an adverse determination in a civil court as a result of activities provided in the member's capacity as a financial adviser where the Member has been adjudicated bankrupt or made a composition with creditors to avoid bankruptcy.

## **9.2. Time for Making Notification**

The events set out in 9.1(known as notifiable events) must be notified in writing to the Association within ten working days of the occurrence of the notifiable event.

## **10. PUBLIC ACCESS TO HEARINGS**

### **10.1. Hearings**

- (a) Proceedings before the Professional Conduct Committee will be closed to the public.
- (b) Unless the Board of Financial Advice New Zealand orders otherwise, every hearing of the Board of Financial Advice New Zealand shall be held in public and public notice shall be given in such form and in such manner as determined by the Board of Financial Advice New Zealand .
- (c) If the Board of Financial Advice New Zealand considers that it is appropriate to do so, having regard to its powers under bylaw 11.2 and the interests of any person, it may:
  - (i) hold a hearing, or any part of a hearing, in private;
  - (ii) make an order prohibiting the publication of one or more of the following:
    - a report of any proceedings before it or any part of those proceedings;
    - any document, or a part of a document, produced at a hearing;
    - the name of, or any matter that may identify, the person to whom any hearing relates or any other person.
  - (iii) make an order lifting any order made under bylaw 10.1(d)(ii).

## **11. PUBLICATION OF FINDINGS**

### **11.1. Findings of the Professional Conduct Committee**

- (a) The Professional Conduct Committee may direct the publication of its decision (whether a charge is dismissed or proven) provided the identity of the complainant and that of the Member is not disclosed and cannot be established from the information published.
- (b) No publication should take place until:
  - (i) the expiry of the appeal period of 15 working days; or
  - (ii) if the right of appeal has been exercised, the appeal has been determined by the Disciplinary Tribunal.

### **11.2. Findings of the Board of Financial Advice New Zealand**

- (a) Where any charge is dismissed, the Board of Financial Advice New Zealand may direct the publication of its decision provided the identity of the complainant and that of the Member is not disclosed and cannot be established from the information published.
- (b) Subject to bylaw 11.2(c), where any charge is proven, the Board of Financial Advice New Zealand may direct publication of its decision in any manner the Board of Financial Advice New Zealand considers appropriate including the Member's name, address, the particulars of the charge and a summary of the reasons for the decision and any sanction or penalty imposed.

- (c) The Board of Financial Advice New Zealand shall direct publication of the information mentioned in bylaw 11.2(b) if it considers that it is necessary in the interests of, or for the protection of, the public.
- (d) Publication of the name of the complainant will be a discretionary matter for the Board of Financial Advice New Zealand under bylaw 11.2(b) and (c).
- (e) No publication should take place until:
  - (i) the expiry of the appeal period of 15 working days; or
  - (ii) if the right of appeal has been exercised, the appeal has been determined by the Board of Financial Advice New Zealand.

### **11.3. Manner of publication**

Unless decided otherwise by the disciplinary bodies, the decisions of the Professional Conduct Committee and the Board of Financial Advice New Zealand shall be published on the Association's website in a manner that is accessible to the public for a period of not less than six months;

- (a) in a newsletter to Members or other official publication of the Association; and
- (b) in such other form of media as the disciplinary body considers appropriate.

## **12. RULES OF EVIDENCE AND PROCEEDINGS GENERALLY**

### **12.1. Admissibility**

The Professional Conduct Committee, the Board of Financial Advice New Zealand may receive in evidence, whether admissible in a court of law or not, any statement, document, information or matter that in their opinion will assist them in dealing with any matter under consideration. The Board of Financial Advice New Zealand will give such weight to the evidence as it considers appropriate.

### **12.2. Nature and Conduct of Proceedings**

The Professional Conduct Committee and the Board of Financial Advice New Zealand will:

- (a) conduct proceedings expeditiously and without undue formality;
- (b) in the case of the Professional Conduct Committee and the Board of Financial Advice New Zealand, not unduly delay determining any sanction or penalty and, if at all possible, deliver these determinations (with or without reasons) at the conclusion of proceedings including any order as to costs;
- (c) have due regard to the entitlement of the parties to the rules of natural justice.

### **12.3. Standard of Proof**

Decisions of the Professional Conduct Committee, the Board of Financial Advice New Zealand will be made on the evidence and submissions before them, applying the standard of proof of "balance of probabilities".

### **12.4. Legal Assessor**

The Professional Conduct Committee, the Board of Financial Advice New Zealand may appoint legal assessors who may advise them at any time on matters of law, procedure and evidence, and may be present at any hearing or meeting of the disciplinary bodies.

## **12.5. Recording of Hearings**

- (a) Unless the parties agree otherwise, hearings of the Professional Conduct Committee and the Board of Financial Advice New Zealand (save for hearings on the papers) shall be recorded in writing or electronically. An electronic record does not need to be transcribed unless required by the Board of Financial Advice New Zealand or a party.
- (b) Records of hearings shall be retained for a period of three months from the date of the decision of the disciplinary body unless the parties agree otherwise.

## **12.6. Confirmation of Decision and Reasons**

- (a) Every decision of the Professional Conduct Committee, the Board of Financial Advice New Zealand **shall** be delivered or confirmed in writing to the Member within 15 working days of the conclusion of proceedings, accompanied by reasons for the decision and (in the case of decisions of the Professional Conduct Committee under bylaw 5.2, except bylaw 5.2(b)(ix)), and in the case of decisions of the Board of Financial Advice New Zealand drawing attention to the right of appeal. The Chairman of the Board of Financial Advice New Zealand may extend the 15 day period if required.
- (b) The complainant should be informed of the outcome of the complaint and, in the case of decisions of the Professional Conduct Committee under bylaw 5.2 (except bylaw 5.2(b)(ix)), this should occur after the appeal period if there is no appeal, or after any appeal has been determined.

## **12.7. Procedural Defect**

Any procedural defect on the part of the Association, the Compliance Manager, the Professional Conduct Committee, or the Board of Financial Advice New Zealand will not of itself render the disciplinary proceedings invalid.

## **13. CRIMINAL CONVICTIONS/OTHER DISCIPLINARY ACTION**

### **13.1. Proof**

- (a) A certificate from, or on behalf of, a Registrar of any court of criminal jurisdiction (indicating that a Member has been convicted of a crime) shall conclusively establish the existence of the conviction, and shall be conclusive proof of that crime. A certificate will always be subject to the outcome of any appeal lodged by the Member against a conviction.
- (b) A letter or any other document or published notice from a government or regulatory agency, or any other professional body (to the effect that a Member has been found guilty in respect of disciplinary action) shall conclusively establish the existence of the disciplinary action, and shall be conclusive proof of that action.

## **14. REINSTATEMENT OF MEMBERSHIP**

### **14.1. After Suspension**

- (a) Any Member who has had their membership suspended for a period of 12 months or less shall have their membership automatically reinstated on the expiry of the suspension period.
- (b) Any Member who has had their membership suspended for a period longer than 12 months shall not have automatic reinstatement. Such a Member will be required to

satisfy the Associations' Certification Committee that he or she is able to meet the usual requirements pertaining to on-going membership. Unless the Certification Committee decides otherwise, such a Member will also be required to provide an affidavit to the Association that the Member:

- (i) has fully complied with the suspension provisions (if any);
- (ii) fully understands the Code of Ethics, the Practice Standards and the Rules of Conduct; and
- (iii) will fully comply with all their provisions upon being reinstated to membership of the Association.

The Member will then be required to make an application for reinstatement to the Board of Financial Advice New Zealand and the Board of Financial Advice New Zealand will decide whether or not to grant the application, in particular, based on its assessment of the fitness and properness of the person to be re-admitted as a Member of the Association

## **15. REGULATORY COOPERATION**

### **15.1. Referral to Other Agencies**

The Association, the Compliance Manager, the Professional Conduct Committee and the Board of Financial Advice New Zealand may at any time convey any information arising from a complaint or investigation to the Financial Markets Authority, the Serious Fraud Office, the Police, any other regulatory or enforcement agency, or any other professional body, where the information is likely to assist that other agency or body with its work.

### **15.2. Obtaining Information from Other Agencies**

(As confirmed in the member's annual membership renewal application)The Association, the Compliance Manager, the Professional Conduct Committee and the Board of Financial Advice New Zealand may at any time seek information from the other agencies or bodies mentioned in bylaw 15.1 where that information might have relevance to a complaint against a Member, any investigation of a Member or to the taking of disciplinary action against that Member.

## **16. OTHER**

### **16.1. Confidentiality**

- (a) No person involved in the disciplinary process (whether sitting on the disciplinary bodies or Board or working for or on behalf of the Association shall disclose any information acquired by virtue of their work unless it is:
  - (i) ordered to be disclosed by the disciplinary body or is otherwise required by legal process;
  - (ii) done in performance or furtherance of work responsibilities or duties (whether related to disciplinary matters or more generally);
  - (iii) otherwise authorised by the Association or by the Board.
- (b) A complainant will be entitled to know the on-going status of the complaint, but the complainant must be given this information on a confidential basis, unless advised otherwise.

## **16.2. Liability**

No liability shall attach to any person sitting on the disciplinary bodies, or any person acting for or on behalf of the Association in the disciplinary process, for anything done or omitted to be done in the course of their work, unless it is shown that the person acted in bad faith.

## **16.3. Recovery of Penalty and Costs**

Where an order is made for the payment of any fine or costs such shall be a debt immediately due and payable by the Member to the Association. A certificate signed by the Chair of the disciplinary body or Board shall be sufficient evidence of the sum due by the Member to the Association, for the purposes of recovery of that sum. Management may negotiate an extension to such terms for recovery as it deems fit. Non-compliance with any order for payment shall constitute a further breach of the Association's bylaws as noted in Bylaws 7.1 (h), (l) and (m) and shall be actionable accordingly.