



Disciplinary and Complaints Rules 2021

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1. SCOPE

- 1.1. These Disciplinary and Complaints Rules (**Disciplinary Rules**) are established by the Board, under the Financial Advice NZ Constitution (**Constitution clause 19.3 Rules**). They set out the procedures that apply to complaints and disciplinary actions against Members.
- 1.2. These Disciplinary Rules are referenced in the following clauses in the Constitution:
- (a) Failure to comply with the Constitution or Rules can lead to disciplinary action against a Member including, but not limited to, expulsion or suspension, as set out in the Disciplinary and Complaints Rules (**Constitution clause 9.2 Member Obligations and Rights**).
 - (b) Complaints about Members, whether initiated by the public, Members, or Financial Advice NZ, will be resolved by following the process set out in the Disciplinary and Complaints Rules (**Constitution clause 11 Complaints & Discipline**).
 - (c) Membership can also end or be suspended following the procedures in the Disciplinary and Complaints Rules (**Constitution clause 12.2 Ending Membership**).
 - (d) A Person whose Membership has ended or been suspended (**Constitution clause 12.4 Ending Membership**):
 - i. must comply with the disciplinary and complaints procedures set out in the Disciplinary and Complaints Rules in respect of any complaints or disciplinary matters related to any action or inaction of the Person while they were a Member; and
 - ii. must comply with any penalty, fine, compensation or sanction ordered against them under the Disciplinary and Complaints Rules whether before or after their Membership ended.
- 1.3. These Disciplinary Rules are referenced in the following Member Rules:
- (a) All Members must co-operate with Financial Advice NZ, its committees and disciplinary bodies and not obstruct the performance of their work (**Member Rule 16.1(d) General Obligations**).
 - (b) All Members must comply with any order made by the disciplinary bodies (**Member Rule 16.1(e) General Obligations**).
 - (c) Financial Advice NZ can refuse a resignation if the Member is subject to a pending or unresolved complaint or disciplinary matter (**Member Rules 19.2(i) and (j) Ending Membership by Resignation**).
 - (d) The Board can use its discretion to suspend or remove a Member following the procedures set out in the Disciplinary and Complaints Rules (**Member Rule 19.5(e) Suspension or ending Membership by Board Discretion**).
 - (e) Where a Member's Membership is suspended or ended by **Member Rules 19.4, 19.5 or 19.6 (Cause for Ending or Suspending Membership)** the Member may appeal following the procedures set out in the Disciplinary and Complaint Rules (**Member Rule 19.8 Appeal Process**).
 - (f) Suspension ends on the earliest of the date on which the suspension period (as determined by the Board, these Member Rules, or the outcome of the Disciplinary and Complaints process) ends, the Membership of the suspended Member otherwise ends, and/or any conditions of suspension ending have been met (**Member Rule 21.5 End of Suspension**).

- (g) A Suspended Member is a Member who has had their Membership suspended under the authority of the Constitution, these Member Rules or as an outcome of the Disciplinary and Complaint procedures (**Member Rule 22.8 Suspended Member Classification**).

2. INTERPRETATION

- 2.1. The Board decides any matters not provided for in these Disciplinary Rules or any question about interpretation of these Disciplinary Rules.
- 2.2. Where there is a conflict between these Disciplinary Rules and the Constitution, the Constitution applies.
- 2.3. In these Disciplinary Rules, terms with capital letters are defined in **Disciplinary Rule 20 (Definitions)** unless the context requires otherwise.

GENERAL

3. GENERAL

3.1. Disciplinary Bodies

Financial Advice NZ has the following disciplinary bodies:

- (a) The Professional Conduct Committee – investigative function;
- (b) The Adjudication Body – adjudication function; and
- (c) The Board of Financial Advice New Zealand – appeals function

3.2. Commencement

- (d) These **Disciplinary Rules** replace the Disciplinary Bylaws dated 20th December 2018 and take effect on the day in 2021 the new Constitution takes effect and apply in respect of matters of professional conduct of Members on and after that date.
- (a) Matters of professional conduct taking place before the effective date of these **Disciplinary Rules** will be subject to the Constitution, Disciplinary Bylaws and other Bylaws that were in place at the time of the conduct or alleged conduct in question.

3.3. 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 Financial Advice NZ;
 - iii. deterring other Members from committing breaches of the Rules of Financial Advice NZ, 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; and
 - 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, and provides the Member a process of appeal.

3.4. Status of Complainant

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

3.5. Conflict of Interest

Where any member of the Professional Conduct Committee, Adjudication Body or any Financial Advice New Zealand employee, or member of the Board (if it is conducting 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 Chair; 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.

COMPLAINTS

4. COMPLAINTS

4.1. 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 may take actions as specified in **Disciplinary Rule 5.1 (Grounds for Dismissal)**.

4.2. 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; namely provide the reasonable particulars of where, when, in what circumstances the alleged misconduct took place, and a statement of the nature of the alleged misconduct; and
- (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.

4.3. Financial Advice NZ can Initiate Action

Financial Advice New Zealand itself can 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 **Disciplinary Rule 9 (Grounds for Complaint)**.

4.4. 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.

4.5. Notification

- (a) 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.
- (b) As part of that notification the Compliance Manager will:
 - i. provide the reasonable particulars of where, when, in what circumstances the alleged misconduct took place;
 - ii. a statement of the nature of the alleged misconduct;
 - iii. the procedure to be followed and possible penalties;
 - iv. the right to not answer questions at any point;
 - v. the right to representation; and
 - vi. the right to respond.

5. DISMISSAL OF COMPLAINT AT PRELIMINARY STAGE

5.1. Grounds for Dismissal

The Compliance Manager will be entitled to:

- (a) dismiss a complaint if they determine the complaint;
 - i. is frivolous, vexatious or trivial; or
 - ii. is not against a Member who gives regulated financial advice (whether directly or on behalf of a FAP), and who does not hold a Pinnacle Mark, and the investigation of the complaint does not serve the purpose of these **Disciplinary Rules** as set out in **Rule 3.3(a) (Purpose and Objective of Disciplinary Process)**.
- (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.

5.2. Approval of Dismissal and Notification

Any action taken under **Disciplinary Rule 5.1 (Grounds for Dismissal)** will be subject to the prior approval of the Chair 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 **Disciplinary Rule 5.1(b)**.

DISCIPLINARY BODIES

6. ROLE OF THE PROFESSIONAL CONDUCT COMMITTEE

The role of the Professional Conduct Committee is to conduct the investigative function regarding a complaint or other disciplinary matter. By way of example this may include:

- (a) gathering of information;
- (b) interviewing any witnesses and persons prior to a full hearing; and
- (c) consider any documentation.

6.1. Forms of Investigative Action

Subject to **Disciplinary Rule 5 (Dismissal of a Complaint at Preliminary Stage)**, 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); requiring the Member, notwithstanding the right of the Member to not answer questions at any point;
- (d) to
 - i. 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; and
 - 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; and
- (g) refer the matter to an independent third party acting as a facilitator or mediator regarding any dispute between the Member and the complainant.

7. ROLE OF THE ADJUDICATION BODY

The Adjudication Body will adjudicate on recommendations and referrals to it by the Professional Conduct Committee. Subject to **Disciplinary Rule 8.1 (Interim Suspension)**, the Board will appoint an Adjudication Body to hold a hearing in order to decide whether a charge or charges or matter before it has or have been substantiated.

7.1. Consideration of Recommendations Following Investigation

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

- (a) dismissal of the complaint if the Committee considers that the evidence does not support the making of a charge or charges against the Member (with or without a recommendation for an order for costs);

- (b) that the evidence is sufficient to warrant the making of a charge or charges against the Member for a hearing before the Adjudication Body;
- (c) that the evidence is sufficiently urgent or serious to warrant immediate action by the Board under **Disciplinary Rule 8.1 (Interim Suspension)**; and
- (d) that the Member enter into mediation discussions with the complainant, if there is joint consent by both parties to enter mediation, 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 Adjudication Body sees fit and which are within its authority under the other terms of these **Disciplinary Rules**.

7.2. Adjudication Body - Hearing

- (a) The Adjudication Body will meet, in a timely manner, to consider the Professional Conduct Committee's recommendations.
- (b) The Adjudication Body is not bound in any way by the recommendations of the Professional Conduct Committee.
- (c) In the event of accepting recommendation under **Disciplinary Rule 7.1(a) (Consideration of Recommendations Following Investigation)** the Adjudication Body will make a determination of any costs as recommended by the Professional Conduct Committee, and publication of findings under **Disciplinary Rule 13.1 (Findings of the Adjudication Body)**.
- (d) In the event of accepting recommendation under **Disciplinary Rule 7.1(b) or (c) (Consideration of recommendations following Investigation)**, the Compliance Manager will prepare a Notice of Charge(s) on the Member and thereafter ensure prosecution of the action through to final determination.
- (e) The Adjudication Body will determine how the hearing should be conducted, and any procedures around it, having due regard to the rules of natural justice.

7.3. Adjudication Body - Decision

After completion of the hearing, the Adjudication Body 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. 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 Adjudication Body considers appropriate;

- viii. order publication of its findings in conformity with **Disciplinary Rule 13.1 (Findings of the Adjudication Body)**;
- ix. terminate the membership (or any class of membership) of the Member;
- x. suspend the membership of the Member for a period up to five years; and/or
- xi. impose a monetary penalty on the Member, not exceeding \$20,000.

7.4. The Board reserves the right to affirm, reverse or vary any decision, or any part of a decision, of the Adjudication Body.

7.5. Appeal of Decisions of the Adjudication Body

- (a) A Member may appeal to the Board against all or any part of a decision of the Adjudication Body made under **Disciplinary Rule 7.3 (Adjudication Body - Decision)** (with the exception of a decision under **Disciplinary Rule 7.3(b)viii**). The appeal must be in writing and lodged with Financial Advice NZ within 15 working days of the decision of the Adjudication Body.
- (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; Board member time, travel and accommodation; expert witness costs and other relevant costs. The Board may request lodgment of a bond, in such amount as determined in the sole discretion of the Board, 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 Adjudication Body 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.

8. ROLE OF THE BOARD

8.1. Interim Suspension

- (a) Where the Board is called on by the Professional Conduct Committee to deal with a complaint or matter where the Board 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; and
 - ii. directing that after five working days has elapsed, notice of the suspension be published as contemplated under **Disciplinary Rule 13.3 (Manner of Publication)**.
- (b) A Member who is suspended under **Disciplinary Rule 8.1(a) (Interim Suspension)** 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 for revocation of the suspension order and the order directing publication.
- (c) On receipt of an application for revocation, the Board 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 **Disciplinary Rule 8.1(b) (Interim Suspension)**, publication shall be delayed until the application has been determined by the Board.

8.2. Other Referrals to the Board

- (a) The Professional Conduct Committee may at any time refer a complaint or a matter directly to the Board if 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 Disciplinary Rule 6.1(d)iii (Forms of Investigative Action) or as otherwise required by the Professional Conduct Committee); or
 - iv. is otherwise uncooperative or obstructive.
- (b) There will be no right of appeal to the Board in respect of decisions of the Board under this **Disciplinary Rule**.

8.3. Appeal Body

- (a) Except for a decision under **Disciplinary Rule 7.3(b)viii (Adjudication Body – Decision Process)**:
 - i. the Board will be responsible for determining any appeal by a Member against all or any part of the process of the Professional Conduct Committee and against all or any part of a decision of the Adjudication Body made under **Disciplinary Rule 7.2 (Adjudication Body – Hearing)**, whether by way of re-hearing or in such other manner as it may decide.
 - ii. The Board may affirm, reverse or vary any decision, or any part of a decision, of the Adjudication Body.
- (b) The Board is responsible for determining the appeal process, and the appeal, in the manner they decide, by a Member who has been suspended or has had their membership ended by **Member Rule 19.4 (Suspending and ending Membership due to no longer meeting the Member type definition)**, or **Member Rule 19.5 (Suspension or ending Membership by Board Discretion)**.

DISCIPLINARY GROUNDS, HEARINGS AND FINDINGS

9. GROUNDS FOR COMPLAINT

- 9.1. Disciplinary action under these **Disciplinary Rules** 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 Financial Advice NZ.

- (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 **Rules** 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 Financial Advice NZ of the occurrence of a notifiable event (as set out in **Disciplinary Rule 11 (Notifiable Events)**) within ten working days of the occurrence of the event;
- (j) at any time supplied any information to Financial Advice NZ, or to the disciplinary bodies, which is false or misleading;
- (k) failed to cooperate with Financial Advice NZ, 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 Financial Advice NZ other than subscriptions for membership;
- (m) failed to comply with any order made by the disciplinary bodies.

9.2. Charges laid under **Disciplinary Rule 9 (Grounds for Complaint)** will in general be dealt with first by investigation of the Professional Conduct Committee which may then make a recommendation to the Adjudication Body. Appeal of any decision of the Adjudication Body is to the Board.

10. NOTICE OF CHARGE(S)

10.1. A Notice of Charge(s) to a Member (as required under **Disciplinary Rule 7.2(d) (Adjudication Body – Hearing)**) should:

- (a) contain:
 - i. details of the charge or charges and the grounds relied on, providing the reasonable particulars of where, when, in what circumstances the alleged misconduct took place ;
 - ii. a statement of the nature of the alleged misconduct;
 - iii. the procedure to be followed and possible penalties;
 - iv. the right to not answer questions at any point;
 - v. the right to representation; and
 - vi. the right to respond;
- (b) make reference to any recommendation of the Professional Conduct Committee and advise that the matter, charge or charges will be heard before the Adjudication Body;
- (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 Adjudication Body or the Board 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 Rules** 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 ordered in these **Disciplinary Rules**;
- (k) state that, in the case of proceedings before the Board, 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); and
- (l) state that a Member may appeal any part or all of any decision.

11. NOTIFIABLE EVENTS

11.1. As noted in **Member Rule 15.2 (Specific Adviser Member and Adviser Obligations)**, Adviser Members, FAP Members and any other members giving financial advice (directly or on behalf of a FAP) must inform Financial Advice NZ 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; and
- (d) 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, FAP or nominated representative; and
- (e) the Member has been adjudicated bankrupt or made a composition with creditors to avoid bankruptcy.

11.2. Time for Marking Notification

The events set out in **Disciplinary Rule 11.1 (Notifiable Events)** must be notified in writing to Financial Advice NZ within ten working days of the occurrence of the notifiable event.

12. PUBLIC ACCESS TO HEARINGS

- 12.1. Proceedings before the Professional Conduct Committee are closed to the public.
- 12.2. Proceedings before the Adjudication Body are closed to the public.
- 12.3. Unless the Board orders otherwise, every hearing of the Board is to be held in public and public notice will be given in the form and manner as determined by the Board.

- 12.4. If the Board considers that it is appropriate to do so, having regard to its powers under **Disciplinary Rule 13.2 (Findings of the Board)** and the interests of any person, it may:
- (a) hold a hearing, or any part of a hearing, in private;
 - (b) make an order prohibiting the publication of one or more of the following:
 - i. a report of any proceedings before it or any part of those proceedings;
 - ii. any document, or a part of a document, produced at a hearing;
 - iii. the name of, or any matter that may identify, the person to whom any hearing relates or any other person.
 - (c) make an order lifting any order made under **Disciplinary Rule 12.4(b) (Public Access to Hearings)**.

13. PUBLICATION OF FINDINGS

13.1. Findings of the Adjudication Body

- (a) The Adjudication Body 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 Board.

13.2. Findings of the Board

- (a) Where any charge is dismissed, the Board 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 **Disciplinary Rule 13.2(c)**, where any charge is proven, the Board may direct publication of its decision in any manner the Board 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 shall direct publication of the information mentioned in **Disciplinary Rule 13.2(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 under **Disciplinary Rule 13.2(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.

13.3. Manner of publication

- (a) Unless decided otherwise by the disciplinary bodies, the decisions of the Adjudication Body and the Board shall be published on Financial Advice NZ's website in a manner that is accessible to the public for a period of not less than six months;

- i. in a newsletter to Members or other official publication of Financial Advice NZ; and
- ii. in such other form of media as the disciplinary body considers appropriate.

14. RULES OF EVIDENCE AND PROCEEDINGS

14.1. Admissibility

The Professional Conduct Committee, Adjudication Body and the Board 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 disciplinary bodies and the Board will give such weight to the evidence as it considers appropriate.

14.2. Nature and Conduct of Proceedings

- (a) The Professional Conduct Committee, Adjudication Body and the Board will:
 - i. conduct proceedings expeditiously and without undue formality;
 - ii. in the case of the Adjudication Body and the Board, 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; and
 - iii. have due regard to the entitlement of the parties to the rules of natural justice.

14.3. Standard of Proof

Recommendations of the Professional Conduct Committee and decisions of the Adjudication Body and the Board will be made on the evidence and submissions before them, applying the standard of proof of “balance of probabilities”.

14.4. Legal Assessor

The Professional Conduct Committee, Adjudication Body and the Board 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.

14.5. Recording of Proceedings and Hearings

- (a) Unless the parties agree otherwise, proceedings and hearings of the Professional Conduct Committee, Adjudication Body and the Board (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 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.

14.6. Confirmation of Decision and Reasons

- (a) Every decision of the Adjudication Body, and the Board 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 Adjudication Body under **Disciplinary Rule 7.2 (Adjudication Body – Hearing)**, except **Disciplinary Rule 7.3(b)ix Adjudication Body – Decision**) and in the case of decisions of the Board drawing attention to the right of appeal. The Chair of the Board 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 Adjudication Body under **Disciplinary Rule 7.3(b)ix**, this should occur after the appeal period if there is no appeal, or after any appeal has been determined.

14.7. Procedural Defect

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

15. PROOF

- 15.1. 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.
- 15.2. 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.

REINSTATEMENT OF MEMBERSHIP

16. REINSTATEMENT OF MEMBERSHIP

16.1. After Suspension as an outcome of these Disciplinary Rules

- (a) **Member Rule 21.5(b) (End of Suspension)** states 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) **Member Rule 21.5(c) (End of Suspension)** states when the suspension of a Member who has been suspended for a period longer than 12 months ends, full Membership rights are not automatically reinstated. The Board may decide to reinstate Membership rights following application by the Member and based on its assessment of the Member's fitness and propriety to be re-admitted as a Member with particular regard to the reasons for the suspension.

REGULATORY CO-OPERATION

17. REGULATORY CO-OPERATION

17.1. Referral to Other Agencies

Financial Advice NZ, the Compliance Manager, the Professional Conduct Committee, Adjudication Body and the Board 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.

17.2. Obtaining Information from Other Agencies

Financial Advice NZ, the Compliance Manager, the Professional Conduct Committee, Adjudication Body and the Board may at any time seek information from the other agencies or bodies mentioned in **Disciplinary Rule 17.1 (Referral to other Agencies)** 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.

MISCELLANEOUS

18. OTHER

18.1. Confidentiality

- (a) No person involved in the disciplinary process (whether sitting on the disciplinary bodies or Board or working for or on behalf of Financial Advice NZ 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); and
 - iii. otherwise authorised by Financial Advice NZ 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.

18.2. Liability

No liability shall attach to any person sitting on the disciplinary bodies, or any person acting for or on behalf of Financial Advice NZ 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.

18.3. 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 Financial Advice NZ. A certificate signed by the Chair of the Adjudication Body or Board shall be sufficient evidence of the sum due by the Member to Financial Advice NZ, 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 **Disciplinary Rule** as noted in **Rule 9.1(h), (l) and (m) (Grounds for Complaint)** and shall be actionable accordingly.

18.4. Privacy of individuals

The personal information held by the Compliance Manager, Professional Conduct Committee, Adjudication Body and the Board about identifiable individuals must be held in a manner to comply with the Privacy Act 2020.

19. CHANGES TO THE DISCIPLINARY RULES

- 19.1. Any changes to these **Disciplinary Rules** will be notified to Members. As set out in the **Constitution (clause 19.3(b) Rules)**, every Member is deemed to have knowledge of the Rules, and changes to them, when they have been published on Financial Advice NZ's website.

- 19.2. If the changes to the **Disciplinary Rules** are material, as determined by the Board, the changes will only be made after reasonable consultation with affected Members.

20. DEFINITIONS

- 20.1. In these **Disciplinary Rules** the following terms have these meanings;

Adjudication Body - means at least two people (who may be Board members or otherwise) appointed by the Board from time to time to act as Financial Advice New Zealand's Adjudication Body, such people not being on the Professional Conduct Committee.

Adviser Member - means a type of Member as defined in **Constitution clause 8.2(a) Adviser Member**.

Board - means Financial Advice NZ's board formed under **Constitution clause 13.1 Board Structure**.

Directors – means the Member Directors and Independent Directors of Financial Advice NZ elected or selected as described in **Constitution clause 14 Member Director Elections** and **clause 15 Independent Director Appointments**.

Financial Adviser - means an individual who is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 in relation to a financial advice service as a financial adviser.

Financial Advice Provider Member (FAP Member) – means a type of Member as defined in **Constitution clause 8.3(a) Financial Advice Provider Member (FAP Member)**.

Member – means and includes an Adviser Member, a FAP Member, a Life Member, an Associate Member and a Retired Member. 'Membership' will be read accordingly.

Person – means an individual, company, partnership, incorporated body or other entity whether or not having separate legal identity. 'People' will be read accordingly.

Pinnacle Mark – means either the CERTIFIED FINANCIAL PLANNER_{CM}, CFP_{CM}, Certified Life Underwriter_{CM}, CLU_{CM} and Chartered Life Underwriter, CLU mark and does not include the Trusted Adviser mark.

Professional Conduct Committee - means at least two 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.

Rules – means rules made by the Board for the effective management and operation of Financial Advice NZ. These can include (without limitation) Member Rules, Certification Rules, Governance Rules, Code of Ethics, Practice Standards, Rules of Conduct, Member Meeting Rules, and Disciplinary and Complaints Rules.

- 20.2. In these Disciplinary Rules, where the context requires;

- (a) the singular includes the plural and vice-versa; and
- (b) reference to one gender includes all genders.