

Financial Counsellors' Association of NSW Inc (FCAN)

COMPLAINTS AND DISPUTES POLICY AND PROCEDURES

This policy sets out the manner in which Complaints, Disputes or Grievances may be dealt with by staff, the Executive Officer, the Board or the relevant Committee.

Complaints, Disputes or Grievances

Complaints, Disputes or Grievances may arise between the following parties;

- A member(s) and FCAN acting in its role as a membership association.
- A member(s) and another member(s) including Board Members
- An external party (eg client) and a member(s)
- An employee and FCAN or another employee or member. Note: in this instance it is a Workplace dispute and may be subject to external legal obligations.

Nothing in this policy relating to the procedure for handling the complaint prevents the complainant from seeking resolution in external forums.

Disciplinary allegations

Disciplinary allegations are a sub-set of Complaints, Disputes or Grievances which suggest unsatisfactory professional conduct or professional misconduct on the part of a member, including a Board member(s), in the course of their duties as a Financial Counsellor or otherwise, which could give rise to disciplinary action pursuant to FCAN's Constitution or FCA's Disciplinary Process and Procedures (as adopted by FCAN.)

How to lodge a Complaint, Dispute or Grievance

A person wishing to lodge a Complaint, Dispute or a Grievance (the Complainant) should lodge their complaint with the FCAN Executive Officer. In the event that the complainant believes there is a conflict of interest or for any other reason, they may lodge the complaint with the FCAN Chair.

If the complaint is a Disciplinary allegation about a Financial Counsellor in the course of their employment, the complainant should lodge that complaint with that Financial Counsellor's employing agency and only to FCAN in the event it is not satisfactorily resolved

Early resolution: If at all possible, such a Complaint, Dispute or Grievance should be resolved informally between the parties before formal lodgement with FCAN.

Dealing with a Complaint, Dispute or Grievance

Upon receipt of a Complaint, Dispute or Grievance FCAN should, where appropriate, ensure that:

1. privacy is observed
2. it is referred to the appropriate person or body as set out above
3. it is handled fairly and without conflict of interest
4. the complainant is kept advised of progress
5. all parties are informed of the substance of the Complaint, Dispute or Grievance
6. all parties have an opportunity to respond
7. advocates may participate
8. it only discusses a matter concerning a member with an employing or funding body in the event that it is necessary for the purpose of an investigation or the matter is found to be substantiated and is material

9. in the case of notifiable or criminal allegations, the complainant or matter is referred to the appropriate outside authority
10. in the case of disability, language or literacy difficulties, the complainant is assisted to prepare their Complaint, Dispute or Grievance or referred to an appropriate agency for such assistance
11. the complainant is informed that their Complaint, Dispute or Grievance, or relevant particulars of same, will be made available to all parties the subject of the matter, and may be made available to individuals or organisations to whom the matter relates in accordance with this policy.

Procedure for dealing with Complaints, Disputes or Grievances that do not involve a Disciplinary allegation

1. **Procedure:** where necessary, possible and/or appropriate, the Executive Officer or Chairperson to whom the complaint is lodged will:
 - acknowledge the complaint;
 - assess, consider and, if necessary, investigate it;
 - convene meetings with the complainant and/or the parties, together or separately, if it appears it may be useful, to clarify each party's position, assess the problem or provide guidance;
 - determine an outcome, noting their reasons;
 - inform the complainant and all necessary parties; and
 - close the complaint, documenting all relevant steps of this procedure.

If a complaint is not or cannot be resolved by adopting the procedure above, the complaint should be escalated to the Board who must refer the matter to its Complaints and Disputes Committee (**the Committee**). This Committee can consist of 3 members of the Board, including the Executive Officer, and/or co-opt non-Board members where necessary or specific skills are required, providing no members of the Committee are involved in the complaint.

2. The role of the Committee is to attempt to:
 - a) resolve the matter following the procedure outlined in Point 1 Procedure above as it sees fit;
 - b) determine the complaint, if necessary and appropriate; and/or
 - c) report and recommend a course of action to the Board.
3. If the above procedure or meetings do not resolve the matter, or if a party fails to attend such meetings, then the parties must within 30 days (or as soon as practicable) hold a meeting in the presence of a mediator in accordance with the relevant Clause of the Constitution referred to above.
4. If the matter is not resolved by mediation within three (3) months of the referral to a community justice centre, the dispute is to be referred to arbitration.
5. The Commercial Arbitration Act 2010 applies to any such dispute referred to arbitration.

Procedure for dealing with Complaints, Disputes or Grievances that involve Disciplinary Allegations

FCAN deals with disciplinary allegations in accordance with Clause 14 of FCAN's Constitution and may consider adopting all or any of Financial Counselling Australia's "Disciplinary Process: Policy and Procedures" or take this into account when dealing with disciplinary allegations.

Constitution of Financial Counsellors' Association of NSW Inc dated 15 April 2021 (FCAN Constitution)

FCAN's Constitution contains clauses 13 and 14 in relation to both the Resolution of Disputes and the Disciplining of Members.

For ease of reference, Clause 13 Resolution of Disputes states:

13. Resolution of Disputes

- 1) *"A dispute between a member and another member (in their capacity as members) of the association, or a dispute between a member or members and the association, will be dealt with by the parties to the dispute who must meet and discuss the matter in dispute, and, if possible resolve the dispute within fourteen (14) days after the dispute comes to the attention of all the parties.*
- 2) *If the parties are unable to resolve the dispute at the meeting, or, if a party fails to attend that meeting, then the parties must within 30 days (or as soon as practicable) hold a meeting in the presence of a mediator.*
- 3) *The mediator must be:*
 - a) *a person chosen by agreement by the parties; or*
 - b) *in the absence of agreement:*
 - i. *in the case of a dispute between a member and another member, a person appointed by the Board;*
 - ii. *in the case of a dispute between a member and the Board, a person who is a mediator appointed or employed by Community Justice Centres pursuant to the Community Justice Act 1983.*
- 4) *If a dispute is not resolved by mediation within three (3) months of the referral to a community justice centre, the dispute is to be referred to arbitration.*
- 5) *The Commercial Arbitration Act 2010 applies to any such dispute referred to arbitration."*

For ease of reference, Clause 14 Disciplining of members states:

14. Disciplining of members

- 1) *The Board may decide to institute an investigation in relation to a member where:*
 - a) *a complaint is made against the member; or*
 - b) *other information comes to the Board's attention,**in either case that suggests unsatisfactory professional conduct on the part of the member, or that the member has refused or neglected to comply with a provision or provisions of this constitution or a by-law, or has wilfully acted in a manner prejudicial to the interests of the association.*
- 2) *The Board may establish by-laws in relation to determining whether to institute such investigation, and in relation to the conduct and conclusion of any investigation.*
- 3) *The Board has the discretion to determine who should be appointed as investigator of the matter.*
- 4) *Where an investigation is conducted the investigator may provide information to the member's employer and obtain information from the member's employer, where reasonably necessary to investigate an allegation of unprofessional conduct or other matter the subject of the complaint (and the member is deemed to have consented to this as a condition of their membership of the association).*
- 5) *At the conclusion of the investigation, the investigator must report to the Board, and the Board must decide what remedial action, if any, should be taken. This may include:*
 - a) *counselling the member about the matter, or*
 - b) *the provision of a formal warning to the member, or*
 - c) *requiring the member to undertake remedial action such as provide an apology to the client or employer agency or complete specified training, or*
 - d) *suspending the member from membership of the association for a defined period or until defined action is undertaken, or*
 - e) *terminating the member's membership of the association, or f) any other action the Board thinks appropriate.*