FINANCIAL PLANNING ASSOCIATION OF AUSTRALIA

CONDUCT REVIEW COMMISSION

DISCIPLINARY PANEL

REGARDING: Steven Blizard (323309)

DETERMINATIONS: CRC 2020 - 1

PANEL: Dale Boucher, CRC Chair, Presiding Member

Pippa Elliott CFP, Panel Member

Shane Nicholson CFP, Panel Member

DATE OF

DETERMINATIONS: 19 March 2021

DATE OF PANEL CONSIDERATION: 10 March 2021

METHOD OF DETERMINATION: On the papers, having regard to such submissions as were received from the parties.

SUMMARY OF DETERMINATIONS

IN RESPECT OF SANCTIONS FOR TWO BREACHES OF THE FPA CODE OF ETHICS WHICH WERE FOUND BY THE PANEL

In the Matter of

FPA v STEVEN BLIZARD

IN SUMMARY, in these reasons the Panel Determine, as follows

- **The Member is to be fined $2500 for each breach where he failed to be diligent, as found in Breach 1 and in Breach 2.**
- **This makes total fines of $5000.00.**
- **The Member is to be reprimanded for his conduct, which was unsatisfactory.**
- **In addition, the Member will be ordered to pay $4600.00 in costs claimed by the FPA**

The Panel also advises the Member as to his rights to appeal under clause 110 of the FPA Disciplinary Regulation 2019.

REASONS FOR THESE DETERMINATIONS

What these Determinations are about

1. **These are the Determinations of the sanctions for two breaches of the FPA code of Professional Conduct (the Code)**, **by Steven Blizard (the Member),** at relevant times a member of the FPA, for engaging in conduct in breach of the *Code*. In particular, the Member has breached Principle 8 of the *FPA Code of Ethics* (relating to diligence), which is contained in the Code.

2. **These Determinations and this statement of reasons have the following structure**.
    - Part A - first, we set out formal requirements, including how submissions were invited from the parties.
    - Part B - next, in order to determine appropriate sanctions, the Panel has found it useful to describe the conduct which constituted the breaches.
    - Part C - then we consider the submissions of the parties, to the extent that these were made.
    - Part D - we set our reasons for the Determinations as to sanctions and costs which we make.
    - Part E - finally the Determinations are made, as is an order as to costs.

PART A - Concerning formal requirements for the proceedings

3. **Statement of Reasons** – There is no explicit requirement in the FPA Disciplinary Regulation 2019 (the DR), under which the proceedings have been conducted, requiring this Disciplinary Panel to provide reasons for a determination as to sanctions. The Panel is however providing these reasons as a matter of good administrative practice.

4. **Written record** - Clause 94 of the DR also requires that the proceedings of the Panel must be recorded in writing or electronically. This statement of reasons gives effect to this obligation. It does so by setting out in writing the steps leading up to the consideration by the Panel on 10 March 2021 of the appropriate sanctions**.**

5. **Hearing on the papers** - Clause 80 (and paragraphs a) and d) of clause 90) of the DR contemplate that proceedings may be conducted on the papers. In this matter, because of the current COVID 19 pandemic where much interstate travel has been impossible and there have been extreme public health concerns, the Panel decided to conduct the proceedings on the papers. This approach was decided upon after consultations with the Member and the Investigating Officer (IO) and was agreed by both parties. This approach has continued to be applied in this the sanctions stage of the Panel's task.

6. This approach was also taken during consideration of the FPA's allegations that the Member had breached the Diligence obligation in Code of Ethics Principle 8. The history of the panels consideration of that issue and will not be repeated here.

7. **An opportunity to make submissions -** There is also a requirement in clause 113 of the DR that where a Panel **makes a determination as to breach, without going on to consider sanction, that the Panel is to give the parties an opportunity to make submissions as to sanctions prior to the Panel making determinations.**

8. **How the obligation to provide an opportunity to make submissions was given effect** - Accordingly, when notifying the member and the FPA of the Determinations as to breach on 18 December 2020, the Panel, through Directions issued on its behalf by the Chair, invited

the parties to make submissions as to sanction. Each party was to make and exchange submissions by 22 January 2021.

9. At that point, the intention expressed in the Directions was that each would have a further opportunity to comment on the submissions of the other party. To that end, the intention expressed through these Directions was that each would lodge any submissions in response by 29 January 2021

10. The FPA sought an extension of time to lodge its submission, to 29 January 2021. This was granted, as was a similar extension to the Member. The FPA then made submissions on 29 January 2021. (Further comments are made on those submissions below.)

11. However, the Member did not make submissions by that date. Instead, the Member had indicated on 11 January 2021 that he intended to appeal from the Panels determination as to breach. (The Member was advised that the lodging of an appeal (for which a refundable review fee would be required under clause 135 of the DRs) would not operate as a stay of the proceedings of the Disciplinary Panel).

12. (In order to provide a complete picture, we should note that when notifying the Chair and the FPA of his intention to seek a review of the breach decision on 11 January 2021, the Member stated in an email:

    "Please find attached a request for a review of the Determination made by the Panel dated 18 December 2020.

    I would also mention that for a bit of perspective to this situation, the complaint (my first ever), occurred at the height of the media furore related to the Haynes Royal Commission investigation.

    At that time, I also had over $5 million in super funds rolled out to other super funds such as HESTA etc by a number of clients (over a month or so), without those clients even contacting me first.

    Advisers around the country were being accused of being guilty, simply because they were unfortunate enough to be an adviser.

    It is my belief that if a similar scenario had occurred today, no such complaint would have been made".)

13. The Panel has taken an approach, which it trusts was suitably considerate of the position of the Member, because on 5 February 2021, the Member advised that because of a current COVID 19 Lockdown in his city and a then-current bushfire emergency, there were some "unnecessary delays" being experienced. Accordingly, the Panel did not press the Member for his submissions.

14. The FPA had made further submissions on 22 February 2021 about the costs it was seeking. This was communicated to the member and a new timetable and Directions were issued, giving the member until 2 March to lodge his submissions. Because the FPA had not had the opportunity comment on any Submissions from the Member (none having been made), the FPA was given until 10 March to make submissions on anything submitted by the Member.

15. The FPA submissions sought fines of $1250 for each breach (making a total of $2500) and costs of $4600.00.

16. However, on 2 March 2021, the Member advised the Chair that he thought '*the $2,500 fine & costs of $4,300 is reasonable, & we can all get on with our lives'.* The Member also abandoned his intention to seek a review of the Determinations as to breach of the Code at about this time.

17. Shortly after that a further email was received from the Member on 2 March in which he said: *"I am growing concerned about the "proportionality" of the ongoing costs & fines, in relation to the minor "loss" that was alleged to have been incurred in the first instance with the client."*

PART B - The breaches found for which the Panel is imposing sanctions

18. The allegations which the Panel found to be proved were as follows

No.	***Breach***	***Conduct constituting the Breach***
1	*The Member breached Principal* (sic) *8 of the FPA Code of Ethics in that he failed to fulfil his professional commitments in a timely and thorough manner and failed to take due care in planning, supervising and delivering professional services*	***Failure to seek instructions from Complainants*** *Between about 11 November 2016 and about 6 September 2017, the Member failed to seek instructions from the Complainants for the investment of their funds into fixed term deposits (FTDs) or other suitable investments, having previously arranged for the investment of their funds into FTDs bearing higher rates of return than if those funds were simply left in cash deposit accounts.*
2	*The Member breached Principal* (sic) *8 of the FPA Code of Ethics in that he failed to fulfil his professional commitments in a timely and thorough manner and failed to take due care in planning, supervising and delivering professional services*	***Failure to seek instructions from Complainants*** *Between about 14 September 2017 and about 11 July 2018, the Member failed to seek instructions from the Complainants for the investment of their funds into fixed term deposits (FTDs) or other suitable investments, having previously arranged for the investment of their funds into FTDs bearing higher rates of return than if those funds were simply left in cash deposit accounts.*

The nature of these particular breaches and what had to be shown

19. **Principle 8 in the FPA Code of Ethics is designated as covering Diligence.** It requires conduct (by FPA Members) of the kind set out in the second column of each of the two allegations in the table at Paragraph 18 above. We note in particular that the principle requires '***timely and thorough'*** fulfillment of professional commitments.

20. According to the **Macquarie Dictionary** (Revised Third Edition),

    - '**timely'** relevantly means: '*1 occurring at a suitable time; seasonable; opportune; well timed'*
    - '**thorough**' relevantly means '*carried out through the whole of something; fully executed; complete or perfect: a thorough search…. or thoroughgoing in action or procedure; leaving nothing undone...'*

21. **In summary, the IO's main concern** with the Member's conduct was *his apparent prolonged failure over the two periods in each of the Allegations (*which were later found by the Panel to be breaches)*, a nearly 2-year period, to advise, or seek instructions from (the complainants), concerning the reinvestment of funds totalling approximately $246,000 that came from the FTDs which matured on 16 August 2016.*

22. **Further, the IO had submitted** that the Member has not suggested that the complainants instructed him not to do anything with the cash pending the availability of new products on the Asgard platform, and it seems he did not take steps to find out if they were happy with the near-zero interest rate of the cash account.[1]

23. **The Member in a submission** prepared for him and by a law firm, but signed by him on 13 November 2020, based his submissions on the proposition that the Complainants were aware that their FTDs had expired and not been renewed in August 2016. For this reason, the Member argued that it could not be alleged against him that he should have advised them of that fact, which he contended, probably rightly, was unnecessary. He argued that the clients knew or should be taken to have known of this fact.

24. The Panel took the view that the argument that the Complainants were aware that their FTDs had expired was a misinterpretation of the case *against* the Member. The case the member had to meet was made clear to him prior to final submissions being called for - and prior to the Panel's deliberations on the matter on 26 November 2020. That is, the issue was about what the Member did or did not do and was not about what the Complainants knew.

25. It was never in dispute that the Member did not contact the clients to seek instructions. And, indeed, he himself said as much as noted, for example in the IOs Report. There it is recorded that the Member stated in an email of 31 October 2019 *'while I totally accept fault in not following it up at that time, Asgard's system did notify (the male Complainant) that his FTD had expired".* (The Panel notes that even if later sought to be qualified this statement was made).

26. As indicated above, instead the Member contended that at all relevant times the complaints knew their funds were not in FTDs. Further the Member indicated he had considered other options for the investment of their funds and in effect that none were available or suitable. Inherently this submission argued that he did not need to contact them.

27. In the panel's opinion by putting this argument the Member was effectively inviting the Panel to read down the meaning of the obligation of Diligence in Ethics Principle 8, so as to ignore the requirements for timely and thorough action. This we were not prepared to do. At no point, did the Member contend that he had in fact spoken to the Complainants during the two discrete periods set out in the allegations and there was no evidence or other information to suggest that he had done so.

28. We regarded that inaction as being central to the outcome of whether there were two breaches as alleged and as we have found, and it is also important to the issue of sanctions.

29. **In relation to the first breach**, having previously given the advice to invest in an asset with a fixed date of maturity (that is, a fixed term deposit), diligence under Principle 8 of the Code of Ethics would require the adviser to have systems and processes to follow up with the client for a further instruction at or near maturity (in a timely manner), be that to invest again in another FTD, choose an alternative investment or to do nothing. There is no evidence that the adviser had such a process or sought this instruction over the period 11 Nov 2016 to 6 Sep 2017 (Period 1).

30. **In relation to the second breach,** having given the advice to invest in an asset with a fixed date of maturity – diligence under Principal 8 would require the adviser to have systems and processes to follow up with the client for a further instruction at or near maturity. That is, in a timely manner- be that to invest again in another FTD, choose an alternative investment or to do nothing. There is no evidence that the adviser had such a process or sought this instruction over the period 14 Sep 2017 to 11 July 2018 (Period 2). We note that the member has since advised that he has a system in place to seek instructions from clients when fixed term deposits mature.

[1] See Paragraph 23 of the IOs submission dated 20 October 2020

31. **Further reasons** why the member failed to fulfil his professional commitments are that FSG 27/3/15 issued by the Members firm confirms that the Ongoing Portfolio Management for Clients included "Management to maximise returns consistent with safety on a best endeavours basis". In both breaches above, during period 1 and 2, the adviser did not manage the client's funds to maximise their returns in light of their stated risk profile of "Moderately Defensive". He took no action at all.

32. **The Member claimed that he considered a number of possibilities for further investment of the client's funds, but the central point is that he did not seek instructions from the clients about this.** It is unnecessary to determine this, therefore, but there may well have been hundreds of available investment options under the Asgard Infinity eWrap platform in which the adviser could have recommended the clients invest. If that were the case, they may not have needed to move products to find alternative investments that would target returns higher than the cash rate they were receiving.

33. Even if the member believed there were no suitable funds in which to invest, (a proposition which the Panel viewed with scepticism (but does not find it necessary to decide, as these arguments go to the issue of mitigation and not as to breach of the diligence obligation) and even allowing as the Member stated that he was waiting for a particular fund to be available (LaTrobe) as the rationale, then short term fixed deposits (i.e., 3 month) may have been able to have been used until the new fund was available. This could have optimised returns in the best interests of the client and demonstrated diligence in the provision of a professional service. But it is unnecessary to determine these matters because they do not go to the central issue in this matter.

PART C – the submissions of the parties about sanctions

34. In its submission dated 29 January 2021, the FPA (in summary) contended:
    - The interests of the public, financial planning profession and the community lie in balance on sanctioning the member, having regard to the requirements of clause 88 (b) of the DRs (which sets out the objectives of having disciplinary proceedings)
    - Because the Member is no longer a member of the FPA, the appropriate sanctions are a reprimand and or fines and costs orders.
    - The FPA is seeking its costs but not as a sanction.
    - The FPA is of the view that the member's conduct represents a serious shortfall in the manner in which an FPA member should treat their clients.
    - It is apparent that the Member did not approach the task of advising the clients or looking after their best interests by taking the reasonable steps that would be required of a financial planner.
    - The Submissions from the Member seek to exonerate his behaviour simply on the basis of the client's awareness of the location of their funds and puts the onus on the clients to look after their own funds.
    - The duration of the Members conduct is also relevant in that if there had been a delay only of months the matter, in the FPA's view might have been seen as a minor instance of unsatisfactory conduct.
    - In the view of the clients, they lost about $9450 as well as having to pay advisor fees of $3880.00 for two years.
    - While the impact of the Member's conduct was not devastating (according to this submission), it did not build towards the typical aim of a superannuation account to increase the clients' wealth to support their retirement.
    - In the FPA's view the conduct did not involve any act of dishonesty which would elevate the matter to a higher plane of misconduct.

- The Member had also been responsive to certain requests, providing assistance with withdrawals and contemplating alterative investments (which we note were not followed up on by action).

35. In summary the FPA submitted that the matter was not an extreme example of misconduct and the maximum sanctions of expulsion or suspension would be disproportionate to the misconduct and the measures used to deter similar future conduct. As the Member is not an ongoing member of the FPA, other potential sanctions such as auditing files enforced education or supervised practice would be of no practical benefit.

36. The FPA submitted that a reprimand would be appropriate and a fine would also be appropriate. The Maximum fine of $20,000 would be punitive.

37. Finally, the FPA submitted that fines for each breach in the vicinity of $1250 would be commensurate to the misconduct involved.
    - As we will indicate below, we disagree with this latter submission of the FPA.

38. The extent to which the Member made submissions is set out about in paragraphs 12,16 and 17. We have considered all these comments.

39. We regard the first set of comments about what may or may not have happened in the past as being irrelevant. The members comments that he would agree to fines totalling $2500 is noted and that he would agree to a costs order in the amount he stated.

40. We note the member's concerns about proportionality. If anything, however, the loss stated to have been incurred by the clients, including advisor fees they paid, is far greater than the fines we propose to determine.

PART D - The Panel's Reasons for the Determinations we propose to make

41. The Panel believes that a reprimand is appropriate. The Members actions we believe involved a consciousness and awareness of the client's situation concerning their funds and a lack of diligence that was not unconscious of that.

42. Therefore, we agree with the FPA submission that he should be reprimanded for conduct which was unsatisfactory.

43. We disagree with the fines proposed by the FPA. While we agree that this was not an extreme case warranting anywhere near the maximum possible fines, fines should be higher up the spectrum of possible fines. It is necessary to deter similar conduct and to express our disapproval of the Members conduct.

44. We have noted but make no finding, one way or another, about the FPA's contention the conduct did not involve any act of dishonesty which would elevate the matter to a higher plane of misconduct. It is sufficient to set out our opinion that the member's actions were not unconscious.

45. Until recently there has been little sign of any insight shown by the Member, who we believe sought to avoid his own responsibility by shifting blame to the clients. As we pointed out in our reasons for deciding that the Member had breached the diligence obligation in the Code, such contentions sought to shift blame away from the Member. There has also been no expression of regret by the Member, which in our view also elevates the seriousness of this matter above the amounts of fines suggested by the FPA.

46. Accordingly, we believe that fines of $2500 for each breach would be appropriate being amounts in each case that are still at the lower end of the spectrum of possible fines and will signify that the conduct was serious.

47. There should also be an order for costs, although we are not making any order in respect of the costs of the FPA at this sanctions stage of the proceedings and do so only in respect of the breach stage. The costs claimed by the FPA total $4600.00.

PART E - Determinations

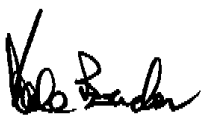
48. For the above reasons, the Panel makes the following Determinations:

    (A) We determine that the Member is fined $2500 for the breach Principle 8 of the FPA Code of Ethics as alleged in Breach 1, set out above.
    (B) We determine that the Member is fined $2500 for the breach of Principle 8 of the FPA Code of Ethics as alleged in Breach 2, set out above.
    (C) The Member is hereby reprimanded for his failures of diligence in breach of the Code.
    (D) The member is ordered to pay the FPA $4600 in costs incidental to the Disciplinary Proceedings, within 30days of the date of this determination or within such other time as may be agreed by the FPA.

Appeal Rights

49. In accordance with Clause 110 of the DR, this **Notice of Determination** by the Disciplinary Panel **includes the following Statements:**
    - **The Member has a right to request a Review of the Determinations contained herein pursuant to Part 14 of the DR (applications for Review).**
    - **Any such application must be made within the Prescribed Time for lodging a review request, which in accordance with Schedule C of the DR will be 8 April 2021 and should be addressed to the FPA Investigation Officer, Mr Richard Wells at richard.wells@fpa.com.au**

Signed



Dale Boucher	Pippa Elliott, CFP	Shane Nicholas, CFP
Chair	Member	Member

18 March 2021