



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

CONDUCT REVIEW COMMISSION

Decision and Overview

17 DECEMBER 2021

Private and confidential

Member: Mrs Komal Pandya

FPA ID Number: 1003158

FPA Registered Address:

Complainant: Mr Benjamin Marshan on behalf of the FPA

Introduction.

1. The Panel accepts the facts that in the case establish the a breach of the Financial Planning Association's Code of Ethics Integrity Principle has occurred. The case involves the actions of a financial planner who, in the opinion of the panel, confused her personal and professional roles, resulting in the improper acceptance, retention and disbursement of a monetary gift from an elderly client. The case does not involve any issue regarding the financial planning advice provided to the client.
 2. Mrs Pandya (the Member) was at all material times an authorised financial planner and a member of the Financial Planning Association of Australia Inc. (the FPA). The Member was authorised to operate under a license granted to a bank (the licensee).
 3. The events described in this decision occurred during the period in which the Member's FPA membership was current. As of 30 June 2020 the Member did not renew her subscription to the FPA. The FPA Constitution provides that a former member remains bound by the Constitution and Regulations of the FPA with respect to any complaint commenced prior to the cessation of membership. The complaint against the Member was made on 22 January 2020 and, consequently, as her membership was current at the time the complaint was made, the Member remains subject to this proceeding.
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4. Members of the FPA agree to be subject to the FPA Constitution and the Code of Professional Conduct. The three elements which constitute that code are the Code of Ethics, a set of Practice Standards and the Rules of Professional Conduct. This case concerns an alleged breach of Principle 2 of the Code of Ethics which provides:

“Principle 2: Integrity

Provide Professional Services with Integrity

Integrity requires honesty and candour in all professional matters. Clients are placed in positions of trust by clients, and the ultimate source of that trust is the financial planner’s personal integrity. Allowance can be made for differences of personal opinion, but integrity cannot co-exist with deceit or insubordination of one’s principles. Integrity requires the financial planner to observe both the letter and the spirit of the Code of Ethics.”

5. Members of the FPA are subject to a set of disciplinary rules as provided for in the Disciplinary Regulations 2016 (the DRs) as amended. This proceeding has been conducted by a Conduct Review Commission (CRC) panel appointed under the DRS.

The Complaint and the Proceeding

6. An anonymous submission dated 13 November 2019 raised concerns to the FPA that the Member had allegedly benefited from a number of transactions and cash withdrawals occurring in 2018 and 2019 from the client’s bank accounts.

7. In addition to the anonymous submission the licensee had notified the FPA of the revocation of the Member’s authorised representative status from 21 October 2019. The basis of the revocation was stated to arise from “...misconduct or a breach of the law”¹. On the basis of that notification the FPA commenced an investigation following which the Head of Professionalism of the FPA lodged a complaint against the Member on 22 January 2020².

8. Rather than attend a hearing the Member elected to make a written submission to the CRC Panel after the issue of the Notice of the Commencement of Disciplinary proceedings was issued. The panel has before it all of the information contained in the file of the FPA, including a detailed response provided by the Member to the Licensee’s finding³ as well as all of the responses to questions asked by the Investigating officer of her and a submission, dated 22 November 2021 made by the Member. The client has not been invited to participate, and has not participated, in any way in this proceeding. Accordingly, there has been no statement or submission from, or on behalf of, the client in respect of these proceedings.

¹ Letter from licensee dated 22 November 2019

² DRs7(b) authorises the FPA to make a complaint against a member

³ Dated 9 October 2019

Background

9. The client, who was then aged in his mid-eighties, commenced receiving financial advice from the Member in 2014. He was a widower and lived in a house which he owned. In 2015, on the advice of the Member, the client granted an enduring power of attorney in favour of his daughter.

10. In 2017, following his general medical practitioner arranging for the revocation of his motor driver's licence, the client sold his house and moved to live in an aged care facility. The Member states that at about this time her relationship with the client changed from being purely professional and involved her additionally becoming, to an ever increasingly greater extent, his friend and supporter.

11. The Member stated that the client did not want his daughter involved in making decisions about his arrangements. Because of this, according to the Member, the aged care facility called on her if the client needed support assistance, eg to attend medical appointments. In the course of providing that assistance the Member drove the client to the bank where he undertook his banking.

12. In mid-2019 the client sought assistance from the director of the aged care facility (the director) as the client was experiencing difficulties reconciling his bank balance account details. Arising from this the director determined that the client's bank account had been drawn upon for various questionable purchases and withdrawals which were inconsistent with the client's needs given he resided in an aged care facility where his material needs were provided. To address his concerns the director convened a meeting, which was held on 13 August 2019, with the Member, the client, his daughter and grand-daughter.

13. Following this meeting the Member returned \$1487.59 to the client. Two days later on 15 August the Member reimbursed \$25,000 to the client's bank account being a sum he had given her in cash in December 2018. On 11 September 2019, following a letter of demand issued by the director, a further sum of \$19,750 in full settlement in respect of the outstanding amounts, was repaid by the Member to the client in respect of the following withdrawals and purchases:

29 May 2018: \$359.97-Athletes Foot and
two transactions each of \$400 at Big W

3 July 2018: Commonwealth Bank ATM withdrawal \$2000
and \$147.40 at Big W

26 July 2018: Two transactions of \$580.22 and \$400 at Woolworths
Two transactions of \$607.75 and \$600 at Big W

22 October 2018: Withdrawal of \$6,300

27 December 2018: Two transactions of \$400 and \$100 at Big W

28 December 2018: \$499 at Big W

8 April 2019: Withdrawal of \$7000

The Member's Account of the Circumstances.

14. In addition to giving professional financial planning advice to the client from 2014, the Member claimed that, commencing sometime in 2017, she provided various levels of support as a growing personal relationship developed between them. She claimed to have assisted him with the sale of his house, driven him to shops, to various medical related appointments (GP, optometrist, ophthalmologist, geriatrician, and audiologist), helped him moving to the aged care facility and in attending other appointments. The Member claimed that the client's family did not provide him with support and that he did not want them involved in his financial decision making. The Member maintained that she treated the client as if a member of her family to the extent that he spent three Christmases with her family and her son came to regard the client as if in a role of a grandfather⁴.

15. A consultant geriatrician, following an appointment held on 26 June 2019 and not held in the presence of the Member, diagnosed the client as suffering 'mild cognitive impairment' but confirmed that he was, at that time, competent to change his will. The doctor also reported that the client said he was thankful for the personal support extended to him by the Member in circumstances in which the client's family had not expressed interest in his welfare.

16. The Member, while she acknowledged in mid-August 2019 that she was aware of the client suffering some memory problems, claimed that he had requested her to submit an invoice to him for providing personal assistance to him. No invoice was ever rendered.

17. It was the Member's assertion that in relation to the substantial gift of the \$25,000 that the client requested that she enquire at the bank on his behalf if he was able to withdraw \$25,000 in cash from his account. Upon notifying him that he could do so the Member drove him to his bank where he withdrew the \$25,000 which he informed her was to be given to a friend and former business colleague, a Mr CF. However, when the client returned to her car, he passed all of the cash to the Member. In so doing the Member has provided slightly differing accounts maintaining on the one hand that the client said that the money was meant not for her but for her son and, on the other, she reported the client as saying:

" go on a holiday, spend on your child, do whatever with these funds I do not want to know about these funds anymore but if you give these funds back to me you will be offending me and disrespecting me".

⁴ Answer by the member to the FPA investigating officer question 2(b) dated 1 April 2020

18. The Member claims that she carried the \$25,000 in cash around with her for several months, during which time she tried, unsuccessfully on a number of occasions, to convince the client to accept the return of the cash.

19. The Member claimed that she ultimately expended the funds between March and July 2019 with \$5,000 being given to a friend of hers who was suffering domestic violence and who subsequently committed suicide, \$8,000 to another person in similar circumstances and \$3,000 was spent in supermarkets and on making other domestic purchases. She claimed that not any of the money was deposited into any of her bank accounts. In her submission to the panel she claimed that she “...*gracefully returned the funds without anyone asking, inquiring or chasing [her]*”.

20. The Member maintained that on the day following the client giving her the money there was what she described as a “tough argument” relating to the client expressing a desire to marry her.⁵ She also claimed that it required two parties in order to make a deposit into his bank account and, by inference, the client would not cooperate with her to achieve this⁶.

21. The Member claimed that she told the client how she was spending the money and that he responded by expressing that he was glad that the money was being put to good use “...rather than ski trips to Canada”.

22. After the circumstances surrounding the withdrawals came to the attention of the Member’s licensee the Member was recorded as stating that up to \$4,500 of the sum had been incurred in expenses associated with the time she spent transporting the client to appointments and other personal trips in respect of which he would otherwise have incurred the cost of taxis. She also claimed that one occasion she had given \$800 in cash to the client.

23. In her submission to the panel the Member claimed that she had not kept receipts for money spent on the purchase of items for the client, which she said she often made when doing her family shopping. The Member listed a number of purchases that she made allegedly on behalf of the client including for an ipad cover, vitamin supplements, winter jumpers, baked cookies and bananas, lunches and dinners while they were out as “...he liked to eat frequently” , creams, laundry, clothing alterations, “other gifts”, car cleaning (following bowel accidents when they were out). She also said that the client would have incurred taxi fees of \$100 per time for 85 trips⁷ where she accompanied him to appointments. This she claimed did not include any personal trips when he visited her at her home eg for meals and Christmas functions.

⁵ Response to FPA investigator’s question 1(c) 1 April 2020

⁶ Answer to question 1 (d)

⁷ As distinct from her claim to the Licensee that an equivalent of \$4,500 was expended in lieu of taxi fares

24. Additionally, the Member claimed in her submission to the panel:

“..from where I stand -when no one stood by this client, I stood by him like a rock support-washing his laundry, wiping his tears, taking him for appointments, to the extent of washing his excrete in my car. I have sacrificed my family’s personal time which I will never be able to return back to my family. Emotionally, financially, spiritually and virtually I have done everything possible. And this UTMOST TRUTH” (emphasis in original).

25. The Member claimed to have no knowledge of how the Client disbursed the other two substantial cash withdrawals (being \$6,300 and \$7,000) other than stating that he said that he had dental work done and had made gifts to staff at the aged care centre where he resided.

26. The Member claimed that she returned all amounts identified as being withdrawn from the client’s bank accounts because she was ‘scared of losing everything’⁸. This occurred following a warning that if the money wasn’t repaid the aged care facility would take action against her. In reimbursing the funds the Member claimed that she did so because she wanted to protect her reputation and that of the licensee⁹.

Consideration

27. As is abundantly evident from the FPA Ethics Code the position of a financial planner with a client is one of trust. The reference in the FPA Code of Ethics Principle 2 to “candour” incorporates notions of “impartiality” and “frankness”. “Honesty” refers to “not lying, cheating or stealing; sincere...showing uprightness....gained by fair means...”.

28. Clients of financial planners present with a wide range of personal circumstances which can sometimes be challenging. As with other professions, it is the responsibility of the professional to assess and respond appropriately to those circumstances. In doing so it is essential that personal relationships should not become confused with professional responsibilities. That is not to say that while undertaking a professional role a friendship cannot co-exist. The essential issue is not to confuse the two roles so that the independence demanded by the professional aspect becomes subsumed into the personal friendship. Further in the case of the gift of a substantial sum of money (eg \$25,000) it is no excuse to claim that decision to make the gift was that of the client. It is the standard of the professional’s actions in receiving, retaining and subsequently distributing that money while in a professional financial advisory role which is to be considered, not those of the client in offering the gift.

⁸ Ibid answer to question 2 (b)

⁹ Member’s response to the licensee dated 9 October 2019

29. On the facts in this case the Member concedes that, commencing from about mid-2017, her personal relationship with the client became the vastly more dominant feature of their relationship than the professional relationship. At that time the client was an elderly man, apparently not receiving a high level of support from his immediate family, who appreciated the need to seek care when he moved to live in an aged care facility. In late June 2019 a geriatrician diagnosed him as having 'mild cognitive impairment' and he was, on the Member's own account, suffering some confusion which became evident at about this time. The panel has, in considering the circumstances of this case, treated issues associated with the age and cognitive capacity of the client as being of marginal relevance and while they may form part of the commentary they are non-determinative factors in its decision.

30. Commencing in May 2018 it is uncontested that there were a number of withdrawals and purchases made from the client's bank account as set out earlier in these reasons. The Member has provided various explanations surrounding her involvement with these transactions. The panel, which is unable to take sworn evidence, has distinguished between the following transactions from the client's bank accounts:

- (a) expenditures on purchases of items which the Member claims were bought for the use or benefit of the client, and,
- (b) cash withdrawals of \$6,300 and \$7,000 which the Member claims the client said were expended on dentist fees and gifts to staff at the aged care centre and,
- (c) cash gift of \$25,000 that the Member retained.

31. In reaching its decision the panel has addressed only the transaction identified in (c). The panel reached this conclusion in the knowledge that the Member repaid the amounts nominated in all three categories. In respect of (a) and (c) while the Member's claims that she did so because she was 'scared' and wanted to protect her reputation and standing, and that of the licensee, may be regarded with considerable suspicion, they do not constitute a sufficient basis from which the panel is able to make an adverse finding. As there is no independent evidence which confirms or refutes the Member's assertions as to how the sums in (a) and (b) were spent the panel has considered only the gift outlined in (c) in reaching a decision.

32. The panel is satisfied that the Member was aware from the outset that it was wrong for her to accept and keep the \$25,000. The Member in answer to a question posed by the FPA Investigation Officer as to what efforts she made to return the money to her client relevantly responded:

"These funds were never acceptable to me...I made numerous attempts to ... return it to the client...As this amount was withdrawn by himself in cash I intended to give him in cash and deposit in the same way, otherwise I would have returned this money the next day....".¹⁰

¹⁰ Ibid answer to question 1(c)

While this statement exhibits some inconsistency and confusion it one of many instances in which the Member in seeking to explain her actions confirms that she was aware that she ought not to have accepted the cash gift.

33. The licensee in examining the circumstances relevantly put to the Member its finding that she "...willing accepted the money from [the client] and had no intention of repaying it. Further [...] you only repaid \$25,000 8 months after the nursing home approached you and raised concerns about the missing monies". In responding to these findings, the Member denied ever admitting that she accepted the funds and claimed:

"[The client] had full mental capacity when he did this transaction (December 2018) he deliberately gave these funds to me. Since these funds were drawn in cash I was pursuing [the client] to reverse it and deposit the funds in the same way.... I voluntarily paid this money before anyone asked, inquired or chased from the nursing home..."

While the panel addresses the circumstances surrounding the repayment later in these reasons the Member's response to the Licensee again confirms her appreciation that it was wrong to accept and keep the monetary gift. This is so even given she acknowledged that the client retained the mental capacity to make the gift.

34. The Member claims that she repaid not only the \$25,000 but all of the \$19,750 that the director demanded because she was concerned about her reputation and standing and that of her licensee. If that is so then she should not have accepted the client's largesse in the first place and either terminated the professional relationship or not accepted the cash gift. It would have been a simple matter for her to have requested the licensee to allocate another financial planner to undertake the professional responsibility of providing the client with financial planning advice. Had she done so then the Member could have then retained a non- conflicted friendship with the client.

35. The Member clearly appreciated that it was possible for another financial planner of the licensee to be assigned to advise the client. In her response to the findings made by the licensee she stated that she refused a request from the client to include her as beneficiary of his will. She stated that if he persisted in this course she would need to assign him to another financial planner. The Member claimed that as a result the client became 'sad' and did not proceed with further on this issue.¹¹ In the same document the Member stated:
"I had multiple conversations with [the client] around changing his Financial Planner, but he really got upset with it, he mentioned he doesn't know how he is going to do without me..."

However, the Member did not advise and/or seek guidance from the licensee, or take any other appropriate steps to address the developing situation.

¹¹ Response by the Member to the licensee's findings dated 9 October 2019

36. While it is evident that from the \$25,000 some of the purchases may have been made for her benefit the fact that the Member claims she distributed the bulk of the substantial \$25,000 gift to her friends and others who she regarded as being in need. The reasons surrounding the circumstances of to whom the funds were disbursed does not in any way exonerate her from responsibility of the duty of integrity which, as a professional financial planner, she owed to her client not to accept, retain and disburse the money.

37. At all times the Member was aware that the client had given an enduring power of attorney to his daughter-she had obviously thought that was a necessary step as early as 2015 and had appropriately advised accordingly. Even although the Member claimed that the client did not want his daughter to be involved in his decision making that did not preclude her from contacting the daughter. The Member's advice that the client grant an enduring power of attorney in favour of his daughter had been accepted and implemented in 2015. There nothing to suggest that this had ever been withdrawn. However, at no time is there any evidence that the Member sought to engage with the daughter and return the gifted money to his account through the daughter.

38. It provides no exoneration for the Member's actions that she discussed with the client how the funds were distributed to those she considered had need and that he approved of the reasons for the distributions.

39. The panel does not accept the Member's submission that she "gracefully" returned the \$25,000 without any prompting. The panel is relevantly satisfied that the reimbursement only occurred eight months after the gift had been made and after questions had been raised about earlier identified purchases and withdrawals from the client's account had been drawn to her attention by the director.

40. It is not correct for the Member to suggest that it requires two parties to make a bank deposit into the bank account of another person. The Member, who must have had earlier access to the client's bank details in order to satisfy his enquiry confirming that he was able to withdraw \$25,000 in cash from his account, could have re- deposited any of the gifted sums without engaging his assistance to do so.

41. The Member's assertion that she returned the \$25,000 'gracefully' on the first opportunity she had and "...without anyone asking, inquiring or chasing" ¹² is inconsistent with her alacrity in reimbursing the money after other unrelated transactions had been drawn to attention only two days earlier. That she did so is indicative that she had a ready appreciation of her wrongdoing.

¹² Submission to the panel dated 22 November 2021

42. The panel is satisfied that the Member confused her professional role with her growing personal relationship with her client. The panel accepts that the client, while he was elderly, was able to reach decisions about how he dealt with his financial affairs. He was entitled to make a gift of \$25,000 to the Member. However, as stated earlier in these reasons the issue in this case is whether the Member was entitled to accept and retain the money while still in a professional relationship providing him with financial advice.

43. The Member had the options of placing the money in trust into a separate account and either disclosing this to her licensee and seeking its advice, disclosing it to the client's daughter or terminating her professional relationship with the client. The Member's actions in keeping the cash for some time was indicative that she was aware from the outset that there was a problem with her accepting the money. Her ultimate decision to give the money to her friends in need transitioned that apprehension to another level as it was indicative that she thought that, there being no issue raised for some months, it was now acceptable for her to keep the money and disburse it. That it was spent on others who the Member determined had a need in no way exonerates the Member's actions. Nor does it excuse her actions that the client approved of the manner in which the money was distributed.

44. The Member was in a trust position to her client. As such she was aware of his financial circumstances. She had a duty to provide him with appropriate financial advice independent of any personal relationship. It was inconsistent with that duty to accept a large cash payment from him in addition to charging him a fee for giving financial advice. It matters not that whether the client, despite his advancing years, was still capable of giving instructions and making decisions about his financial affairs. It was the responsibility of the Member to maintain that professional relationship and not be blindsided by her client into accepting a large cash payment on the basis that they had transitioned from a professional to a personal relationship.

45. The panel is satisfied that the Member confused her growing personal relationship with the client with her professional duty to provide him with personal financial advice independent from that personal relationship. The Code of Ethics mandates compliance with "the letter and the spirit" of the code. This sets a high standard consistent with the Financial Planning industry members offering a professional service. The panel is satisfied that the Member's actions did not meet the required standard demanded in principle 2. The panel is satisfied that in the context of the facts her actions lacked candour in that the transition of her professional relationship to one of increasing friendship misled her into compromising the impartiality required to maintain the professional relationship. Further her actions in accepting, retaining and disbursing the money given do not display 'uprightness' or that the money was gained by 'fair means'.

46. The panel is also concerned at the number of instances which display the Member's lack of appreciation of the circumstances. An example of this is demonstrated in the response the Member gave in answer to a query directed to her by the FPA Investigating Officer. The Member relevantly stated:

"In very (sic) confidence I had also discussed with him that I was considering redundancy which was on the plate-so I was consistently preparing him for my exit. Again I wish I did it in December 2018 without worrying about his emotions and preserved my professional standards! Win-lose situation is-he is winning and I am losing-I have lost my job, my savings, my career that I was so very much proud of, and probably still am!"¹³

Her response demonstrates yet again that the Member was conscious that her position was conflicted. The events in this case are not in any way akin to a competition and her reference to "winning" and "losing" exhibits an alarming lack of insight, understanding and acceptance of her position.

47. If the director had not, in the course of assisting the client with an unrelated query about the status of his bank account, identified and raised a concern about some seemingly inconsistent bank transactions the circumstances of the Member's conduct might well have remained unexposed. In that case it is reasonable to conclude that the money may never have been returned.

48. The panel is satisfied having regard to the facts that the Member's conduct constitutes a breach of Principle 2 of the FPA Code of Ethics.

Graham McDonald.
Deputy CRC Chair.

¹³ Member's response on page 4 to question 3 (a) dated 17 February 2020



FINANCIAL PLANNING
ASSOCIATION of AUSTRALIA

CONDUCT REVIEW COMMISSION

Private and confidential

NOTICE OF SANCTION

Sanction decision following the finding of a failure of the Member to provide professional services with integrity in breach of the Financial Planning Association Code of Ethics - Principle 2.

CRC Panel: Mr G McDonald (Deputy CRC Chair)
M/s R Sky
Mr J Cotis

Member: Mrs Komal Pandya (Member ID 359554)

Complainant: Mr Benjamin Marshan on behalf of the FPA

Date of Sanction Decision: 7 February 2021

Background and Submissions

1. In an earlier made decision the panel determined that the Member breached the Financial Planning Association (FPA) Code of Conduct Principle 2 which mandates ethical behaviour. The panel found that the Member confused her personal and professional relationship with her client in accepting, retaining and ultimately disbursing a cash gift of \$25,000 given to her by the client during the time that she was providing him with professional financial advice. At the time the client was aged in his late eighties and residing in an aged care facility. Schedule B of the FPA Disciplinary Regulations sets out the sanctions which may be imposed where a breach has been found.
 2. The Member and the FPA Investigation Officer have been invited to make submissions as to the sanction to be imposed. The Member wrote declining to make a formal submission. However, the Member reiterated her previously made statements concerning the pride she experienced in being associated with the financial planning profession and stated the distress which she has experienced as the result of the events involved in this matter.
 3. The FPA submitted that the Member's conduct should be regarded as a serious breach of the FPA Code of Conduct and warranted the imposition of two sanctions, *vis*; that the Member should be expelled from membership of the FPA and that a fine of \$5,000 should be imposed.
 4. The panel has taken account of the extensive information contained in the Investigation Officer's report of 18 November 2019, the answers provided by the Member in response to questions asked of her by the Investigating Officer and her earlier made breach submission to the panel.
 5. The Member has confirmed that she has exited the financial planning profession. Her membership of the FPA would ordinarily automatically lapse at the conclusion of this proceeding. Accordingly, the sanctions dealing with suspension of membership of the FPA, education, training and undertaking remedial measures are not relevant to consider.
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6. The panel notes that the gifted \$25,000, was repaid by the Member in full to her client after eight months. Additionally, the Member repaid a further \$24,749.34 in circumstances where, at least for a large proportion of the amount, she disputes liability to do so and in respect of which the panel was unable to, and expressly did not, make any adverse finding. Consequently, the circumstances relating to that latter amount has not been taken into account in the panel's determination in respect to the sanction to be imposed.

The salient points accepted by the panel in considering the sanction to be imposed.

7. The panel accepts the following facts:
- a) The Member claimed that the client gifted the Member the money on an occasion outside the provision of professional services,
 - b) The Member claimed that the client stated that the purpose of the gift was for her son or, in the alternative, for her personal use following a long period during which the Member had assisted the client with many of his personal activities,
 - c) The Member claimed that the client refused to accept the return of the cash gift at the time of giving it to her or subsequently,
 - d) The Member claimed that the funds were a genuine gift from the client and did not involve any duress or pressure being applied by the Member,
 - e) There is no FPA Code of Professional Practice prohibition nor a prohibition at law against a financial planner or adviser receiving gifts from a client,
 - f) The funds were used for purposes that were deemed charitable by the Member, and there is some evidence that the cash was gifted to others, including to Mrs D [a friend of the Member] claimed to be for the purchase of expensive Family Court transcripts, needed by Mrs D,
 - g) There is no complaint and hence no issue in the panel's sanction determination relating to the quality of financial advice provided by the Member to the client,
 - h) The \$25,000 was repaid by the Member following a meeting instigated by the CEO of the aged care facility where the client resided. The meeting was held between the CEO, the Member, the client, his daughter (who held an enduring power of attorney granted by the client) and his grand-daughter.
 - i) The meeting, which occurred some eight months after the \$25,000 gift-had been made, concerned other amounts identified by the CEO as being irregularly withdrawn from the client's bank accounts and did not address the \$25,000 gift. The Member repaid the gift two days after the meeting and before it came to the attention of the CEO or any member of the client's family. Given the Member repaid the amount only after unrelated irregularities associated with the Member allegedly accessing the client's bank accounts had come to light, the panel expressly rejected the Member's subsequently made assertion that the sum was repaid "gracefully and without pressure",
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- j) The Member claimed that she repaid the gifted \$25,000 in an attempt to protect both her and the licensee's professional reputations,
 - k) The Member highlighted a geriatrician's report of 26 June 2019 that, while the client was assessed as having mild cognitive impairment, he was found to have the legal capacity to make a will and by inference to manage his financial affairs.

Finding and Sanction

- 8. While there has been no participation in this case from, or on behalf of, the client the panel accepts the Member's assertion that she formed a close personal friendship with him during the years in which she also provided financial advice to him. The panel also accepts that as part of that friendship the Member, in addition to providing him with companionship (eg by participating in family events such as Christmas celebrations), provided material support in assisting the client in the conduct of his affairs (eg with transporting him to medical and other appointments).
 - 9. Following the licensee's cancellation of her authority to act the panel accepts that the Member has lost her right to participate in a profession in which she felt that she was providing a high standard of advice and in which she had participated over a number of years. The panel also notes that there is no complaint made about the standard of professional advice provided by the Member to the client and that the FPA has not received any other complaint from any other of the Member's clients concerning the Member's professional conduct.
 - 10. The fact that the Member stated that she kept the \$25,000 in cash for some time before eventually distributing it is indicative that she was aware that retaining it was problematic. Over time her apprehension of wrong doing apparently faded and the Member started to disburse the money as she saw fit. That she stated that it was distributed to what she regarded as worthy causes does not justify, or in any way mitigate, the seriousness with which the circumstances should be regarded.
 - 11. The panel is satisfied that the Member had access to the client's bank details and could have at any time repaid the money into his bank account. In the breach decision the panel rejected the Member's assertion that two people were required to make such a bank deposit.
 - 12. As the panel stated in the reasons for the breach decision the Member's subsequent claims in one of her submissions that as the result of the return of the money the client is 'the winner' and she 'the loser' is indicative of a subsequently developed failure to appreciate the nature and seriousness of her conduct.
 - 13. The central issue of the panel's finding remains that the Member failed to recognise the distinction between the deepening growth in her personal friendship with her client in accepting a gift of \$25,000 in cash and her responsibility to provide professional financial advice to him. The Member improperly accepted, retained and disbursed a substantial cash gift from the client without either taking concrete steps to return the money to him or, alternatively taking steps to notify her licensee and request guidance and/or arrange for another financial planner to take over providing financial advice to him. In failing to do this the Member breached the ethical standard expected of a professional financial planner. As the panel stated in the reasons for the breach decision it is of concern that the Member seems unable to appreciate the seriousness of her actions. This type of breach of professional standards is to be regarded as serious as it undermines the high level of professionalism which the FPA is seeking to
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promote so that public confidence in the profession can be acknowledged and maintained.

14. As the panel noted in the breach decision, despite not renewing her membership, her membership of the FPA continues until this proceeding concludes.¹ While the Financial Adviser Register discloses that the Member has not been registered as a financial adviser since October 2019 and the Member has confirmed that she will not be returning to the profession, the panel accepts that, in view of her unacceptable conduct, it is appropriate to impose a sanction that the Member be formally expelled from FPA membership.²
15. For the reasons earlier expressed the panel also determines that a fine is an appropriate sanction. Taking into account the mitigating factors nominated earlier in these reasons the panel determines that a fine of \$10,000 should be imposed. In determining the fine the panel has also taken into account that under the FPA Disciplinary rules the Member will also have to meet the costs of this proceeding.³

Signed by the Panel Chair,

Graham McDonald.
Deputy CRC Chair.

¹ FPA Constitution clause 17.1

² Clause 9 of the schedule b of the FPAV Disciplinary Regulations (DR)

³ DR schedule B under 'Standard determinations point 1 (a) (FPA investigation expenses) and (d) (Panel member sitting and preparation fees)
