

# Explore ethical dilemmas of 2023

and expand your thinking

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FAQQ  
**CONGRESS**

**2023 ADELAIDE** NOVEMBER 20-22



# Are you Ready to Poll?





# Polling Question

**Is a breach of the Code of Ethics  
a breach of the law?**

- A. Yes
- B. No
- C. Not sure



# Overview – Why



Link the Code to real life scenarios and encourage advisers to think whether or not there are Code violations



Lawyers always say things like, “you cannot do that, or you will put your practicing certificate at risk”



Advisers need to start thinking the same way, “I could breach the Code if I did that”



Remember it’s not just what you do at work, what you do outside of work can have consequences too

# Ethical considerations

Ethics are not rules

Ethics are not learnt but lived

It is the hallmark of a profession

Your duty to the profession is higher  
than the duty to your client

# What is unbecoming conduct of the profession?

Can ethical failures amount to  
breaches of the FAAA Code of Conduct?

# FAAA Professional Code

*All FAAA members must -*

*Identify and act in accordance with their duties both to the profession and to the public interest the profession serves*

*Avoid situations and conduct which reflects adversely on their integrity or fitness as a financial planner, membership of the financial planning profession and the FAAA, or upon the FAAA*

# Dilemma 1

The dying client



# The dying client

- The client is terminally ill and has been told to get their affairs in order, they are expected to die in 2 – 4 weeks. There are Life, TPD and Trauma insurance claims on foot and a claim is expected to be paid shortly.
- Prior to the client's turn of events, the client ran a very successful business however, due to their poor health, the business is now teetering on administration.
- The adviser is concerned about capacity and the client's wife has no idea about business dealings. She is not a client however, she has Power of Attorney and may become a future client. They never had kids.
- You have another client who you know who is a sub-contractor to the client and is owed a lot of money.

# The dying client

- The client has expressed a wish that you look after his wife, he is concerned she will be lost, he is also concerned that his brother may take advantage of her while she is vulnerable.
- The client's brother has contacted you as he is concerned that his sister-in-law cannot perform the PoA role properly and you have noticed she is late to return paperwork, is never contactable and is not computer literate.
- The client's brother is a financial adviser and has told the client's wife, she should put insurance money into superannuation to avoid the money going to administrators and he could look after it for her. She has now asked you to put the proceeds from the insurance payout into her superannuation.

# Are you Ready to Poll?





# Polling Question

**Will the adviser breach the Code if they put that insurance money into the client's superannuation?**

- A. Yes
- B. No
- C. Not sure





# Polling Question

**Will the adviser breach the Code if he tells his subcontracting client who is owed a lot of money that he should start calling in those invoices?**

- A. Yes
- B. No
- C. Not sure





# Polling Question

**Is the brother who is telling the wife of the client to put that money into superannuation breaching the Code?**

- A. Yes
- B. No
- C. Not sure





# Polling Question

**Is the adviser breaching any Code obligations if they know the client is teetering on administration and does not tell the sub-contractor who is also a client?**

- Yes
  - A. No
  - B. Not sure



# Capacity and ethics

What should the adviser do if they have concerns around the client's capacity and the ability of the PoA to perform the role?

# Dilemma 2

The whistle blower



# The whistleblower

- The AFSL has developed an investment philosophy based on their own model portfolios. Quotas are placed on advisers that are difficult to meet and one of the of the advisers is starting to feel like clients are going to be disadvantaged or harmed, as advisers are being encouraged to place clients into an in-house SMA.
- The adviser has raised their concerns with their manager and was referred to the Head of Compliance (who is also a shareholder) and they disagree with the adviser.
- The adviser is not satisfied with the response from the Head of Compliance and cannot bring themselves to recommend these products to their clients.
- The adviser is concerned. Should they blow the whistle? Does this warrant blowing the whistle?

# Are you Ready to Poll?





# Polling Question

**Does this person have reasonable grounds to blow the whistle?**

- A. Yes
- B. No
- C. Not sure





# Polling Question

**Does the adviser have an ethical obligation to their employer or the fellow advisers and employees, who could be harmed by their actions of blowing the whistle?**

- A. Yes
- B. No
- C. Not sure



# Moral Courage

- It involves being aware of retaliation that one would experience as a result of blowing the whistle, but you do it anyway.
- It involves protecting others who could be adversely impacted by the actions that we take when we blow the whistle.

# The whistleblower – part II

- Shortly after their meeting with the Head of Compliance, the adviser is placed on performance management and their work emails are searched.
- There is evidence of the adviser emailing themselves a lot of internal company information, client lists and they have recorded conversations that took place with other managers including the Head of Compliance, without their consent.
- If this information was made public, it could validate the adviser's claims and concerns.
- The adviser is sacked on the spot and their employer is considering what other options are available to them, including referring the matter to police.



# Are you Ready to Poll?





# Polling Question

**Did the adviser breach any Code obligations by emailing themselves company information and recording conversations without other people's consent?**

- A. Yes
- B. No
- C. Not sure



# Dilemma 3

The downward spiral



# The downward spiral

- Your business partner's personal life has recently started to implode and you are worried.
- He had a messy divorce which ended up in the courts, his ex-wife has called you to say he has stopped paying child support again.
- He has not lodged a tax return for two years and he is blaming his accountant, who has admitted he has dropped the ball on this one.
- Your business partner was pulled over by the police for speeding and he has lost his licence for 12 months and is now taking public transport to client meetings.
- As your business partner was running out the door, you remind him you both need to renew your FAAA memberships.

# The downward spiral

- As he was running late for a meeting and forgot to top up his Myki, he knowingly jumped on a tram without a valid ticket, the next thing the ticket inspectors boarded the tram and he admitted he did not validate his ticket, this is not the first time this has happened.
- While he was reaching into his pocket to find some other ID (since he had to surrender his driver's licence), a bag of powder fell out of his pocket. The ticket inspectors picked it up and he has denied it was his and said "you cannot prove that is mine".
- The police were called and when he was arrested, he was also found to have \$3,000 cash in his pocket and then said the powder was crushed up anti-inflammatory medication and will sign a statutory declaration attesting to that.
- He has been charged with drug trafficking and has asked you for your help and to act as a character witness. What will you do?



# Are you Ready to Poll?





# Polling Question

**Could repeated indiscretions be considered to be bringing the profession into disrepute and be considered a breach of the Code?**

- A. Yes
- B. No
- C. Not sure





# Standard 12

## Standard 12

Individually and in cooperation with peers, you must uphold and promote the ethical standards of the profession and hold each other accountable for the protection of the public interest

# Are you Ready to Poll?





# Polling Question

**Would the act of knowingly boarding a tram without a valid ticket, be a breach of Standard 12 of the Code, particularly if this is not the first time it has happened?**

■ Yes

A. No

B. Not sure



# Are any of the below breaches of the Code?

- The serious speeding offence
- The failure to pay child support
- Being caught with \$3,000 cash and powder which he claims is crushed up anti-inflammatory medication
- Signing a declaration that the powder is anti-inflammatory medication



# Dishonesty Offences

Historically the test has been

- Was the conduct dishonest according to the standards of ordinary people (**objective limb**); and
- They knew their conduct was dishonest according to the standards of ordinary people (**subjective limb**).

# Are you Ready to Poll?





# Polling Question

**Should the business partner be notifying the FAA about these events as part of renewing their FAA application?**

- Yes
- A. No
- B. Not sure





# Polling Question

**Would you be comfortable to give your business partner a character reference?**

■ Yes

A. No

B. Not sure





# What is a notifiable event?

- You are refused PI insurance
- A licensee has terminated your authorisation
- You are the subject of a successful claim in relation to PI insurance
- You become a defendant or respondent in any criminal, civil or regulatory proceeding or investigation
- You are a director of a body corporate, that becomes an Externally Administered Body Corporate
- You receive a Notice from ASIC pursuant to sections 19, 30 or 33 of the Australian Securities and Investments Commission Act and the Notice relates to an investigation into the Member's conduct

Q&A

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# Meet the speaker zone





**Thank you for  
attending this  
session**

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