

FAAA Conduct & Integrity Regulations

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Approved by	FAAA Board
Owner	Head of Professional Standards
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FAAA CONDUCT & INTEGRITY REGULATION 2024

1. This Conduct & Integrity Regulation 2024 (CIR) is made by the Board of the Financial Advice Association of Australia Ltd (FAAA) under clause 16 of the FAAA Constitution and is in operation on and from 20 March 2024 (the operative date).
2. The purpose of this Regulation is to set out the approach of the FAAA in relation to its procedures and processes for reviewing the conduct of members that is alleged to have breached the relevant principles and standards.
3. It applies to any matter dealt with under Clause 16 of the FAAA Constitution 2023 (or subsequent or amended version), after the operative date, irrespective of the date of the conduct under review (the alleged conduct). However, the complaint will be assessed and determined against the conduct principles and standards applicable at the time of the alleged conduct¹
4. A member of the FAAA or its predecessor entities remains bound to comply with the provisions of this Regulation, and decisions made under this Regulation in respect of alleged conduct while the Member was a Member, even if they have subsequently ceased to be a Member. The FAAA must not accept the resignation of a Member whilst a complaint is under investigation.
5. The provisions of this Regulation will be administered by the FAAA Board (including any delegate or committee of the Board), the nominated Investigation Officer (IO) within the FAAA, and by the Conduct Review Commission (CRC).
6. At all times complaint investigations and Conduct Oversight Action must proceed in accordance with the FAAA Objects and the principles of natural justice and procedural fairness.
7. The FAAA, (its Board, officers or the Chair of the CRC) has the power to vary or extend any timeframe set out in these regulations, for reasons of procedural fairness or operational experience.
8. Defects in adherence to these procedures by the FAAA will not adversely impact the FAAA's ability to pursue an investigation, unless the Board Delegate or the CRC Chair conclude that the defect is such as to prevent natural justice or procedural fairness.

The FAAA Board

9. The FAAA Board may appoint a delegate to act in its stead in relation to these regulations. A delegate may be an individual or a committee.
10. The role and scope of any appointed delegate in relation to the Board's powers (as set out in this document) will be as determined by the Board.
11. Any reference to the FAAA Board, or any action, power or decision referred to within these regulations as being reserved to the FAAA Board, should be interpreted as the FAAA Board or its delegate.

¹ In practice this will mean either the AFA by-laws, the FPA Code of Professional Practice 2013, the FPA Professional Code 2022, or the FAAA Professional Code 2023.

The Conduct Review Commission

12. The CRC is to operate under the following structure:
 - a. The purpose of the CRC is to review the evidence relating to any allegation of misconduct by an FAAA Member that is referred to it by the FAAA. The CRC will bring relevant expertise in order to establish:
 - i. Whether, on the balance of probabilities, the conduct alleged can be assessed to have occurred.
 - ii. Whether, having occurred, that conduct is a breach of the FAAA's principles and standards.
 - iii. Whether, having occurred and being established as a breach of the relevant principles and standards, it is appropriate for the FAAA to sanction the Member, and what form that sanction should take.
 - b. The CRC Chair (the Chair) is appointed by the Board and will be engaged, for a period and on remunerative terms determined by the Board. The Board will appoint one or more Deputy Chairs on the same basis.
 - c. Other CRC members will be appointed by the Board, engaged on a sessional basis, for a period determined by the Board (which period is able to be extended). The number, remuneration and qualifications of other CRC members, will be determined by the Board from time to time, along with the basis and rate of their remuneration.
 - d. CRC members are entitled to re-imburement of their reasonable expenses in performing their function, in addition to remuneration.
 - e. The Chair will determine from available CRC members, the composition of a Panel (the relevant Panel), to hear a complaint that is referred to the CRC for determination (a referred complaint), taking into account the qualifications of CRC members and the opportunity for all CRC members to participate from time to time in a Panel.
 - f. The Chair or a Deputy Chair will preside over each panel.
 - g. CRC members (including the Chair or Deputy Chair) allocated to a Panel will confirm that they have no conflict of interest or duty in respect of the complaint being heard by that Panel.

Reports, Complaints and Investigations

13. The FAAA has an inquisitorial remit in overseeing Member conduct to ensure adherence to its principles and standards. Accordingly, where a Member may have engaged in conduct that potentially breaches those principles and standards, the FAAA may be informed of this, or inform itself, via any reasonable means. Notwithstanding the route by which the FAAA is informed, any review of individual Member conduct will be referred to as a *complaint* for the purposes of these procedures.
14. A complaint:
 - a. can be made by any reasonable means, but must, if made orally, be reduced to written form and, where possible, the content agreed with the person making the complaint (the *complainant*);
 - b. must identify the Member who is the subject of the complaint (the relevant Member) and should include as many contact and other details as possible, including the name of the person with whom the complainant dealt, if a business entity is the subject of the complaint;
 - c. should describe as clearly and precisely as possible the alleged conduct;
 - d. should give as complete details as possible, including a signed statement and with available documents, that are said to prove the alleged conduct.

15. Where there is an identifiable complainant, that individual must acknowledge and confirm willingness that their identity will be shared with the relevant Member, or otherwise provide reasons why their identity should not be shared. At the sole discretion of the FAAA, the FAAA may withhold the identity of the complainant from the relevant Member.
16. Where there is no identifiable complainant, or where the complainant withdraws, the FAAA may proceed as though a complaint had been made, provided it is aware of conduct on the part of a Member that may breach the FAAA Code.
17. The FAAA may extend the complaint or the grounds of complaint or the areas under investigation, in line with its inquisitorial remit. The FAAA may, at its sole discretion, focus its investigation and any conduct oversight action on one or more aspect of a Member's conduct, notwithstanding that other matters may have been reported to or raised with the FAAA. The FAAA may, at its sole discretion, decline to investigate or undertake conduct oversight action in relation to a Member.

Investigation of a Complaint

18. A complaint is not to be taken further if the Investigation Officer (IO) accepts that the alleged conduct occurred more than 6 years prior to the receipt of the complaint by the FAAA, unless the Board or its delegate, under its powers, determines that the complaint should be investigated and referred to the appropriate decision maker, despite the lapse of time, based on one or more of the following:
 - a. there is a reasonable explanation/justification for the delay;
 - b. the alleged conduct may be found to constitute malpractice (meaning conduct in contravention of an applicable conduct requirement that is likely to cause harm to clients, the community or the financial planning profession by its systemic nature); or
 - c. it is in the public interest to deal with the complaint.
19. Unless it is prevented by law or by an instruction or direction or order made according to law, the FAAA may proceed with the processes in this Regulation in respect of a complaint even if a complaint on a substantially similar matter, or on substantially similar material has been made under another approved external complaints resolution scheme. The FAAA may at any time discuss the subject matter of a complaint with the administrator of such a scheme, to the extent permitted by law, with a view to resolving whether or not the FAAA should proceed with a particular complaint or defer its process pending resolution of the complaint made to the other scheme. Subject to the law, the FAAA may enter into a Memorandum of Understanding with any scheme administrator, ASIC, AFCA or other relevant regulator in relation to exchange of information and use of exchanged information concerning complaints and their investigation and determination.
20. A complaint will be processed in the following manner, subject to the exception set out in this clause:
 - a. Where a decision is taken that the allegations made in the complaint require formal investigation, the IO allocated to the complaint will , within 14 days after receipt of the complaint, notify the relevant Member by providing to the Member a summary of the issues under investigation and the principles and standards that the alleged conduct may be in breach of, unless the Board Delegate approves withholding notification of the complaint.
 - b. The IO, for the purpose of investigating the complaint, will seek any further information and documents from the complainant, the relevant Member and other sources as the IO considers appropriate for the proper investigation of the complaint. Each such person shall be given reasonable time to respond and must verify the information and other documents to be provided in the manner the IO requires.

- c. The IO will assess all information and documents in the IO's possession in respect of the complaint fairly and in accord with law and the applicable conduct requirements.
 - d. Within a reasonable time, after receipt of any further information and other material, the IO will provide to the Board or its delegate, an interim report on the complaint containing the following:
 - i. a succinct statement of the complaint;
 - ii. a description of the information and other documents obtained during the investigation;
 - iii. the IO's recommendations concerning disposition of the complaint, including the IO's conclusions on contraventions of any applicable conduct requirements;
 - iv. the reasons for those conclusions and recommendations, including an assessment of the seriousness of the breach and any aggravating or mitigating factors; and
 - v. the IO's recommendations for resolving the case.
 - e. The FAAA Board may, at its sole discretion, approve variation from the above process, where circumstances are such as would render this appropriate doing so will not render the investigation procedurally unfair.
21. Where the IO believes there is a case to answer and recommends conduct oversight action, the IO will also:
- a. provide a copy of the interim report to the relevant Member, within 14 days of providing the interim report to the Board or its delegate.
 - b. provide copies of any relevant evidence – including anything relied on or considered in the report.
 - c. provide notification in writing that the member has 28 days to formally respond to the allegations, providing any statement, evidence or other material they believe to be relevant.
22. Within a reasonable time after the lapse of time allotted to the Member to respond to the report, and whether or not a response from the relevant Member has been received, the IO will provide to the Board, or its delegate, and at the same time to the relevant Member, a copy of the IO's final report.
23. The IO's final report will include the material in the interim report and provide:
- a. a description of the information and other documents provided by the relevant Member;
 - b. changes (if any) to the IO's recommendations concerning disposition of the complaint including the IO's conclusions on contraventions of any applicable conduct requirements and the reasons for those conclusions and recommendations, and recommendations for the resolution of the case.
 - c. the reasons for any changes (or lack thereof) to such conclusions and recommendations, having taken into account the information and documents provided by the relevant member, or for there being no such changes.
24. Both the interim and final report, as well as the response, may comment on appropriate sanction including the perceived severity or systemic nature of the contraventions arising out of the alleged conduct.
25. The IO, the Board or its delegate, or the Presiding Chair, may extend any time in this section on reasonable grounds to such time as is reasonable, on his/her own initiative or the request of the relevant member.
26. In the processes described in this section, the IO is not required to provide to the relevant Member any information or documents that the IO reasonably considers would, by its provision breach the law, prejudice investigations by police, regulatory authorities, pending court or tribunal proceedings, or place the complainant or other person at risk of harassment, intimidation or harm.
27. The Board or its delegate will, on the basis of the final report from the IO and the documents referred to in the report, state in writing, with reasons, whether:
- a. Whether the investigation should cease (see schedule 1)
 - b. Whether the investigation should be resolved with words of advice (see schedule 2),

- c. Whether the investigation should be resolved as a minor issue (see schedule 3)
 - d. Whether the complaint should be referred to the CRC for determination (see Schedule 4)
28. The Board or its delegate may give consideration to one or more of the following in reaching a decision on which method of resolution is appropriate:
- a. the nature and scope of the alleged conduct, including whether the conduct is suspected to be systemic in nature;
 - b. the breadth and severity of alleged contravention of applicable conduct requirements including any malpractice;
 - c. whether there is a reasonable prospect that the alleged conduct can be established on the balance of probabilities to have occurred, and whether such conduct could be considered a contravention of the applicable principles and standards;
 - d. whether assessment of the matters in (a) to (c) is affected by the existence of information and documents that have not been provided to the relevant Member under section 23 but would, in accordance with law and obligations of procedural fairness, be required to be provided to the relevant Member, or not relied upon, in a CRC hearing;
 - e. whether the complaint is assessed to be vexatious or misconceived.
29. In addition to the matters already specified, the Board or its delegate may take into account the following in issuing an instruction to the IO:
- a. whether the subject-matter of the complaint is substantially the same or reasonably related to an earlier complaint that has been dealt with;
 - b. the relevant Member has already been expelled or otherwise proportionately sanctioned for the alleged conduct or substantially similar conduct and it would be futile or disproportionate to investigate and sanction further;
 - c. the substance of the complaint is a commercial dispute between the complainant and the relevant Member;
 - d. The FAAA Conduct Oversight Process is not an appropriate forum for the complaint to be pursued, or is otherwise not in the public interest for the FAAA to investigate.
30. The IO will implement the Board's instruction and notify the Member (in so far as the Member is aware of the complaint).
31. A record of all complaints will be kept by the FAAA in its permanent archives. The record will contain at least the following in respect of each complaint:
- a. the name of the complainant (which may be or include the FAAA), or that the complainant chose to remain anonymous
 - b. the name of the relevant Member;
 - c. brief particulars of the complaint;
 - d. the Board resolution as to the complaint;
 - e. where relevant, the decision of the CRC on the referred complaint.
 - f. the FAAA will keep confidential all dismissed complaints but will publish CRC decisions on referred complaints and in anonymised form may refer to the facts of and issues in any complaint in educational material to members.
32. At any time during the investigative process, and notwithstanding whether the Member has been informed of the complaint, the IO may make a written recommendation to the Board or its delegate that the investigation be discontinued, referencing one or more of the considerations set out under sections 25 or 27. In response to any such recommendation the Board or its delegate will issue an instruction to the IO to continue or to discontinue the investigation, setting out the reasons for the instruction. The instruction and the reasons will be recorded.
33. In the event that the relevant Member has not previously been notified of the complaint then, in the event of an instruction to discontinue the investigation, it will be at the discretion of the IO, or the Board or its delegate, whether such notification is required.
34. The FAAA may, at its sole discretion, in any format and for any purpose, make public the details of the complaint, including but not limited to:
- a. The name of the member
 - b. The conduct investigated

- c. Any findings following the investigation, including the findings of the CRC
- d. Any sanction applied
- e. Any other detail the FAAA believe is appropriate in the furtherance of its Objects, as set out in the FAAA Constitution.

Schedule 1

Cessation of investigation

- 1) At any time following an initial assessment of the complaint and the available evidence, the IO may recommend to the Board or its delegate that any investigation into the complaint be paused or ceased.
- 2) Any such recommendation should be in writing and should set out a summary of the issues involved in the complaint and why the IO believes that this method of resolution is appropriate.
- 3) The Board or its delegate may, on receiving a recommendation that investigation into the complaint should cease, issue an instruction that the investigation should continue, or that the investigation should cease.
- 4) In the event that the investigation is ceased,
 - a. within 7 days, the IO will notify the complainant.
 - b. if the Member has been notified of the complaint, within 7 days the IO will notify the Member.
- 5) Nothing in this section will prohibit the FAAA from reopening an investigation at a later date.

Schedule 2

Words of advice

- 1) The IO may seek leave from the Board or its delegate to resolve the complaint with “words of advice” related to the conduct alleged where, following an investigation, the IO believes that an allegation is:
 - a) Unproven, but potentially serious if it were proven; or
 - b) Proven, but not viewed as a serious breach of the Professional Code as an individual instance of conduct; or
 - c) Proven, but viewed as a trivial breach of the Professional Code
- 2) Any such recommendation should be in writing and should set out a summary of the issues involved in the complaint and why the IO believes that this method of resolution is appropriate, as opposed to alternative means of resolution allowed by these regulations.
- 3) The Board or its delegate may approve a resolution via words of advice, or they may instruct the IO to use one of the alternative methods of resolution set out under these procedures.
- 4) The Board or its delegate should issue its approval or instruction in writing.
- 5) For a matter to be resolved with words of advice, the member must acknowledge the shortfall in their conduct.
- 6) Words of advice may be provided verbally or in writing. In the event that they are provided verbally, a record of the conversation should be made.
- 7) Any response from the Member should be recorded.
- 8) Resolving a case via words of advice does not entail a formal adverse finding against the Member complained of.
- 9) Where this method is used to resolve a case, the complainant is to be notified of the resolution within 7 days of the advice being provided to the Member.

Schedule 3

Minor Instance of Unsatisfactory Conduct

- 1) The IO may recommend to the Board or its delegate that the FAAA seeks to resolve the issue as a Minor Instance of Unsatisfactory Conduct, where the IO concludes that the conduct complained of is:
 - a. on the balance of probabilities, likely to be proven to have occurred; and
 - b. would be likely to constitute a breach of the relevant principles and standards; and
 - c. the substance of the complaint is minor in nature.
- 2) Any such recommendation should be in writing and should set out a summary of the issues involved in the complaint and why the IO believes that this method of resolution is appropriate, as opposed to alternative methods of resolution allowed by these regulations.
- 3) On receiving a recommendation that the FAAA seeks to resolve a complaint as a Minor Instance of Unsatisfactory Conduct, the Board or its delegate may:
 - a. Accept the recommendation and instruct the IO to approach the member regarding resolution (see clause 6 of this schedule); or
 - b. Instruct the IO to resolve the case using one of the alternative methods of case resolution (see clause 27 of these regulations).
 - c. Instruct the IO to continue the investigation.
- 4) In considering the recommendation, the Board or its delegate may consider one or more of the following:
 - a. any mitigating factors in the Member's conduct.
 - b. any aggravating factors in the Member's conduct.
 - c. the Member's demeanour and approach to the FAAA in responding to the complaint, including whether they have accepted responsibility for the conduct.
 - d. any loss to the complainant.
 - e. whether the conduct was deliberate or accidental.
 - f. The Member's conduct record.
 - g. whether the conduct appears to be systematic in nature.
- 5) The Board or its delegate should issue its instruction in writing.
- 6) On receipt of an instruction to seek to resolve a complaint as a minor instance of unsatisfactory conduct, the IO will approach the Member, setting out in writing the assessment of the complaint and the proposed method of resolution.
- 7) The Member may choose to accept the IO's recommendation, in which case the case will be recorded in the association's accountability register as a complaint upheld by way of a minor instance of unsatisfactory conduct.
- 8) If the Member does not accept the IO's determination, the matter will be referred to the CRC in accordance with the CRC referrals process.

Schedule 4

CRC determinations

- (1) The IO will recommend to the Board or its Delegate that an investigation be referred to the CRC, where the IO believes that a breach of the FAAA's Code:
 - Can be shown to have occurred on the balance of probabilities; and
 - Is not trivial or minor in nature.
- (2) On receipt of a recommendation that an investigation be referred to the CRC, the Board or its delegate can instruct:
 - that further investigation take place.
 - that the case be referred to the CRC.
 - that one of the alternative means of resolution be selected.

The CRC will hear and determine complaints as follows:

- (3) Each complaint will be heard and determined by a Panel of three CRC members allocated by the Chair, taking into account procedural fairness in selection of the panel.
- (4) The CRC will observe the requirements of procedural fairness and must give written reasons for its final decision on contravention and sanction.
- (5) The CRC will make findings on the balance of probabilities, being the civil standard of proof.
- (6) The CRC may, on proper notice and after any required hearing or submissions on the papers as it determines is appropriate, of its own motion, or on the application of the relevant Member or the FAAA:
 - amend the grounds or particulars of complaint;
 - grant leave for legal representation or other representative assistance;
 - adjourn or refuse an adjournment;
 - proceed in the absence of a party;
 - grant leave for persons other than the FAAA, the relevant Member and any witness to be present in what is otherwise a private hearing;
 - determine if documents sought should be produced and the basis for inspection; determine questions of client legal privilege, settlement privilege, privilege against self-incrimination or other issues of privilege and confidentiality;
 - determine if evidence should be excluded, and the basis for such exclusion; permit and limit oral evidence and cross-examination;
 - determine if the whole or part of a referred matter should be determined by hearing in person and/or by remote technology or on the papers;
 - restrain the relevant member from contacting a client or former client, the complainant or another person.
- (7) The CRC is not bound by the rules of evidence, but is able to take into account how such rules would operate in respect of particular production of documents or particular evidence.
- (8) The CRC, subject to the requirements of other parts of this Schedule, will establish the procedure for determination of a referred complaint, including making directions for the preparation for hearing or determination on the papers.

(9) The CRC may defer questions of sanction until after any finding of contravention and, if it does so, will give the opportunity for written submissions and any further information and documents on sanction in light of the findings of contravention. The range of available sanctions is set out in this Schedule.

(10) The CRC may make findings including relating to contravention and impose sanctions:

(a) by consent;

(b) having regard to the effect of the contravention, whether the contravention or its effects were unintended, whether the relevant Member acknowledged the contravention and at what stage of the investigation, whether the relevant Member attempted remedial action and at what point and the public interest.

(11) The proceedings are to be recorded.

(12) There shall be no order as to costs for or against either party.

(13) A Member is under a duty to co-operate reasonably with and to give reasonable assistance to the FAAA including the IO, and the CRC in connection with matters arising under this Regulation. Failure to provide reasonable assistance will constitute a breach of the FAAA Code. The content of such duty includes but is not limited to:

- production without charge to the FAAA of documents sought,
- access to premises,
- provision of consent or authorisation,
- facilitation by others of such production,
- access and provision of consent or authorisation,
- compliance with the CRC's directions.

(14). The Chair of the CRC has summary power to sanction non-compliance with the duty of cooperation set out in Schedule 4, clause 13 through any combination of:

- A written reprimand.
- Suspension of the Member's membership until the member complies, or for such alternative period as specified by the CRC Chair.

(15) In the event that the CRC finds that the conduct alleged has occurred, is a breach of one or more of the relevant principles and standards, and warrants the imposition of a sanction, the CRC may impose one or more of the following measures:

A) Words of advice for the Member.

B) A requirement that the Member issues a formal apology to one or more party to the complaint

C) A written reprimand to the Member.

D) That the Member undergo a course of study specified by the CRC at the member's expense and in addition to any CPD or other ongoing learning obligations.

E) That the Member's membership is to be suspended for a period of up to six months

F) That the Member's membership is to be terminated.