

**FINANCIAL ADVICE ASSOCIATION AUSTRALIA
CONDUCT REVIEW COMMISSION (CRC) DISCIPLINARY PANEL**

FAAA CONDUCT AND INTEGRITY REGULATION 2024

PROCEEDINGS REGARDING: [REDACTED]

DETERMINATION: FY 23/24 23 (final) ASIC NUMBER [REDACTED]

PANEL: Gregory Burton SC, FCI Arb (Chair), Presiding Member
Shane Nicholas FAAA, Panel Member
Michael Chalmers FAAA, Panel Member

HEARING DATE: 19 March 2025

DETERMINATION DATE: 14 April 2025

DETERMINATION:

1. Find the alleged breaches are made out.
2. Suspend [REDACTED] (the member) from his FAAA membership while he undergoes education and training in the professional ethics and compliance requirements set by the FAAA Board or its delegate having taken into account the recommendations in that respect of the Head of Professional Standards.
3. Note that the suspension will end when the FAAA Board or its delegate is satisfied, by a report or reports provided by or for the member on the member's practice's systems that details the changes made to those systems to eliminate substantially the risk of recurrence of the matters for which the member has been found to be liable in this determination and by satisfactory completion of extra ethical and compliance training, that the member understands and will comply, and his practice staff will comply, with the FAAA principles, standards and rules.
4. If the Board or its delegate is not satisfied pursuant to order 3 within six months after date of this determination, then the member's membership is terminated unless the Board or its delegate extends the suspension period for a reason such as enabling the education and reporting to be satisfactorily completed.

REASONS FOR DETERMINATION

Background, nature and grounds of complaint, procedural, relevant provision of FAAA Conduct and Integrity Regulation 2024 (CIR)

1. On 14 October 2024 the FAAA Investigating Officer (IO) provided a final report (the IO report) to the FAAA Board alleging that [REDACTED] (the member) had engaged in conduct which constituted a number of breaches of the FPA Professional Code then in operation, being the 2022 Code. The complainant to the FAAA that prompted the investigation and report was [REDACTED] a former client of the member (the complainant).
2. The complaint and report process is within the jurisdiction, under reg 27d of the FAAA Conduct and Integrity Regulation 2024 (CIR), of the FAAA Board to consider a final report of an IO and determine whether the complaint should be referred to the CRC for determination in accordance with procedures set out in and under CIR Schedule 4. The Board so recommended, agreeing with the recommended action in the IO report.
3. The complaint, received by the FAAA on 22 April 2024, alleged that the member had fabricated an "Authority to Obtain" dated 24 January 2024 by transposing a copy of the complainant's signature and had submitted what was regarded as a forged document in that circumstance to a superannuation fund in order to obtain information in relation to the complainant's account.
4. The complaint also alleged that the member on 25 January 2024 used his office of Justice of the Peace (JP) falsely and improperly to certify a copy of the complainant's expired 2016 passport as an original, in support of the "Authority to Obtain". The copy so certified was of a passport issued on 18 April 2016 that had been cancelled and a new passport issued at the complainant's request some six months earlier; the member did not have the new passport and did not have authorisation from the complainant for the certification.
5. In accord with the CIR, the member was provided with a draft of the IO report on 10 September 2024. His response dated 4 October 2024 is part of the papers with which the Panel has been provided.

6. The two matters of complaint were formulated as specified grounds. Each was alleged to constitute a breach of clause 2 in the FAAA Professional Code 2022 which is headed "Integrity" and provides as follows:

"This requires honesty and candour in all professional matters. Integrity requires the financial planning professional to observe both the letter and the spirit of relevant rules, regulation and laws – including the FAAA Code. Integrity requires that conduct is approached in a spirit of utmost good faith and that their actions are aligned with promoting a culture that supports and requires integrity in others."

7. Owing to the very serious nature of the complaints, the member was offered an in-person hearing. He chose a hearing by AVL.
8. The member did not seek to have the complainant available for questioning on her complaint.
9. At the start of the hearing, when the Chair outlined the course of the hearing process, the member said that he had not been told that the proceedings would be conducted as a formal hearing like NCAT (where he had conducted a case) or a court and that he could be represented. The FAAA, for whom the IO appeared, said that the member had been told several times the hearing process, that he could be represented but there was no recourse on costs and that the FAAA was not legally represented.
10. The Chair indicated that the hearing had the same substantial process elements as any hearing because of procedural fairness but it was less formal than a court or tribunal. The Chair asked the member if he had any application to make such as for an adjournment and the member said that he was happy to proceed but wanted to make the point.
11. The documents were then gone through to show that the member had been provided them with the draft and final IO reports and included the member's documents and the four central docs: the 2020 and 2024 authority to obtain documents; a copy of the complainant's 2016 passport identification details pages and the member's certification of that passport in January 2024.
12. The member cross-examined the IO at length and in detail and the IO similarly cross-examined the member. After time for preparation over lunch,

both parties made brief closing submissions to supplement what was already in writing and the hearing finished after just over four hours (including preparation time over an approximately 15-minute morning break and about 40 minute lunch break which were times that were expressed by the parties to be satisfactory).

13. After the hearing the FAAA provided to the Panel and to the member, in addition to the transcript and recording of the hearing, by way of requested assistance a document showing the two Authority to Obtain documents that were in evidence side by side and a copy of the draft 19 January 2024 client annual review report for 2023/2024 requested by a Panel member to go into evidence. There was no support in that document for the member's contention that there was ongoing client authority. Rather, the relevant paragraph said: "Super contribution review summary: ... As of April 2023, the authority we have on file for your balances in [the superannuation fund] has expired. We require an updated third-party authority from you". When we have referred to the transcript below we have left in what appear to be errors in transcription, with minimal comment, as they do not change the point for which the transcript is relied on in these reasons.

Evidence and submissions

14. As already said, there were provided to the FAAA and to us a number of documents. These were communications between the complainant and the member and documents supplied to the complainant by the superannuation fund.
15. The documents included the following: an undated Authority to Obtain signed by the complainant and her former spouse in (it was understood) August 2020; a copy of the complainant's current passport dated 30 June 2023; an email from the member to the complainant in January 2024 requesting that the complainant complete an up to date Authority to Obtain which the complainant said that she did not provide (which appeared to be common ground); the "Authority to Obtain" dated 24 January 2024 purportedly bearing the complainant's signature; a copy of the complainant's superseded passport issued 18 April 2016, certified as a true copy of the original by the member on

25 January 2024 with words stamped that read “I certify this to be a true copy of the document shown and reported to me as the original on” followed by a handwritten 25/1/24 and the member’s name and identification as a JP.

16. The FAAA provided these documents to the member with its letter of 13 May 2024 that set out the substance of the complaint.

17. In his letter to the FAAA of 25 June 2024, among other matters the member said that there was a meeting with the complainant “scheduled” for 19 January 2024 but acknowledged that the complainant was notified of the meeting about 35 minutes before its start time, with no earlier notice. The FAAA submitted that it was “disingenuous” for the member in that context to say that he waived the cancellation fee for the complainant’s non-attendance at the meeting. The FAAA further submitted that there was no evidence provided to support the member’s assertion in his email of 29 July 2024 that the complainant requested the meeting in November 2023, which the complainant contested.

18. The FAAA submitted that the member made mutually contradictory statements in the same email – namely, that he had been in possession of the original passport that he certified in 2024 and that his most recent possession of a passport was in 2020 – and that this arguably showed a “disingenuous attempt to obscure [the member’s] actions in this matter”.

19. The FAAA further submitted that the member’s reliance upon authority he received in August 2020 to support his submission of the 2024 “Authority to Obtain” was also arguably “a disingenuous attempt to obscure his actions” that appeared “to have little basis in fact”. It was submitted that it was “not supportable” that the 2020 authority would carry over to 2024, especially given the apparent length of time since its signature and the co-signature of the 2020 authority by the complainant’s former husband. That degree of change of life circumstances was submitted to invalidate any existing authority, as was implicitly recognised by the attempts to obtain a new authority.

20. In that last respect, the member’s contention, in his letter of 25 June 2024, that he needed to renew the authority after three years was itself well out of

time by January 2024 but implicitly recognised that authority from 2020 could not support the alleged events in January 2024. Further acknowledgement was that the member forwarded a replacement authority to the complainant to sign, which the complainant did not return. This fatally undermined the answers, to the IO's questioning in cross-examination, to the effect that the member had ongoing authority to update a client's authority to obtain directed to a specific superannuation fund which had a specific time limit that differed from time limits in other superannuation funds.

21. In his response of 4 October 2024 to the draft IO report which substantially is the same as the final report, the member did not expressly deny that the signature on the 2024 "Authority to Obtain" was not the complainant's. Rather, he said: "[The complainant's] signature was the same signature as provided on the 2020 Authority to Obtain. ...It is acknowledged the form was updated incorrectly by my team and re-lodged with [the superannuation fund]. [The complainant's] signature was not fabricated as the 2020 form had been used".

22. In the same response, in relation to the passport, the member said: "Old passport was certified in a face-to-face meeting in 2020 where the original ID was presented. The old passport was certified improperly in Jan 24 in that the original was not present". In closing submissions, reflecting his answers in cross-examination, the member said "As far as the passport was concerned, yes, it was incorrect certifying it without citing [sighting?] the original and once again, personal circumstances are no excuse. The fact that she was going through something and and possibly delaying the meeting again, but yeah, I'm not gonna make any excuses about it". In cross-examination the member stated his intention was at the review meeting to view the passport.

23. The member pointed to the family pressures under which the complainant was operating in late 2022 to the end of 2023 and his practice's attempts to accommodate her through those pressures. When the updated authority was emailed and not returned and contact attempts failed, and with the review meeting approaching on 12 February 2024, the member said: "Given her personal circumstances, it was decided to use the older authority and seek a

new signature at the review meeting, where we would also ask to bring along her original ID”.

24. The FAAA and we raised the foregoing matters, and others in our consideration below, with the member by way of questioning during the hearing.
25. Initially, the member’s cross-examination of the IO was to the apparent effect that the 2020 authority signed in blank by the complainant and her then husband was a general authority to the member to obtain information until it was withdrawn, including authority to update individual authorities to obtain with specific institutions which had different lives for such an authority. The authority in question was updated before the complainant withdrew the general authority.
26. In his own cross-examination the member confirmed that, despite his contention that in 2020 he explained to the complainant that the 2020 authority would be used to obtain information from relevant funds, “best practice is to get the client to sign an updated form and the intention was to get the updated form at the review meeting which was the following week because of a personal circumstances I said to the team because we couldn’t get hold of her and to avoid a second meeting with the client I said to the team changed the date lodger and I’ll get an updated. I’ll get a fresh signature at the review meeting, but the client gave authority when we onboarded her to access her information. It was never revoked. ... Just change the date and I’ll get it signed off the following week, so I made the call on that.”
27. In the course of questioning in cross-examination of him the member expressly acknowledged as follows: originally he said that the physical form of the 2020 blank authority was altered in 2020 and between then and 2023 by removing the ex-husband’s signature, removing the handwritten address and typing it and adding other information; with the covid epidemic the office went paperless so the original authority was scanned, then altered electronically, but the complainant’s original signature was not altered being simply re-used in scanned form with changed date and other added information.

28. In closing submissions the member acknowledged that changing the date was wrong and “I’m not making any excuses ... that was an error of judgment”. He maintained that lack of authority was not correct because “The client authorises use of the authority because she’d been doing that every year since onboarding to access the information to provide the services. The same process that I’d followed with the same process I’d followed in previous years on my team ... “.
29. The member however acknowledged in cross-examination that his business development manager in the licence group, when consulted by the member in May 2024 after the complaint was notified, said that the member should have got his client’s signature on the authority with the changed date; when he said that was his intention the following week due to the client circumstances, the superior’s response was “They said no, it’s black and white should have had two meetings. You just cannot change the date. ... just get a new authority regardless of the circumstances”. The member then agreed that the member’s belief that he had ongoing authority to update was incorrect in the view of the business development manager.
30. The member also agreed that a recipient of the 2024 “Authority to Obtain” document was likely to view it as a current authority signed by the client and dated on the date showing on the form and that such was the message intended to be conveyed.
31. In closing submissions, in answer to the suggestion that the entire authority to obtain was a fabrication because it represented itself as a fresh authority when it wasn’t a fresh authority, the member said “So that I take responsibility for that. But behind the scenes, my team do the work and the person that was responsible. I don’t like to throw people under the bus. That person has since been terminated.” There followed a subsequent exchange: “Chair: Now you’ve said that signature is genuine because it’s the one you transposed from the 2020 document to the 2024. When I say you, I mean you and gave some instructions and have happened. Um. But my question was then, even if that signature in itself was genuine, did not the reconstruction, if I can use that term of the document itself, constitute a forgery or fabrication, because the document was not a genuine document from the client? Member: And that is

worrying to me. And that's the reason the client was the particular staff member was terminated. I wasn't aware of the extent of that change."

32. In cross-examination the member also acknowledged that the way in which the review meeting did not occur showed that it was wrong "to do the two acts that are complained of, which you'd hope to fix up because there was always the risk that what in fact occurred would occur? That the client withdraw authority and never turned up for the meeting."
33. The member in his closing submissions said "In conclusion, I've been a financial planner for 17 years. Um, there's no excuse for what I did, but not any. Had there been no complaints, there's been glowing references of the work. I think one could say, look, I've been a planner for this long. There's been no complaints, but that's not good enough. I hold myself to a higher standard".

Consideration - liability

34. It appears compelling to us on the above material that the member, despite whatever general authority to update specific provider authorities that he thought he had from the 2020 document, realised by January 2024 that his existing authority as regards the complainant could not be relied upon by at least lapse of time, that the complainant's life circumstances had changed, that he needed a new authority, that he sought to obtain one from the then-client and that it was not forthcoming.
35. Despite the lack of clarity in earlier responses, the member's 4 October 2024 response effectively admits that the member or part of his team used the complainant's signature from her 2020 authority on the purported 2024 "Authority to Obtain". This is denied to be a fabrication because it was her actual form of signature. That in itself indicates a clear lack of understanding that, whether or not it is a forgery (about which the law has complexity and in part depends on whether legislation or civil or criminal law is in issue), a person's genuine signature added without the person's authority is wrongful as is an unauthorised reproduction of the person's signature. The resulting document as a whole was not a genuine document of the complainant issued with the complainant's authority.

36. We find it established on the required standard of proof (that it is more probable than not) that the member in those circumstances placed the complainant's signature as a client on the replacement "Authority to Obtain" without the complainant's authority to do so. Whether or not that constitutes a forgery in civil or criminal Australian law, absence of authority is sufficient to establish a serious breach of clause 2 in the FAAA Professional Code 2022.
37. The member's motivation may have been to facilitate administration, and well-intentioned from his perspective that he was assisting the administration for a client in difficult circumstances. That it was not perceived by him to be particularly serious can be discerned in his words on 4 October 2024: "In preparing for the 2023 review meeting, we were advised by [the superannuation fund] that the 2020 Authority to Obtain had expired. An updated form was subsequently emailed but not returned. Due to her personal circumstances and review meeting the following week, it is acknowledged the form was updated incorrectly by my team and re-lodged with [the superannuation fund]". There followed the words earlier quoted about the complainant's personal circumstances.
38. The proposed replacement of the old signature with a new signature at the review meeting fell apart because the complainant cancelled the review meeting and terminated the member's services. This illustrated cogently how plans to circumvent what was perceived (it appears) as an administrative issue can redound and leave in place the wrongful circumvention. It should also be recalled that the member proceeded with what he thought was administrative facilitation when the absence of communication with the client and the absence of return of the completed authority should have rung warning bells to stop and wait to undertake proper procedures.
39. Therefore, even if the motivation was well-intentioned administrative facilitation, the member's lack of perception of the seriousness of what occurred compounds the seriousness of the breach. The member is not assisted by the obscurity in the earlier explanatory responses to the FAAA. He is also not assisted by the fact that it emerged at the hearing that the staff member who had undertaken the signature transposition had apparently been sanctioned by termination of employment, yet it was clear that the member

authorised what occurred at least as to dating the document when the absence of authority to obtain was raised in a staff meeting and the member as principal authorised what happened.

40. We accept that the wording of the certification on the copy of the passport carries the usual meaning that the original of the copy was sighted at time of signature and dating by the certifier. This conforms to the requirement for certification in the NSW JP Handbook: "You must never certify a copy unless you have both the original and the copy physically in front of you".
41. The effect of the 25 June 2024 letter from the member is that he did not sight the document at the time he certified in 2024 and that he was not authorised to certify by the complainant. His answer was with respect to the 2020 meeting and the 2016 passport because it referred to the complainant and her former husband bringing the original documents to that meeting as requested. There was no meeting in January 2024. We are not satisfied that the member ever saw the complainant's 2023 replacement passport (and the member somewhat belatedly admitted this) or in January 2024 knew of its existence since the 2016 passport had a ten-year life (the complainant changed it for collateral security reasons). The current passport was the appropriate document to certify. The member did not realise this precisely because he sought to circumvent the requirement to sight the original at time of certification. Again, the motivation does not reduce the seriousness of the conduct.
42. In submitting the authority and the certification to the superannuation fund the member made a serious false representation on which he invited the fund to rely and breached his duties as a JP. He finally clearly admitted this in his response of 4 October 2024.
43. We are accordingly comfortably satisfied that the member on both counts alleged has committed a serious breach of the 2022 FAAA Professional Code section 2 as set out above.

Consideration - sanction

44. The contraventions that we have found are very serious. They indicate a deep lack of understanding by the member of his professional obligations.

There is no excuse from matters such as administrative convenience which as we have mentioned can have its own unexpected consequences when the apparent planned temporary fix comes undone.

45. Sanction must also take into account the protection of the profession's reputation and the public trust in the profession, together with the direct protection of the public from departures from professional requirements that are designed to ensure the basis for public trust.
46. These central considerations mean that the public and the profession must be protected from the continuance of practice of a member, to the extent that a professional association can achieve, while the member undertakes the required training in professional obligations and then demonstrates to the association's satisfaction that the member will in the future understand and fulfil those professional obligations.
47. In his 4 October 2024 response the member sought to raise matters in mitigation, including three character references. In essence, these were: "Staff training on the use of third-party authorities has since been completed so Authority to Obtain forms are only updated by clients"; other consultation and procedures, including a "through audit with my BDM [business development manager] of their [our?] practices", had occurred to avoid recurrences of either type of wrongdoing; no financial loss was suffered by the client; there was no malicious intent; this was an oversight and not a systematic problem; the pressures of very sad and very serious family health circumstances; an otherwise unblemished record.
48. We have taken into account the family circumstances and the resultant pressures on the member but do not need to detail them in a published determination.
49. In part the circumstances put forward by the member in mitigation are self-contradictory: the matters are said to have arisen from "oversight" and not to be a "systematic problem" but there is also said to have now occurred the advice, training and process changes that would infer that previously there was a need for systemic overhaul. There is no present detail on that overhaul, which appears to have occurred in conjunction with the member's

licensee but without clarity whether the licensee's audit and compliance team conducted the overhaul.

50. We take into account that the member has made belated and partial acknowledgement of the conduct and has also acknowledged to some extent that aspects of that conduct were wrong, but this occurred at the end of the investigation which was not assisted by earlier obscure and self-serving responses.
51. We cannot give significant weight to the character references. They are of a general nature so add little to the member's stated unblemished record to this point. On their face they have been written without knowledge that the member has effectively admitted the alleged misconduct or at least without a detailed knowledge of the allegations and the documentary evidence.
52. Taking into account the protective, reputational and restorative matters and the mitigating circumstances put forward and not fully accepted as such, in our view the appropriate sanction is to suspend the member's membership for up to the maximum of six months that suspension is a permitted sanction, with that suspension ending when the FAAA Board or its delegate is satisfied, by a report or reports provided by or for the member on the member's practice's systems that details the changes made to those systems to eliminate substantially the risk of recurrence of the matters for which the member has been found to be liable in this determination and by satisfactory completion of extra ethical and compliance training, that the member understands and will comply, and his practice staff will comply, with the FAAA principles, standards and rules. Since the CRC cannot suspend under CIR Schedule 4 para 15(E) for more than a maximum of six months, if that satisfaction is not achieved within such six months then it will be up to the FAAA Board or its delegate whether or not the suspension continues or termination occurs unless another form of sanction is imposed.
53. We urge the member to take advantage of the resources of the FAAA wellbeing programme which he was reminded about at the time the complaint was brought to his attention and which will be made available during and despite the suspension.

Dated: 14 April 2025

