



Financial Advisers Disciplinary Committee

INFORMATION GUIDE

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ABOUT THIS GUIDE

This guide provides information about the Financial Advisers Disciplinary Committee (the Committee) and the process the Committee follows when a complaint is referred to it by the Financial Markets Authority (FMA).

While the guide summarises the rules and processes of the Committee, it is not a substitute for the Financial Advisers Disciplinary Committee Rules of Procedure ([The Rules](#)). If there is any conflict between the Rules and this guide, the Rules prevail.

MAKING A COMPLAINT

A complaint about an Authorised Financial Adviser (AFA) should be made directly to FMA. Any person wishing to complain about an AFA can submit their complaint either through FMA's website (see Make a Complaint or Report Misconduct at www.fma.govt.nz), by telephone or in writing by facsimile or post. Contact details for submitting a complaint are:

AUCKLAND

Financial Markets Authority

PO Box 106 672

Auckland 1143

Phone: (09) 300 0400

Facsimile: (09) 300 0499

Email: questions@fma.govt.nz

Website: www.fma.govt.nz

ABOUT THE COMMITTEE

The Committee is an independent body. It conducts disciplinary proceedings arising from complaints about AFAs relating to breaches of the Code of Professional Conduct for AFAs (the Code).

The Committee was established in December 2010 by the Minister of Commerce.

The Financial Advisers Act 2008 (the Act) sets out the functions of the Committee and allows the Committee to determine its own practices and procedures for performing its functions under the Act.

The Committee's functions are:

- to conduct disciplinary proceedings arising out of complaints regarding AFAs; and
- to impose, if appropriate, a range of penalties ranging from recommending to FMA that it cancel the AFA's authorisation, through to imposing a fine not exceeding \$10,000 as a result of the disciplinary proceedings.

The Rules set out how the Committee deals with complaints that are referred to it by FMA. The Committee may amend the Rules from time to time. At the date of writing this guide, the current Rules are the Rules that came into force on 12 March 2012.

The Rules are available online at www.fadc.govt.nz or can be obtained from the Committee's office (see Contact Us at the end of this guide for full details).

Who makes up the Committee?

The Committee must have between four and six members, including the Chairperson. The Committee must include at least one member who works, or has worked, in the financial adviser industry, at least one member who is independent of the financial adviser industry and at least one member who is a lawyer with no less than seven years legal experience.

The Committee currently has six members:

- Hon Sir Bruce Robertson (Chairman)
- Tracey Berry
- Geoff Clews
- Simon Hassan
- Peter Houghton
- David Macdonald

The Committee's website (www.fadc.govt.nz) includes biographical details of each member.

Each hearing will be heard and decided by at least three members of the Committee.

The Chairperson is responsible for guiding the hearing and issuing the Committee's decision.

The Committee also has a Registrar, who conducts the Committee's day-to-day administration and management, including managing all communication between the Committee, the AFA and FMA. All enquiries should be directed to the Registrar (see Contact Us at the end of this guide for full details).

What sorts of complaints does the Committee hear and decide?

The Committee conducts disciplinary proceedings where a complaint relating to an AFA is referred to the Committee by FMA because the FMA considers that the AFA has breached the Code.

Complaints should not be made directly to the Committee but should be made to FMA. Please see Make a Complaint or Report Misconduct at www.fma.govt.nz, for further guidance.

Can I have someone to help and represent me, and do I need a lawyer?

Anyone involved in a proceeding can be represented or assisted by a person of their choice. The representative may be a lawyer, but does not have to be. Parties choose and pay for their own representatives.

You do not need a representative to appear before the Committee. The Committee will ensure that all parties have the opportunity to fairly put their case, whether or not they have a representative.

HOW COMPLAINTS ARE DEALT WITH

Hearing (the Committee hears and decides a matter)

The Committee decides a matter after conducting a hearing. Complaints referred to the Committee for decision are known as ‘proceedings’.

In conducting hearings, the Committee has to establish the facts and ensure each party involved has a fair hearing. When there is a factual dispute, each party is given the opportunity to put its case and be present when the other party is stating its case. The Committee then makes a decision about the facts presented.

The Committee will hear evidence as it considers appropriate and may receive evidence which in its opinion assists it to deal effectively with the matters before it, whether or not that evidence would be admissible in a court of law. Witnesses may be called to give evidence to the Committee in the case of a full hearing.

The Committee aims to hear and decide cases in a timely manner. The length of time it takes to complete a hearing process depends on:

- the circumstances of the case;
- the hearing procedure adopted;
- the timetable set by the Committee for parties to file documents;
- the time required for preparation by the Committee; and
- the availability of all parties to attend a hearing.

Giving false evidence to the Committee with an intention to mislead the Committee may amount to perjury. A person who commits perjury is liable to imprisonment for a term not exceeding seven years.

Are Committee proceedings public?

Hearings will be held in public unless the Committee is of the opinion that exceptional circumstances apply. The Committee will not disclose information about current cases to the media or anyone else making enquiries (unless the parties to a case agree otherwise or any other relevant rules state otherwise).

The Committee will publish its final decision on its website at the conclusion of a case and may advise the media of such publication. However, where the Committee is of the opinion that exceptional circumstances apply, it may direct non-publication of all or any part of proceedings.

THE GENERAL PROCESS FOR PROCEEDINGS

Having a complaint heard by the Committee usually involves six steps:

Step 1: Complaint referred to Committee

A complaint about an AFA will be referred to the Committee by FMA if, in FMA's opinion, the conduct complained of amounts to a breach of the Code.

A complaint may be made to FMA by any person or may be initiated by FMA itself. For further information about making a complaint to FMA see Make a Complaint or Report Misconduct at www.fma.govt.nz

When there is a referral by FMA the Committee will receive the following material:

- a summary of facts in relation to the complaint;
- the provision or provisions of the Code which FMA considers may have been breached by the AFA;
- a statement as to whether FMA has taken or intends to take any step against the AFA in relation to the conduct that is the subject of the complaint;
- all relevant documents FMA relies on;
- any witness statements relied upon by FMA; and
- any material FMA considers likely to undermine FMA's opinion that the conduct complained of amounts to a breach of the Code.

Step 2: Is a hearing necessary?

Following receipt of the complaint by the Registrar, the Chairperson will be informed that a complaint has been received.

The Committee will consider the complaint and determine whether a hearing is necessary.

If the Committee determines that a hearing is not necessary to deal with a complaint, the AFA concerned and FMA will be advised in writing, in accordance with [Rule 11](#).

Step 3: Advice of proceedings and filing of other documents

If the Committee determines that a hearing is necessary, a Notice of Complaint (as required by [Rule 10](#)) will be sent to the AFA concerned and FMA.

The Notice of Complaint will:

- set out a summary of facts;
- state that the Committee considers that there is reason to believe that the AFA may have breached the Code;
- specify what provision(s) of the Code are alleged to have been breached;
- specify any other particulars that are reasonably necessary to inform the AFA of the nature of the contravention;
- specify the date by which the AFA must file either a Statement of Response (Form A), or a notice requesting further time to file a Statement of Response (Form B);
- specify the date and time of the initial telephone conference, no sooner than ten working days from the date of service of the Notice of Complaint; and
- specify the date that the Committee intends to hear the matter, which must not be sooner than 20 working days after the date of service of the Notice of Complaint.

Step 4: Initial telephone conference

Prior to the hearing, the Chairperson will hold an initial telephone conference with the parties and their representatives in accordance with [Rule 16](#). It may be necessary to have more than one telephone conference.

The date and time of the initial telephone conference will be advised in the Notice of Complaint issued by the Committee and will be no sooner than ten working days after the date of service of the Notice of Complaint.

Initial telephone conferences are generally concerned with preliminary and/or procedural matters leading up to the hearing. These might include:

- discussing the matter under dispute;
- examining the documents received from the parties and deciding whether anyone else needs to attend the proceedings;
- requesting further information from the parties;
- deciding whether independent experts are needed to assist the Committee during the hearing;
- setting the date and venue for the hearing;
- deciding the process the parties will follow leading up to and during the hearing (this may involve parties filing and exchanging written submissions and evidence); and
- making any other direction considered necessary for the just and speedy resolution of the proceeding in a cost effective manner.

At least two working days prior to the pre-hearing telephone conference each party must file a memorandum (Form C). If the parties wish, they can file a single memorandum.

Step 5: Disclosure by FMA and statement of response

If the AFA advises the Committee in writing that he or she intends to dispute the Notice of Complaint, FMA must provide copies of all relevant material relating to the complaint to the AFA, unless it is legally privileged or there is other good reason for withholding it (see [Rule 18](#)). Within 10 working days after FMA makes this disclosure, the AFA must file a further Statement of Response (Form A) in accordance with [Rule 19](#).

Step 6: The hearing

Hearings are open to the public. However, where the Committee is of the opinion that exceptional circumstances apply it may direct that a hearing or part of a hearing be held in private.

The hearing gives all parties the opportunity to present their case to the Committee. The Committee follows the principles of 'natural justice'. This means that all parties have a fair opportunity to understand the issues, to consider all the relevant material, and to prepare and present their evidence.

Parties may not need to be physically present at a hearing. In some cases, the Committee will be able to decide the dispute by reviewing the written submissions and documents provided by the parties.

The first step will be to determine which of the three procedures will be used. If the parties cannot agree which procedure to follow, the Committee Chairperson will decide whether a matter is to be heard on the papers, under a summary hearing procedure or by a full hearing. A hearing on the papers and a summary hearing procedure offer timely, cost effective processes and, where practical, they will be utilised by the Committee.

A 'hearing on the papers' does not require the appearance of the parties before the Committee and the Committee relies on the documentation and evidence filed by the parties in making its determination. For more information concerning a 'hearing on the papers' refer to [Rule 23](#).

A 'summary hearing' will involve the parties making submissions in person to the Committee but otherwise the Committee will rely on the documentation and evidence provided by the parties, including any witness statements, in making its determination. Witnesses will not be called to give evidence in person to the Committee. A summary hearing tends to be shorter and less formal than a full hearing. For more information concerning a 'summary hearing' refer to [Rule 24](#).

Where a proceeding cannot be determined on the papers or by a summary hearing there will be a 'full hearing'. This will involve, where there are factual disputes or credibility issues, the appearance of witnesses before the Committee (with cross-examination to the extent permitted by the Committee) as well as submissions by the parties and their representatives. For more information on 'full hearings' refer to [Rule 25](#).

The Committee may receive evidence under oath or affirmation. The procedure for taking the oath or for making an affirmation is set out in Form D.

THE COMMITTEE'S DECISION

The Committee aims to make decisions that are not only fair and soundly reasoned, but also timely and cost effective.

The Committee will advise the parties of its decision, in writing, as soon as possible following the hearing. [Rule 28](#) sets out the written statement of findings which the Committee must provide.

After the Committee has released its decision to the parties, it may issue a media statement and will post the decision and other information on the Committee's website at www.fadc.govt.nz. However, if the Committee is of the opinion that exceptional circumstances apply, it may direct non-publication of all or part of any proceeding.

PENALTIES AND COSTS

If the Committee is satisfied there has been a breach of the Code, it will take the following matters into account when deciding the appropriate penalty:

- the nature of the breach;
- the nature of the conduct of the AFA;
- whether the AFA accepted that there had been a breach of the Code without the need for a hearing;
- any other penalties imposed on the AFA for the same conduct;
- the conduct of the AFA during the investigation;
- any offer of amends; and
- any previous findings of misconduct against the AFA.

Possible penalties the Committee may direct against an AFA include:

- recommending FMA cancel the AFA's authorisation;
- recommending FMA:
 - i. cancel the AFA's authorisation; and
 - ii. debar the AFA for a specified period from applying to be re-authorised;
- recommending FMA suspend the AFA's authorisation for a period of no more than 12 months, or until the AFA meets specified conditions relating to the authorisation (but, in any case, not for a period of more than 12 months);
- censuring the AFA;
- ordering that the AFA may, for a period not exceeding three years, perform a financial adviser service only subject to any conditions as to employment, supervision, or otherwise that the Committee may specify in the order;
- ordering the AFA undertake training specified in the order;
- ordering the AFA to pay a fine not exceeding \$10,000.

In appropriate circumstances the Committee may decide to take no action.

Usually the parties are expected to pay their own other costs in any proceeding, but the Committee has the power to award costs and expenses in favour of any party or itself.

APPEALING A COMMITTEE DECISION

An AFA may appeal a decision of the Committee pursuant to [Rule 31\(2\)](#). The Committee will advise the AFA of this right of appeal when the decision of the Committee is communicated (and the time frame within which any appeal must be lodged with the District Court).

CONTACT US

The Committee's office is in Auckland. Enquiries should be directed to the Registrar.
All documents to be filed with the Committee should be sent to:

The Registrar

Financial Advisers Disciplinary Committee

PO Box 106 672

Auckland 1143

Phone: (09) 300 0400

Facsimile: (09) 300 0499

Email: registrar@fad.govt.nz

Website: www.fad.govt.nz
