

**FINANCIAL PLANNING STANDARDS BOARD IRELAND  
DESIGNATED ACTIVITY COMPANY**

**Formerly FINANCIAL PLANNING STANDARDS BOARD IRELAND LIMITED**

**BYE LAW No 4**

**Disciplinary Procedures**

**Introduction**

1. This Bye-Law is made by the Council of Financial Planning Standards Board Ireland Limited (the "Council" and "FPSB Ireland"), pursuant to article 45 of the articles of association of FPSB Ireland on 4<sup>th</sup> November 2010. This article was re-numbered to article 47 on 10 February 2016.

The Company was converted to a Designated Activity Company (DAC) on 10 February 2016 with an amended Constitution which includes re-numbering of the Articles of Association. Consequently, references to the articles in this Bye-law are amended as follows:

- article 45 is re-numbered to article 47
  - article 46 is re-numbered to article 48
  - article 46(a) is re-numbered to article 48(a)
  - article 46(c) is re-numbered to article 48(c)
  - article 47(c) is re-numbered to article 49(c)
2. The articles of association of FPSB Ireland set out disciplinary procedures applicable to CERTIFIED FINANCIAL PLANNER professionals, including the circumstances in which disciplinary action may be initiated by FPSB Ireland. Any terms used in this Bye-Law but not defined herein have the meanings given to them in the articles of association.
  3. Any consideration under article 46 (which was re-numbered to article 48 as set out above) of the articles of association of FPSB Ireland of any facts or matters indicating that a CERTIFIED FINANCIAL PLANNER professional may have become liable to disciplinary action under article 45 (which was re-numbered to article 47 as set out above) shall be conducted as expeditiously as circumstances allow, provided that if any such fact(s) or matter(s) indicating that a CERTIFIED FINANCIAL PLANNER professional may have become liable to disciplinary action constitutes an apparent or suspected breach

of any law or regulation or code or other instrument issued by a regulatory authority, whether in Ireland or elsewhere, the Director shall defer any such consideration as is referred to in article 46(a), (which was re-numbered to article 48(a) as set out above) or suspend any such consideration if it has been initiated, pending the conduct, completion and/or outcome of any inquiries by any relevant legal and/or regulatory authority.

In any such consideration the Director or any delegate may

interview the CERTIFIED FINANCIAL PLANNER professional and any other person concerned (including, without limitation, any person who has made a complaint or has drawn the attention of FPSB Ireland to such facts and matters),

examine any books, documents, records, files and other relevant material,

take professional or other expert advice,

do anything which he or she considers to be necessary or desirable to enable proper consideration to be given to such facts and matters for the purposes of article 46 (which was re-numbered to article 48 as set out above).

### **Hearing**

- 4.1 Upon reference to it of a complaint pursuant to article 46(c) (which was re-numbered to article 48(c) as set out above) the Disciplinary Committee shall make arrangements for the hearing of the complaint.
- 4.2 The Disciplinary Committee may determine that any complaint be considered by some but not all of its members, and that a different composition of its membership may consider different complaints, and all references herein to the Disciplinary Committee shall be applicable to any such composition for any particular complaint not consisting of all of its membership. All powers of the Disciplinary Committee under the articles of association of FPSB Ireland and this or any other Bye-Law may be exercised by any such composition of its membership not constituting the entire committee.
- 4.3 The quorum for any hearing or meeting of the Disciplinary Committee shall be three of its members.
- 4.4 No person shall serve as a member of the Disciplinary Committee in relation to any complaint or in respect of any CERTIFIED FINANCIAL PLANNER professional for which or for whom he or she or any member of his or her immediate family or a member of his or her firm, or any company by which he or she is employed, would have any interest or if such service as a member otherwise would involve a conflict of interest or any appearance of impropriety.
- 4.5 Upon the fixing of the time and place for the hearing, the Secretary shall give written notice (the "Notice of Hearing") to the CERTIFIED FINANCIAL PLANNER professional and the members of the Disciplinary Committee. The Notice of Hearing shall provide the CERTIFIED FINANCIAL PLANNER professional with details of the relevant evidence to be relied upon by the Director at the hearing, including, where applicable, the names of any witnesses.

- 4.6 The CERTIFIED FINANCIAL PLANNER professional shall file with the Secretary, not later than 30 days after receipt of the Notice of Hearing, a response to the complaint (the "Response"). The Response should provide his or her explanation of the circumstances and his or her conduct in respect of the subject matter of the complaint. The Response should also include any additional information he or she intends to make available to the Disciplinary Committee, and where applicable, the name and address of any legal representative. The Secretary shall deliver copies of the Response to members of the Disciplinary Committee.
- 4.7 The CERTIFIED FINANCIAL PLANNER professional has the right to be represented at the hearing by a legal representative, to introduce evidence, to call and cross-examine witnesses and to make submissions.
- 4.8 The Director may at any time prior to the hearing, withdraw the complaint before the Disciplinary Committee, and shall so notify the Disciplinary Committee and the CERTIFIED FINANCIAL PLANNER professional.

### **Settlement**

- 5.1 Prior to the commencement of the hearing, at a mutually convenient time and place, the Director shall convene a case conference with the CERTIFIED FINANCIAL PLANNER professional and, where applicable, his or her legal representative to consider:
  - (a) any matters that may simplify the hearing, including facts or evidence that may be agreed upon, the narrowing of any issue and any other matter that may assist in the fair and expeditious disposition of the complaint; and/or
  - (b) a settlement of the complaint (a "Settlement").

Where a Settlement is agreed upon, the CERTIFIED FINANCIAL PLANNER professional and the Director shall file with the Disciplinary Committee, a settlement agreement consisting of an agreed statement of facts, an admission to the complaint, in whole or in part, by the CERTIFIED FINANCIAL PLANNER professional and an agreed penalty and waiver of rights of appeal by the CERTIFIED FINANCIAL PLANNER professional. The Disciplinary Committee shall review the Settlement and, unless it considers the Settlement to be clearly unreasonable in the circumstances, shall make an order consistent with the Settlement.

### **Decision of the Disciplinary Committee**

- 6.1 The Disciplinary Committee shall either dismiss the complaint or make a finding that there has been misconduct. Its decision shall be by majority vote.
- 6.2 Following a finding of misconduct, the Disciplinary Committee shall hear submissions on penalty from the CERTIFIED FINANCIAL PLANNER professional and the Director, which may include a review of any files with respect to the CERTIFIED FINANCIAL PLANNER professional held by FPSB Ireland. Following such submissions, the Disciplinary Committee may order any one, or a combination, of the forms of discipline which are set out in article 47(c) (which was re-numbered to article 49(c) as set out above) of the articles of association of FPSB Ireland.

- 6.3 The Chair shall provide to the CERTIFIED FINANCIAL PLANNER professional, and the Director and the Secretary, a written decision and order of the Disciplinary Committee within 30 days of the hearing.
- 6.4 The CERTIFIED FINANCIAL PLANNER professional and the Director shall have 21 days following receipt of the written decision to give notice of appeal, in accordance with paragraph 7.1. If neither party appeals within the allowed time, the decision of the Disciplinary Committee will be final.

### **Appeal**

- 7.1 The party making any appeal (the "Appellant") shall provide the other party (the "Respondent") and the Secretary with a written notice of the intention to appeal (the "Notice of Appeal"). Where the CERTIFIED FINANCIAL PLANNER professional is the Appellant, the Secretary shall suspend the disciplinary penalty imposed by the Disciplinary Committee immediately upon receipt of a Notice of Appeal pending the outcome of the appeal.
- 7.2 The Appeal Committee shall fix a time and place for the hearing of the appeal and the Secretary shall give notice thereof to the Appellant and the Respondent.
- 7.3 The Appellant shall deliver to the Secretary, not later than 15 days prior to the appeal hearing, a written submission setting out the grounds for appeal and the relief sought. The submission shall be accompanied by a copy of the transcript of the Disciplinary Committee proceedings. The Secretary shall deliver copies to the Respondent and to the members of the Appeal Committee.
- 7.4 The Respondent may make a written submission to the Appeal Committee. Any such submissions shall be filed with the Secretary not later than 10 days prior to the hearing. The Secretary shall deliver copies to the Appellant and to the members of the Appeal Committee.
- 7.5 Both parties may make oral submissions to the Appeal Committee. The Appeal Committee shall not hear witnesses and no new evidence shall be admitted except with leave of the Appeal Committee.
- 7.6 The Appeal Committee shall decide the appeal by majority vote and its decision, with reasons, shall be delivered promptly following the hearing. The Appeal Committee may vary any penalty or make such orders as it sees fit.
- 7.7 The decision of the Appeal Committee is final and there is no further right of appeal. The Secretary shall provide the Appellant and the Respondent with a written copy of the final decision and order of the Appeal Committee.
- 7.8 The quorum for any hearing or meeting of the Appeal Committee shall be three of its members.

### **General Rules for Hearing**

- 8.1 The following general rules shall apply, depending on the context, to the proceedings of the Disciplinary Committee or the Appeal Committee.

- (1) the Chair shall establish such procedures as are appropriate in the circumstances, consistent with this Bye-Law;
- (2) the Chair may admit any evidence relevant to the proceedings;
- (3) the Chair may impose reasonable time limits during the proceedings;
- (4) the Chair may make such orders or give such directions in proceedings as the Chair considers proper to maintain order or prevent abuses of the Committee's processes;
- (5) all hearings shall be electronically recorded, and a transcript shall be provided upon request at the expense of the party requiring the transcript;
- (6) a hearing may be adjourned by the Chair at any time;
- (7) the Chair may engage counsel or experts to assist the panel in hearing a complaint and in making its decision;
- (8) the Chair may extend or abridge the time for service, filing or delivery of any document pursuant to this Bye-Law, on such terms as are just;
- (9) the Chair shall have the discretion, provided that the fairness of the hearing is not impaired, to hold any hearing by such means as may be appropriate, including telephone conference call, video conference or written submissions;
- (10) unless otherwise ordered by the Chair, all hearings shall be held in camera.

### **Costs**

- 9.1 Unless otherwise provided herein, FPSB Ireland shall bear the costs of the investigation, the Disciplinary Committee and the Appeal Committee. The CERTIFIED FINANCIAL PLANNER professional shall be responsible for his or her own costs. In all disciplinary cases where a hearing is convened, the Disciplinary Committee and the Appeal Committee may direct a contribution to be paid by the CERTIFIED FINANCIAL PLANNER professional in respect of costs relating to the hearing.

### **Suspension and Revocation**

- 10.1 Unless otherwise provided by the Disciplinary Committee or the Appeal Committee, a CERTIFIED FINANCIAL PLANNER professional who has been suspended shall continue to meet all certification requirements and shall be reinstated upon the expiration of the period of suspension provided the CERTIFIED FINANCIAL PLANNER professional demonstrates that he or she has fully complied with the order of the Disciplinary Committee or Appeal Committee.
- 10.2 Revocation shall be permanent and there shall be no opportunity for reinstatement.

### **Confidentiality of Proceedings and Disclosure or Publication**

- 11.1 Except as provided in this Bye-Law, all proceedings conducted pursuant to this Bye-Law shall be confidential, and the records of FPSB Ireland, the Secretary, the

Director, the Disciplinary Committee and the Appeal Committee shall remain confidential and shall not be made public.

- 11.2 Any records with respect to the CERTIFIED FINANCIAL PLANNER professional and all records of an investigation and/or hearing under this Bye-Law will be disclosed if such disclosure is required by legal process of a court of law or other governmental body or agency having appropriate jurisdiction.
- 11.3 All CERTIFIED FINANCIAL PLANNER professionals, by their application for and continuance of certification by FPSB Ireland, shall consent to any notice, publication or release of information made in accordance with this Bye-Law.
- 11.4 Following the later of the expiration of the time for filing a Notice of Appeal and final disposition of any complaint, FPSB Ireland may publicise, in such media as deemed appropriate, any finding of misconduct. Generally, any such publicity will be limited to a brief factual recitation, a statement of the misconduct established and a description of the penalty imposed. The Director may notify any person of a finding of misconduct including, without limitation, the CERTIFIED FINANCIAL PLANNER professional's employer, associates, partners and the governing bodies of other professions.

#### **Notices**

- 12.1 Notices may be delivered by personal service, by registered mail, by facsimile or other means of electronic communication or at the discretion of the Secretary and/or the Director as the case may be, by such alternate methods as the Secretary or the Director reasonably believes will bring the notice to the attention of the intended recipient.
- 12.2 Notices delivered by personal service shall be deemed to be delivered on the day delivered, by registered mail on the second business day following mailing, by facsimile or other electronic methods on the day following transmission and by alternate means on the fourth business day following dispatch.
- 12.3 Any time periods specified in these Procedures shall include and begin to run from the date of deemed service in accordance with paragraph 12.2.
- 12.4 Proof of service shall be by registered mail receipt and/or affidavit of service or such other means as may be determined by the Secretary.
- 12.5 A CERTIFIED FINANCIAL PLANNER professional may not challenge service properly given to his or her latest address recorded in the files of FPSB Ireland. He or she may challenge service if he or she did not, in good faith, receive the notice due to circumstances beyond his or her control, by providing proof to the Secretary.