



FPI

Financial Planning
Institute of Southern Africa

THE PROFESSIONAL STANDARD

**Disciplinary
Regulations of the
Financial Planning
Institute of Southern
Africa**



www.fpi.co.za

FPI VISION:

Professional financial planning for all.

OUR MISSION:

The FPI's mission is to advance and promote the pre-eminence and status of financial planning and advice professionals, while at all times acting in the interests of the society (community, constituency) whom the profession serves, by:

1. Improving the quality and accessibility of professional financial planning and advice for all in Southern Africa.
2. Acting as advocate for professional financial planning, building a recognition of the importance and need for such planning and advice by the general public.
3. Providing a framework within which members can achieve qualifications and maintain competence to create greater value for their clients, practices and employers.
4. Ensuring that members maintain the highest ethical standards in the pursuance of their profession.
5. Providing a leadership role within financial services by providing balanced, credible input and commentary to government and the public.
6. Facilitating transformation within the profession.

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PART 1

PURPOSE, DEFINITIONS AND INTERPRETATION

1. Purpose and Application:
 - 1.1 These regulations provide for the Disciplinary process relating to the conduct of affiliate and professional Members of the Financial Planning Institute of Southern Africa NPC (“FPI”) and matters incidental thereto.
 - 1.2 These regulations apply to all Members and all Membership classes of FPI and FPI as a professional body regulating Member affairs.
2. The purpose of FPI’s proceedings relating to Member conduct is to:
 - 2.1. Protect the public;
 - 2.2. Maintain public confidence in the financial planning and advice professions;
 - 2.3. Maintain public confidence in financial planners and advisors that are FPI Members;
 - 2.4. Declare and uphold high standards of professional conduct amongst all FPI Members;
 - 2.5. Take appropriate contractual measures against FPI Corporate Members for actions that mitigate against FPI values;
 - 2.6. Assess whether an FPI Member is fit to carry an FPI designation;
 - 2.7. Assess whether it is appropriate for an FPI Member to retain FPI Membership;
 - 2.8. Assess whether an FPI Member should be entitled to use FPI benefits and privileges;
 - 2.9. Protect the integrity and reputation of FPI as a professional body;
 - 2.10. Protect the integrity and reputation of FPI’s professional Members generally.
3. These regulations are based solely on the principle that each party shall be given a fair opportunity to state his version of events and own case. No procedure, rule of conduct or principle of common law, civil law or criminal law is included explicitly or implicitly. Therefore, if any dispute should arise regarding the processes and procedures followed under FPI regulations, the chairpersons of the relevant committees and panels shall determine a fair and reasonable approach in the particular situation.
4. The basis for FPI’s disciplinary proceedings is that:
 - 4.1. Natural person FPI Members aspire to be regarded as professionals in their field;
 - 4.2. Corporate FPI Members aspire that their representatives’ actions are equivalent to the conduct of professionals in their field;
 - 4.3. All Members consider the credibility, integrity of and regard for FPI as a professional body as being of paramount importance to the Financial Sector in SA;
 - 4.4. Disciplinary proceedings should be dealt with in a manner that is efficient and cost-effective;
 - 4.5. Scrutiny by peers and co-professionals is the most appropriate means of assessing professional conduct.
5. The regulations set forth herein shall be binding on all Members of FPI, irrespective of their designation or class, and, following termination of a Member’s Membership for whatever reason, shall remain binding in relation to complaints made for conduct during the term of such Membership.
6. Definitions and Interpretation:
 - 6.1. These regulations form part of the body of work comprising FPI’s Memorandum of Incorporation, regulations, rules and by-laws. The constituent parts of these documents are all interpreted in terms of and regulated by the FPI Glossary and Standard Interpretation Rules as amended from time to time.
 - 6.2. In the event that a complaint is lodged in terms of the FPI Disciplinary Regulations the applicable version thereof as at the date of such conduct shall be used to adjudicate that matter.

PART 2

LODGING, RECEIVING AND REFERRING A COMPLAINT FOR INVESTIGATION

7. Complaints may be levelled against a Member for any infringement of the FPI Code of Ethics and Practise Standards incorporating the FPI Rules of Professional Conduct as well as an infringement of the Memorandum of Incorporation, regulations, rules and by-laws.
8. Any interested party (“the complainant”) may lodge a complaint with FPI against any current or previous Member, which complaint shall:
 - 8.1. Be in writing in the form of a sworn affidavit;
 - 8.2. Detail the alleged act or acts relating to the complaint;
 - 8.3. Include substantiating documentary evidence and declarations in support;
 - 8.4. Identify applicable witness(es) who may be able to provide evidence in support of the complaint.
9. Should an anonymous complaint be received FPI may elect to act as substitute complainant in the event that it deems it appropriate and/or practical to proceed with such complaint.
10. Following receipt of a complaint FPI shall acknowledge receipt to the Complainant and:
 - 10.1. Conduct such communication with the complainant it deems fit to assess its further actions;
 - 10.2. If it deems there is no substance to a complaint, refer the matter to the Disciplinary Committee for a second opinion before either conveying that decision to the complainant;
 - 10.3. If FPI or the Disciplinary Committee deems there is substance to a complaint, refer it to an applicable Investigating Panel.

PART 3

INVESTIGATING PANEL

11. The main purpose of an Investigating Panel is to:

- 11.1. Investigate each complaint as fully and completely as is possible;
- 11.2. Engage with the complainant to procure all possible evidence to substantiate the complaint;
- 11.3. Engage with witnesses, service providers and experts to build a body of evidence that is recoded in writing;
- 11.4. Accept a complaint or dismiss a complaint on the basis that there is no prima facie case of misconduct;
- 11.5. Formulate a detailed charge and put it to the Member;
- 11.6. Allow the Member an opportunity of replying to the complaint lodged against him;
- 11.7. Assess a Member's reply against the evidence in support of a complaint;
- 11.8. To, in its sole discretion, adjourn consideration of the complaint pending the outcome of third-party legal proceedings; employer proceedings, statutory Ombud and criminal investigations or settlement negotiations relating to the complaint;
- 11.9. Determine whether and which facts are in dispute;
- 11.10. Attempt to resolve factual disputes between the Complainant and Member;
- 11.11. Obtain certified versions of the findings and/or outcome of any other proceedings on the facts, i.e. a court record, regulatory determination, an employer disciplinary proceeding or a finding of another professional body which may then be used as evidence in the matter before it;
- 11.12. If needed, convene a physical hearing on the facts in dispute and to allow cross-examination on the facts;
- 11.13. Determine the procedures to be followed at such a hearing;
- 11.14. Reach consensus with the parties involved or make a finding on the facts, including the credibility of witnesses and evidence;
- 11.15. Compile all evidence and a summary of the facts for referral to a Conduct Panel;
- 11.16. Make recommendations to the Conduct Panel on whether or not the Member is guilty as charged;
- 11.17. Advise the complainant and the Member of the recommendations made to the Conduct Panel;
- 11.18. Advise the complainant and the Member by when and how they can make representations to the Conduct Panel;
- 11.19. Submit its body of evidence, summary of facts and recommendations to the Conduct Panel.

12. When putting detailed charges to a Member an Investigating Panel shall advise the Member:

- 12.1. Of receipt of a complaint against him;
- 12.2. Of the nature of the alleged improper conduct or contravention;
- 12.3. That he may, within 21 (twenty-one) days from the date of the notice, submit a voluntary written response to the allegations contained in the complaint;
- 12.4. That, if he chooses not to respond to the complaint or any part thereof, such failure would not preclude the committee from making recommendations to a Conduct Panel;
- 12.5. That a response may be applied either as evidence or as mitigating argument by the Investigating Panel.

PART 4

CONDUCT PANEL

13. The purpose of a Conduct Panel is to receive the body of evidence, summary of facts and recommendations of an Investigations Panel convened for any particular complaint and to consider the matter in private and on the papers only and decide whether:
 - 13.1. A full hearing or a sanction hearing should be held by that Conduct Panel based on the nature of the dispute and the information available;
 - 13.2. To accept an Investigating Panel's not guilty-finding and discharge the Member;
 - 13.3. To refer the matter back to the Investigating Panel for further enquiries to be made, on behalf of the Conduct Panel, before it can come to a decision in the matter;
 - 13.4. To accept an Investigating Panel's conclusion that there is a prima facie case of misconduct and, based on the severity of such misconduct, to pass judgement in the matter and advise the Member accordingly;
 - 13.5. To, having considered a Member's arguments in mitigation of sanctioning, issue a final sanction;
 - 13.6. To, in its sole discretion, adjourn consideration of the complaint pending the outcome of third-party legal proceedings, employer disciplinary steps, regulatory and Ombud proceedings, criminal investigations or settlement negotiations related to the complaint;
 - 13.7. To, on the basis that the evidence discloses a case of misconduct, offer the Member a disposal of the matter by Consent Order.

Sanctioning on the papers

14. If, in the view of an Investigation Panel, the Member is guilty on a balance of probabilities, the Conduct Panel considers the facts before it and either refers the matter for hearing or find the Member guilty and cause a notice to be sent to the Member:
 - 14.1. Detailing its decision and the terms of the proposed sanction;
 - 14.2. Allowing the Member an opportunity to raise arguments in mitigation of the sanction within 10 (ten) days of notification of its findings;
 - 14.3. Upon consideration of all arguments in mitigation, issue a sanction in the matter.

Adjudication in a Hearing

15. In case of a dispute of facts a Conduct Panel shall convene a hearing.
16. Preparation for Hearing:
 - 16.1. The Conduct Panel shall prior to the commencement of the hearing, select a Chairperson from among its ranks;
 - 16.2. The Panel may appoint one or more assessor(s) with relevant skill, expertise and experience to assist the Panel in considering technical, legal or evidentiary matters;
 - 16.3. The assessor(s) shall however not participate in any decision of the Panel;
 - 16.4. FPI shall cause the appointment of an appropriate Case-putter who may, but need not be, a Member of the FPI or a Member of FPI staff;
 - 16.5. FPI may, following a request from the case-putter, appoint one or more persons to assist the case-putter;
 - 16.6. The Case-putter shall be entitled to re-formulate the charge(s) against the Member and cause a written notice to be dispatched to the Member informing him of the final charges against him. In so doing the case-putter shall not be limited to the allegations disclosed in the original complaint;
 - 16.7. The Case-putter shall inform the Member of the date and time of the adjudication which may not be earlier than 30 (thirty) days after the date of dispatch of the notice of hearing and

- inform the Member of his rights in general;
- 16.8. The Member shall file any answering affidavit or supporting evidence he wishes to introduce with the Case-putter, at least 14 (fourteen) days prior to commencement of the adjudication. Such evidence may be used at the hearing;
 - 16.9. Where the Case-putter or the Member intends to rely on testimony from witnesses they shall procure such evidence to be prepared in the form of written affidavits which affidavits/ evidence must be furnished to the case-putter, Conduct Panel Members and Member, as the case may be, no later than 14 (fourteen) days prior to commencement of the adjudication;
 - 16.10. Where the Case-putter or Member intends presenting the evidence of experts they shall be obliged to disclose that fact together with a summary of the issues the expert will be testifying on to the other party and the Members of the Conduct Panel no later than 21 (twenty-one) days prior to commencement of the adjudication.

Adjudication in a Hearing

17. The Chairperson of a Conduct Panel shall at all times determine the procedure for any proceedings in front of that Panel having considered the circumstances of each matter, the nature of evidence to be presented and any agreements between the parties.
18. In the absence of any specific directive to the contrary by the Chairperson before or in the course of a hearing, the following procedure for a full hearing shall serve as a guideline to the Conduct Panel:
 - 18.1. The Chairperson of the Conduct Panel reads the charge(s) to the Member;
 - 18.2. The Chairperson then asks the Member to plead by admitting or denying each one of the charges;
 - 18.3. If the Member informs the Conduct Panel that he admits to all or some of the charges, the Conduct Panel may find the Member guilty on the charge(s) admitted to without hearing evidence, or after hearing evidence, if it deems necessary;
 - 18.4. If the Member denies a charge or charges the Conduct Panel may hear evidence pertaining to the charge(s) so denied;
 - 18.5. If the Member refuses or fails to plead to a charge(s), the Conduct Panel shall make a note of the refusal or failure and shall enter a not guilty plea to the charge(s) on behalf of the Member and a plea so entered shall have the same effect as if it had in fact been so pleaded;
 - 18.6. The Case-putter then states the case against the Member and adduces evidence in support of it;
 - 18.7. If witnesses are called, no such witness may be examined unless he is, at the commencement of his testimony, warned to tell the truth;
 - 18.8. The Conduct Panel must consider all documents, submissions and evidence produced by the parties;
 - 18.9. The Member may be represented by a person of his choice;
 - 18.10. The Member shall be given the opportunity to cross-examine any witness called by the Case-putter and then the Case-putter may re-examine the witness on points raised in cross-examination;
 - 18.11. The Conduct Panel may ask any witness any question, at any time during the course of such witness' testimony, and may re-call any witness in the interest of establishing the facts on any point or to clarify evidence testified to;
 - 18.12. The Conduct Panel may, furthermore, call any witnesses it deems fit;
 - 18.13. At the conclusion of the case presented by the case-putter, the Member must be afforded the opportunity of stating his defence, and of adducing evidence in support of it;
 - 18.14. If the Member's defence is contained in a written statement the statement must be read at the hearing, failing which, the chairperson may deem it as having been read;
 - 18.15. A statement by the Member must be attested to, signed by or confirmed orally at the hearing to be considered his statement and to be allowed as his testimony;
 - 18.16. The Case-putter may cross-examine a Member who has elected to give evidence as well as each witness for the Member and thereafter the Member may re-examine the witnesses on points raised in cross-examination;
 - 18.17. If any person whose evidence may be material (in the opinion of the Conduct Panel) is not called as a witness by the Case-putter or Member at the hearing, the Conduct Panel may

- at any time request such person to testify or present an affidavit as a witness or expert, after it has informed both parties of the name of the witness and the expected evidence, and subject to their rights to cross-examine the witness;
- 18.18. Members of the Conduct Panel may, with the permission of the Chairperson, question the Case-putter and/or a Member who was elected to give evidence;
 - 18.19. At the conclusion of the case for the Member, the Conduct Panel must, irrespective of whether the Member has adduced evidence or not, hear the address of the Case-putter on the case generally, but may hear no further evidence unless, in a special case, it deems it just to receive further evidence;
 - 18.20. At the conclusion of the address of the Case-putter, the Member may address the Panel in defence.
 - 18.21. The Case-putter may re-address the Conduct Panel if the Member has adduced further evidence after the address of the Case-putter or on questions of law raised by the Member;
 - 18.22. The Case-putter may, with the consent of the Conduct Panel, withdraw any charge before a finding has been made on it but once the Member has pleaded to a charge the Member is entitled to a finding on it;
 - 18.23. The Conduct Panel may deliberate in camera to decide on any point in the course of and at the conclusion of a hearing;
 - 18.24. A Conduct Panel may adjourn a hearing at any time and reconvene it at a time or place which is acceptable to both parties and failing agreement thereon, may take any decision about the time and place for the reconvening of a hearing that would be efficient, cost-effective and reasonable to most of the parties involved in the circumstances.

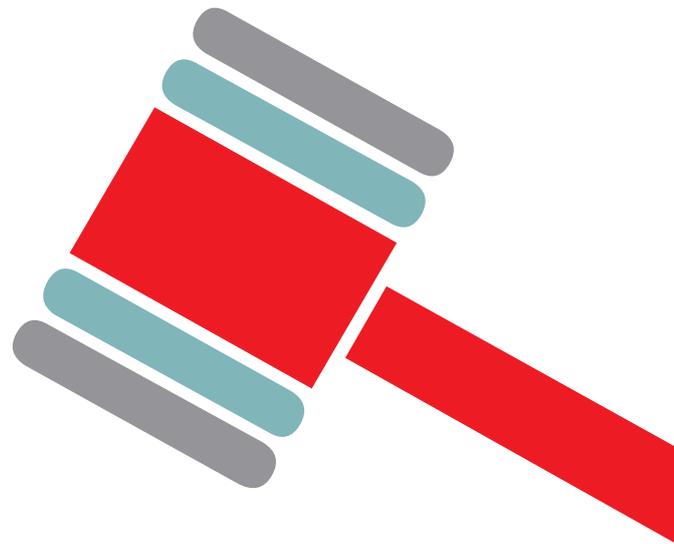
Hearing procedure in the absence of the Member

19. If a Member fails to attend a hearing or to be present at any resumption of it after an adjournment, a Conduct Panel may continue to deal with the matter in the absence of the Member as follows:
 - 19.1. The Case-putter must produce proof to the Conduct Panel that the Member was duly notified of the hearing or the recommencement of the hearing as the case may be;
 - 19.2. The case-putter may then state his case and adduce evidence in support of it;
 - 19.3. Thereafter a Conduct Panel shall execute their adjudication function in a reasonable, fair and unbiased manner in accordance with the principles of natural justice. The matter shall be adjudicated in accordance with the evidence produced by the Case-putter and on the papers, provided that the Conduct Panel may adjourn proceedings to call for further supporting documents or written clarification should it so deem fit.

Finding and Sanctioning

20. A Conduct Panel must, in regard to each charge, determine whether sufficient facts have been proved on a balance of probabilities to support the charge(s), and the Chairperson shall at the conclusion of the adjudication, or soon thereafter at a time indicated by him, announce the Conduct Panel's finding on the merits.
21. The Conduct Panel shall, in case of a finding of guilty on one or more charges call for argument in mitigation of sanction and impose an appropriate sanction after deliberation. The Member must submit arguments in mitigation of sanction within 10 days of being called upon to do so.
22. Sanctioning after a hearing shall comprise one or a combination of the following penalties and shall, in the case of multiple penalties, run concurrently:
23. The Sanction imposed by the Conduct Panel shall contain one or a combination of the following penalties:
 - 23.1. A reprimand;
 - 23.2. An order to successfully complete approved Ethics courses to the value of up to 10 CPD points which CPD points shall be required in addition to the CPD points a Member is required to complete annually;
 - 23.3. A suspension of Membership and a loss of Membership privileges for a period shorter than 5 years:

- 23.4. A fine not exceeding R 100 000.00 (one hundred thousand rand);
 - 23.5. Termination of Membership for a maximum of 10 (ten) years after which the Member may re-apply for Membership in the normal course. Compliance with all requirements and successful completion of a Professional Competency Examination shall be required to restore use of any lost designation;
 - 23.6. A life ban on Membership.
24. The Conduct Panel may suspend all or any part of sanction(s) for any period on any condition that it deems appropriate in the circumstances.
25. A Conduct Panel shall at all times following any determination made by it prepare written reasons for its finding and file such reasons with the FPI Manager responsible for Member discipline within a reasonable time of reaching that finding.



PART 5 APPEALS

26. A Member having been found guilty by a Conduct Panel may lodge an appeal against the finding and/or sanction to that Conduct Panel within 21 (twenty-one) days from the date of written reasons for the finding being issued by:
 - 26.1. Setting out the grounds for appeal in writing;
 - 26.2. Handing or delivering 5 (five) copies of its appeal application to a responsible staff Member of FPI at its head office, or
 - 26.3. By furnishing FPI with such document via registered email to legal@fpi.co.za ;
 - 26.4. In another manner as may be agreed upon in writing between the responsible FPI Manager for Member discipline and the Appellant.
27. The Conduct Panel shall study the record and the grounds for the appeal and allow or disallow an appeal within a reasonable time of receiving the documentation from the Appellant and shall cause the Appellant to be informed of its decision accordingly.
28. In the case of the Conduct Panel disallowing the appeal, it shall cause the Member to be notified accordingly and, if the appeal had been disallowed the Member shall be entitled to submit a petition to the chairperson of the Disciplinary Committee within 7 (seven) days from disallowance of the Appeal.
29. The Disciplinary Committee shall be entitled to request written reasons for the finding, sanction and/or disallowance of the appeal from the Conduct Panel.
30. The Chairperson of the Disciplinary Committee may elect to seek advice on the matter but must in all instances come to a reasonable conclusion within a reasonable time.
31. In all cases if an appeal is allowed the matter shall proceed to the Appeal Panel. Where an appeal is not allowed the matter shall proceed as if the guilty finding and sanction stand.

PART 6 APPEAL PANEL

32. Where applicable FPI shall convene an Appeal Panel which panel:
- 32.1. Shall prior to the commencement of the hearing, select a Chairperson from among its ranks;
 - 32.2. May request the Committee to appoint one or more assessor(s) with relevant skill, expertise and experience to assist the Appeal Panel in considering the appeal. The assessor(s) shall not act as a Member of the Appeal Panel and will not participate in any decision of the Appeal Panel;
 - 32.3. Shall cause an Appeal sitting to be scheduled at a time and place that would be cost-effective to FPI, convenient to the members of the Appeal Panel and reasonable in the circumstances;
 - 32.4. May conduct its functions on the papers only as agreed to by FPI and the Member.
33. Both the Member and FPI shall file their Heads of Argument no less than 21 (twenty-one) days prior to commencement of the Appeal Hearing.
34. The Appeal Panel shall hear argument from both the Member and the FPI, in that order, but shall not hear any evidence, except where:
- 34.1. New information becomes available which was not available at the time of the hearing and it would be impracticable, in the opinion of the Appeal Panel, to refer the matter back to the Conduct Panel;
 - 34.2. A dispute arises as to a point of procedure followed at the original hearing, and it is not possible to ascertain from the record, in the opinion of the Appeal Panel and on a balance of probabilities, the process that the Conduct Panel followed.
35. The Appeal Panel shall at the Appeal Hearing decide the appeal by due consideration of the record of the original hearing and the arguments presented to it at the Appeal Hearing and shall, in its sole discretion have the authority to:
- 35.1. Substitute any finding of the Conduct Panel at the original hearing with a new finding;
 - 35.2. Confirm the finding or findings of the Conduct Panel;
 - 35.3. Refer the matter back for a rehearing by a new Conduct Panel on all or some of the original charges;
 - 35.4. Aggravate or alleviate the sanctions imposed by the Conduct Panel or impose further sanctions from the competent sanction(s) available to the original Conduct Panel.



PART 5

APPEALS

36. The findings of any Conduct Panel, Disciplinary Committee or Appeal Panel:

- 36.1. Shall be retained in the membership records of a Member;
- 36.2. Shall be published by the FPI in such fora and manner as it deems appropriate subject to the restriction only that publication shall be withheld until both the findings and sanctions are final and appeals to FPI forums are either out of time or exhausted or if, for good reasons, FPI decide not to do so;
- 36.3. May be shared with other Professional Bodies to which the Member belongs, the Member's employer and the Financial Sector Conduct Authority.

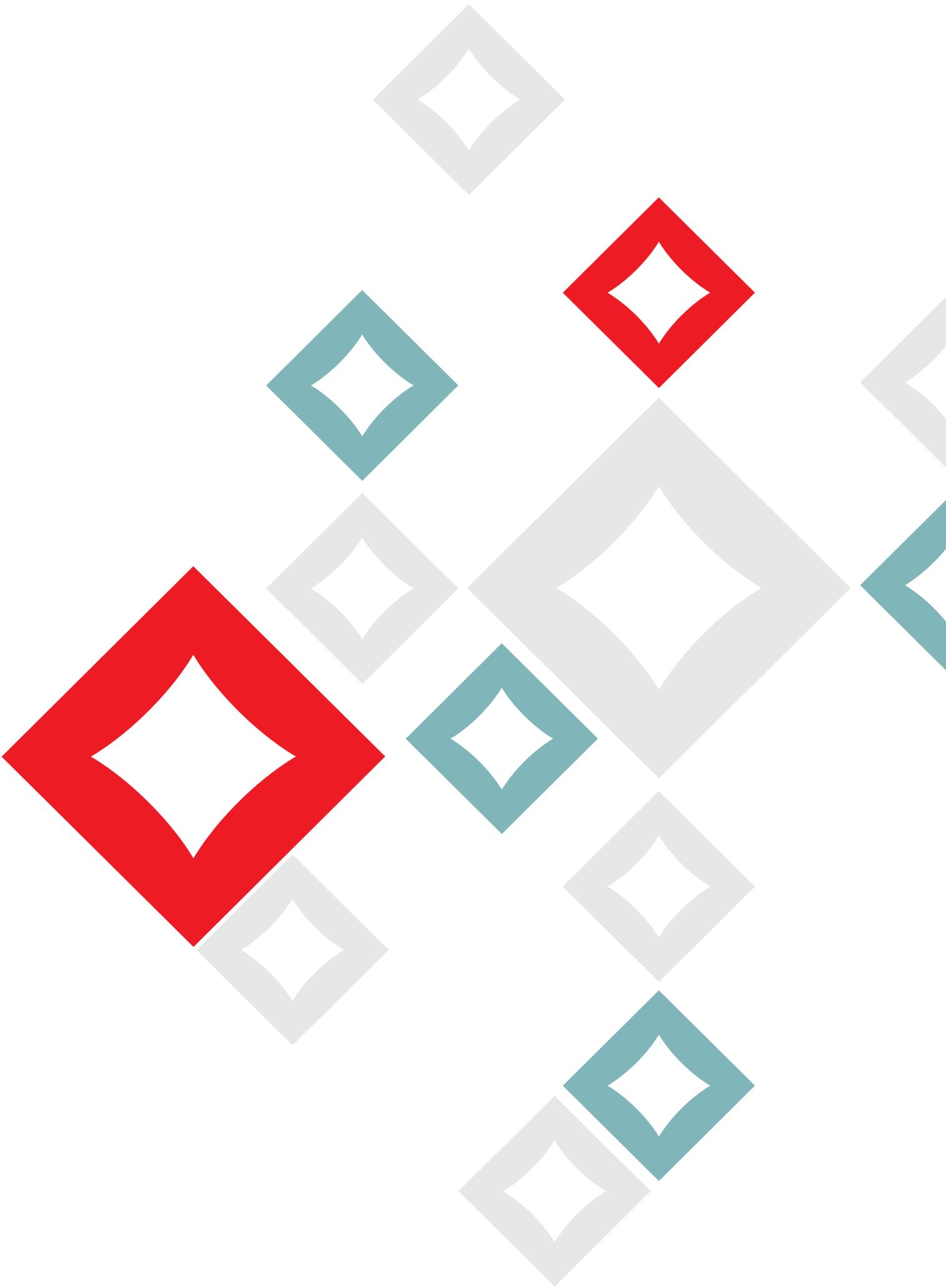
37. May be referred to in subsequent disciplinary proceedings against the same Member in aggravation of sanction.

PART 8

FINES AND COST ORDERS

38. FPI shall in all matters where a finding is made against a Member apply for an order for a contribution towards its costs in the matter which order shall:
- 38.1. Be within the competency and discretion of the relevant Investigating or Conduct Panel and be for an amount not exceeding R 75 000,00 (seventy-five thousand rand);
 - 38.2. Be within the competency and discretion of the relevant Appeal Panel and be for an amount not exceeding R 125 000,00 (one hundred and twenty-five thousand rand).
39. If a Member, having been fined and/or ordered to pay costs, fails to pay the full amount within 30 (days) from the date of such order, expiry of the appeal period or conclusion of an appeal process, whichever is reached last in time, the Disciplinary Committee may cause the fine and/or costs to be dealt with under FPI regulations or recovered by due process of law in a competent court.
40. The Member shall in such event be held liable for the costs of recovery on the scale as between attorney and client together with interest at an interest rate of not less than 15,5% (fifteen comma five percent).







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