In the matter of The Constitution of the Institute of Financial Advisers Inc. and its Bylaws

and

In the matter of Charges referred for hearing by the Disciplinary Committee

Between: The Institute of Financial Advisers Inc.

and: Craig Lunn, a Member

Determination of the Disciplinary Committee
(Dated 11 May 2009)

Disciplinary Committee:
Anthony N Frankham (Chairman)
Robert Narev
Karl Schweder

Determination of the Disciplinary Committee

[1] Craig Lunn, ("Mr Lunn" or "the Member"), a member of the Institute of Financial Advisers ("the Institute" or "IFA"), was the subject of a complaint to the Institute lodged by the complainants on 14 September 2007. Following investigation by the Complaints Committee of the Institute that committee decided to prefer four charges against Mr Lunn and to refer those charges to the Disciplinary Committee ("the Committee") for hearing and determination.

[2] Subsequent to the filing of the charges, Mr Lunn, through his solicitors, asserted that the Disciplinary Committee did not have jurisdiction to hear the charges. The reason given was that by reason of non-payment of his subscriptions Mr Lunn had been deemed non-financial and thus was no longer a member subject to the jurisdiction of the Institute or its Disciplinary Committee. The Committee received submissions and legal argument on this issue from the Member and from the Institute (both through counsel) and issued a reasoned decision dated 26 February 2009 in which the Committee made the finding that it did have jurisdiction. Although he reserved his right to do so, the Member did not seek to have the determination of the Committee judicially reviewed by the High Court.

[3] Following the issue of that determination and negotiations between counsel, Mr Lunn agreed to plead guilty to the charges on the basis that the Committee would only be required to consider the issue of penalty. Mr Lunn advised that he did not wish to attend a hearing. The Committee agreed a timetable for written submissions on penalty with counsel and for the Committee to consider the issues on the documents but for counsel to participate at the commencement of the hearing by conference call to answer any questions from the Committee. The Committee received submissions on penalty from Kensington Swan for the Institute on 25 March 2009. The members of the Committee received submissions in reply on 14 April 2009 from Shieff Angland for Mr Lunn. Those submissions confirmed that Mr Lunn pleaded guilty to all of the charges as laid, but made it clear, for the first time, that the Member did not accept the particulars underlying each of the charges.

[4] By letter dated 24 April the chairman of the Committee advised that the Committee was not prepared to proceed on the documents if Mr Lunn was not prepared to admit to the particulars on which charges are based (or such of them as the Committee considers reasonable to permit consideration of penalty without a hearing). The

Committee would set the matter down for a fixture to hear evidence on 4 May 2009. By letter dated 28 April Shieff Angland advised that:

(a) in order to avoid further hearing time Mr Lunn would accept all the particulars on which all of the charges are laid;
(b) Mr Lunn had reached a settlement with the complainants the terms of which are confidential but involved payment of a pecuniary sum. The Committee was informed of the quantum;
(c) Mr Lunn had no insurance cover in respect of the settlement or any costs or penalty the Committee might order.

[5] In response to the information provided by Shieff Angland, the chairman set down the hearing for consideration of penalty on the papers for 4 May and advised that the Committee would hear from counsel by teleconference at the commencement of the hearing. The chairman advised counsel that the Committee would like to hear from counsel for the Member on the settlement and the reasons there was no insurance cover for Mr Lunn on the matters before the Committee. Counsel for the Institute would have a right to make submissions on any new information.

The charges

[6] The charges against the member and their associated particulars were:

FIRST CHARGE

Following an investigation by the Institute of Financial Advisers Complaints Committee ("the Committee") regarding a complaint against you by [the complainants], the Committee says it has just cause to suspect that you did act in breach of bylaw 1.2 of the Code of Ethics and Professional Conduct in force at the relevant time.

Bylaw 1.2	Members must provide recommendations that are appropriate to the client's needs and circumstances, after taking into account the client's wishes.

Particulars

As financial adviser, on or about 9 September 2005 you recommended that the complainants invest $25,000 in Pacific Retail Finance Limited ("Pacific"), $25,000 in Bridgecorp Limited ("Bridgecorp") and $25,000 in Provincial Finance Limited ("Provincial").

As a result of your recommendations, on or about 14 September 2005 the complainants invested $15,000 in Pacific.

In early December 2005, you recommended that the complainants invest funds in Bridgecorp and/or Provincial.

As a result, the complainants invested $30,000 in Bridgecorp and $30,000 in Provincial.

At the time the recommendations in paragraph 3 were made you were aware that the complainants, were risk adverse (sic) and wished to preserve their capital.

In July 2007, Bridgecorp went into receivership.

In making the recommendations in paragraph 3, you failed to provide the complainants with recommendations which were appropriate to the complainants' needs and circumstances, taking into account their wishes, in particular:

(i) One of the complainants' needs was to preserve their capital;

(ii) To preserve capital the complainants' investment should have been diversified;

(iii) The recommendations in paragraphs 1 and 3 were not an appropriate investment strategy.

As a result, the complainants have suffered, or will suffer, financial loss due to the failure of the investments in Bridgecorp.

SECOND CHARGE

Following an investigation by the Institute of Financial Advisers Complaints Committee ("the Committee") regarding a complaint against you by [the complainants] the Committee says it has just cause to suspect that you did act in breach of Bylaws 5.1 and 5.2 of the Code of Ethics and Professional Conduct in force at the relevant time.

Bylaw 5.1	Members must supply to clients/prospective clients a written disclosure document. A master copy of this document must be lodged with the Association and an updated copy lodged with the Association when any change has occurred.
Bylaw 5.2	Member's disclosure documents must include the following: (a) all requirements to meet the initial disclosure section of the Investment Advisers (Disclosure) Act 1996; (b) the relationship of the member to the organisation the member represents and the date the member commenced with the organisation; (c) disclosure of any conflict of interest which could impair the member's independence and objectivity as an adviser or provider of financial services; (d) a statement that the member is bound by this Code and the Association's bylaws; (e) the member's method of remuneration i.e. fee only, commission only, or fee and commission; (f) procedure for the handling of client funds; (g) a statement that the member carries professional indemnity insurance, and the name of the insurer; (h) the fact that a complaints procedure is available through the Association for all clients dealing with Association members; (i) the member's relevant qualifications and experience; (j) the membership status of the member.

Particulars

1. As financial adviser, you recommended that the complainants invest in Pacific Retail Finance Limited, Bridgecorp Limited and Provincial Finance Limited ("the Investments").

2. As a result of your recommendations, the complainants invested funds in the Investments.

3. You failed to supply the complainants with a written disclosure statement in accordance with Bylaws 5.1 and 5.2.

The Committee accordingly considers it has grounds to proceed to a disciplinary hearing before the Disciplinary Committee for misconduct pursuant to clauses 2.1.a.i and 1.7(c)(iv) of the IFA's Disciplinary By-laws.

THIRD CHARGE

Following an investigation by the Institute of Financial Advisers Complaints Committee ("the Committee") regarding a complaint against you by [the complainants], the Committee says it has just cause to suspect that you did act in breach of Bylaws 10.1 and 10.4 of the Code of Ethics and Professional Conduct in force at the relevant time.

Bylaw 10.1	Members shall provide to the client, or prospective client, a written statement stating the type of services being provided/offered. The statement may be provided separately or as part of another document.
Bylaw 10.4	If providing a comprehensive financial plan members must follow the internationally recognised six-step financial planning process of: (a) collect and assess all relevant data; (b) identify personal goals and translate to financial goals; (c) define and analyse financial problems; (d) provide a written financial plan with recommendations; (e) implement or co-ordinate the implementation of that plan; (f) periodically review the plan.

Particulars

1. As financial adviser, you recommended that the complainants invest in Pacific Retail Finance Limited, Bridgecorp Limited and Provincial Finance Limited ("the Investments").

2. As a result of your recommendations, the complainants invested funds in the Investments

3. You failed to:

a. Provide a written statement of the extent of the service being provided to the complainants; and / or

b. Provide a comprehensive financial plan in accordance with Bylaw 10.4.

The Committee accordingly considers it has grounds to proceed to a disciplinary hearing before the Disciplinary Committee for misconduct pursuant to clauses 2.1.a.i and 1.7(c)(iv) of the IFA's Disciplinary By-laws.

FOURTH CHARGE

Following an investigation by the Institute of Financial Advisers Complaints Committee ("the Committee") regarding a complaint against you by [the complainants], the Committee says it has just cause to suspect that you did act in breach of Bylaw 11.3 of the Code of Ethics and Professional Conduct in force at the relevant time.

Bylaw 11.3	Where advice involves investments, members must be able to demonstrate that a reasonable attempt was made to ensure that the client has a clear understanding of the potential volatility of the investment markets into which they are entering, to ensure that they can properly understand and cope with the likelihood of rises and falls associated with the value of the investments provided or recommended

Particulars

1. As financial adviser, you recommended that the complainants invest in Pacific Retail Finance Limited, Bridgecorp Limited and Provincial Finance Limited ("the Investments").

2. As a result of your recommendations, the complainants invested funds in the Investments

3. You failed to ensure that the complainants had a clear understanding of the volatility of the investment in Bridgecorp and risks involved.

4. The complainants have suffered, or will suffer, financial loss due to the failure of the investment in Bridgecorp.

The Committee accordingly considers it has grounds to proceed to a disciplinary hearing before the Disciplinary Committee for misconduct pursuant to clauses 2.1.a.i and 1.7(c)(iv) of the IFA's Disciplinary By-laws.

The hearing

[7] The Committee met on 4 May 2009 to consider the charges and submissions against the Member. Counsel appeared by teleconference at the commencement of the hearing. As noted, the Member pleaded guilty to the charges as laid and eventually admitted all of the particulars. Mr Greg Milner-White appeared for the Institute and Ms Kim Burkhart for Mr Lunn. Mr Lunn was not present. In considering the issue of penalty, the Committee considered:

(a) The charges and particulars, the Member's guilty plea and acceptance of the particulars;
(b) Mr Milner-White's submissions for the Institute dated 25 March 2009;
(c) Ms Burkhart' submissions for Mr Lunn dated 3 April 2009;
(d) Mr Milner-White's submissions in reply dated 17 April 2009;
(e) Correspondence relating to the settlement with the complainants and the insurance issues;
(f) An amended schedule of costs;
(g) The further explanations and submissions of counsel at the teleconference.

[8] Ms Burkhart advised the Committee that whilst negotiations were continuing, Mr Lunn and the complainants had reached no finality over the settlement referred to in her earlier advice. The chairman advised that the Committee would only take into account, to the extent it considered appropriate, details of a confirmed settlement provided to the Committee. He advised that the Committee would allow Mr Lunn

until 8 May to finalise and report a settlement otherwise the Committee would proceed to a determination that disregarded any settlement. In the event, Ms Burkhart confirmed the finalised settlement and its broad terms to the Committee by advice dated 7 May.

[9] With regard to the lack of insurance cover not withstanding the Member's obligation to carry professional indemnity insurance, Ms Burkhart advised the Committee that Lumleys as indemnifier had denied cover in respect of this matter other than for some defence costs. The Committee is aware of a policy exclusion in the cover offered by Lumley's (an indemnifier whose policy is recommended by the Institute) relating to the diminution of value of securities where such diminution has not been incurred by any act or omission of the insured or implementation of investment advice or investment decisions.

Submissions on penalty for the Institute

[10] In written submissions, counsel for the Institute Mr Milner-White, submitted that a central charge against Mr Lunn is that he was aware that the complainants were risk averse and wished to protect their capital and that the recommendations he made to invest in Bridgecorp and/or Provincial were not appropriate to their needs and circumstances..

[11] It was submitted:

- The Constitution of the IFA notes a series of objectives for the Institute. It is important that these be borne in mind when considering penalty. The relevant objectives are:
    - To advance through its programmes and influence, the financial well-being of the New Zealand public and promote the public appreciation of the added value provided by members (3.1.a);
    - To prescribe for members and to maintain in the public interest a high standard of ethical conduct through the Code of Ethics and Professional Conduct and through the IFA's Bylaws (3.1.d)
- The following must be considered when determining penalty:

  Protection of the public: The protection of the public is an important factor to consider when looking at penalty against a member. Members of the public seek financial planners' advice in the hope that they will provide informed, independent and discerning advice and assist the investor in maximising their

investment. They rely on their financial planner to analyse the investment offered, and to use their experience and training to identify the most appropriate investment product for their personal circumstances and inform them of the associated risks. Mr Lunn failed to carry out this essential function in this case.

Experience of the Member: Mr Lunn has been registered as a member of the IFA (or its predecessor organisations) since 1988. It was submitted that it can be expected that Mr Lunn, as a financial planner with over 20 years' experience, should be fully aware of the regulatory requirements of the IFA and the applicable provisions of the Code of Ethics and Professional Conduct.

Seriousness of the breach: The overall standard of service received by the complainants from Mr Lunn was inadequate and not competent in a number of respects. In particular, Mr Lunn did not carry out a comprehensive financial planning process and, not doing so, has failed to understand properly the objectives of the complainants in the circumstances.

Damage suffered by the complainant: As a result of the advice received from Mr Lunn, the complainants invested $40,000 in Bridgecorp securities ($30,000 in December 2005 and a further $10,000 in March 2006), which was a significant part of their assets. The personal effect of the resulting loss of the complainants has been significant. The complainants' needs and circumstances should have been obvious to an experienced adviser like Mr Lunn.

Attitude of member: Although Mr Lunn has entered guilty pleas, this occurred at a late stage and this followed significant delay and argument over his objection to jurisdiction of the Disciplinary Committee. It was accepted that he co-operated with the initial investigations of the Complaints Officer.

Deterrence: When considering penalty, the Committee must consider the deterrence of others, as well as a penalty that will act as an individual deterrent for Mr Lunn. The penalty imposed on Mr Lunn must be a sufficient disincentive to other members from involving themselves in, and recommending investment products that are not suitable for their clients and failing to undertake comprehensive financial planning. The penalty in this matter should not only deter members from undertaking the same breaches, but also ensure that the public has confidence in the IFA and its members.

Penalties sought

[12] It was submitted that a penalty comprising the following would be appropriate:

(a) Payment of IFA's costs in full

(b) A modest fine;

(c) Censure; and

(d) Publication of the details of the Committee's decision including Mr Lunn's name.

Costs

[13] With regard to quantum of costs, Mr Milner-White submitted that it is in the interests of the members and the public for the IFA to undertake prosecutions such as this and ensure that the public can have confidence that the IFA will ensure its members' conduct complies with its requirements. In its 21 July 1995 decision in Galvin v BLB the Board of Appeal noted (at page 33):

> *"In our view, and especially considering the self-funding, self-regulatory nature of the Association, it is entirely appropriate that the general rule should be that the offending professional should pay the whole of the costs involved in the investigation and prosecution of the disciplinary proceedings."*

The IFA is a self-funded organisation. If the IFA is required to fund these prosecutions, the costs will have to be borne by the non-offending members through increases in membership fees. This is contrary to the interests of justice. Without the award of a large contribution or indemnity costs, the IFA would rapidly be unable to investigate and prosecute cases. If the IFA is to be seen as an effective regulatory body, it must have the ability to investigate and determine all deserving complaints.

Submissions on penalty for Mr Lunn

[14] For Mr Lunn Ms Burkhart submitted:

- It is clear that the appropriate penalty in the particular case is a matter of judgement to be determined in each case in the light of all the facts and circumstances of that case. The Disciplinary Bylaws set out a number of additional factors that should be considered. These include:

(a) Was this the first, or a subsequent offence?

(b) Attitudes of the Member If the member appears to be unrepentant or indicates flagrant disregard for the rules, it will weigh against the member.

(c) Was it a deliberate breach or technical oversight? If it appears that the member quite deliberately and knowing they broke the rules, it will weigh against the member. If it appears that the member is basically sincere and honest in his/her intentions though some requirements were overlooked, then a lesser penalty may be indicated.

(d) The amount of the costs award should be taken into account so that the aggregate of costs and penalty is reasonable in the circumstances.

First Offence: This is Mr Lunn's first offence in his 20 years as a member of the IFA.

Attitude of Member: Mr Lunn did not act in flagrant disregard of the Code and rules of the IFA and he is not unrepentant.

Deliberate Breach: Mr Lunn did not deliberately act in breach of the Code. His intentions were honest and sincere and a lesser penalty should be imposed in recognition of this.

Costs

Given that there is no database of past cases it is impossible for Mr Lunn to respond to any precedent that the Committee may have in mind. If the Committee is minded to deal with this case in a manner that reflects that way in which other such cases have been dealt with, then natural justice requires that Mr Lunn be informed of the principles to which the Committee refers and be given an opportunity to respond to the same.

- A guilty plea does not simply allow the Committee to recover all costs incurred by the IFA (and the Committee) and that if such costs are to be sought they are to form part of the penalty and ought to be recovered on a principled basis, based on the charges laid and the appropriate penalty, and not simply because those costs have been incurred.

- Further, it appears that a portion of the costs relate to the protest to jurisdiction. The question of jurisdiction arose out of a lack of clarity in the IFA's own Rules and not any failure on the part of Mr Lunn. Accordingly, it is submitted those costs should not be

borne by Mr Lunn. Whilst that protest was ultimately unsuccessful (before this Disciplinary Committee) it must be conceded that the IFA's Rules lacked clarity given that those Rules have now been amended to specifically deal with this very issue.

Publication

- There is no public interest benefit in the publication of Mr Lunn's name and nor is there any educative purpose in the publication of his name. If the decision on penalty is to be published, then it is submitted that the published decision should not include reference to Mr Lunn's name in all the circumstances.

Conclusion

For the reasons set out above, it was submitted that:

(a) Payment of a significant part of the costs is unduly harsh and not appropriate in the circumstances;
(b) A fine is unduly harsh and not an appropriate censure in the circumstances;
(c) Censure is appropriate; and
(d) Publication of Mr Lunn's name is unduly harsh and not appropriate in the circumstances

The Committee's reasoning on Penalty

[15] The Committee acknowledges that Mr Lunn's failures are a matter of considerable importance to the complainants. The Committee acknowledges the stress, pressure and emotional pain Mr Lunn's actions have caused the complainants. However, the process is about the IFA acting on a complaint about a member, to ensure maintenance of proper standards and actions by its members and not to compensate a complainant for losses incurred. It is a significant benefit if the process produces compensation for the complainant but that is not a matter for the Committee to negotiate.

[16] Kensington Swann provided the Committee with a bundle of documents for the Institute. The bundle included, amongst other documents, the original letter of complaint from the complainants, Mr Lunn's response to the Institute to that letter, witness statements from the complainants and a witness statement from an independent expert. Several of the allegations of the complainants were denied in the later submissions on behalf of Mr Lunn. Some of the matters complained about were not referred to in the Notices of Charges. There is clearly a difference of opinion

between the complainants and the Member on many of the issues. Because we have not been able to hear evidence and by reason of Mr Lunn's guilty plea and admission of the particulars, we are not required to make findings on those differences. For the same reason we are not required to take into account many of the matters referred to in submission by Ms Burkhart.

[17] By his own admission, Mr Lunn:

(a) In breach of by-law 1.2 of the Code, failed to provide recommendations that were appropriate to the complainant's needs and circumstances after taking into account their wishes;

(b) In breach of by-laws 5.1 and 5.2 of the Code, failed to provide the complainants with a written disclosure statement setting out specified matters.

(c) In breach of by-laws 10.1 and 10.4 of the Code, did not provide a written statement stating the type of services being provided or provide a comprehensive financial plan in accordance with by-law 10.4.

(d) In breach of by law 11.3 of the Code, failed to ensure that the complainants had a clear understanding of the volatility of the investment in Bridgecorp and the risks involved.

[18] We regard these breaches when taken together as being at the upper range of the scale of seriousness. We consider that had the Member observed all of his obligations appropriately, the complainants would unlikely have invested a large amount of their available funds in the recommended investments in question and would have been unlikely to have suffered the loss and emotional pain they have. These matters must be taken into account when considering penalty.

[19] Although counsel submitted that Mr Lunn "was not unrepentant", from the documents before the Committee it appears that Mr Lunn has shown few overt signs of contrition or regret. After receipt of the Notice of Charges, he sought to resign from the Institute by note dated 23 October 2008. Once the Institute advised him that the Constitution precluded resignation when disciplinary processes were in train, he contested the jurisdiction of the Institute's disciplinary process by contending that non-payment of his subscriptions removed that jurisdiction. He chose not to appear before the Disciplinary Committee to explain his actions and belatedly advised he would plead guilty to the charges. He then advised he did not accept the particulars underlying the charges. Finally, he changed his position on the particulars and advised that he accepted them.

We think that by his actions Mr Lunn has demonstrated a reluctance to face up to his failure to meet all his obligations as a member of the Institute of Financial Advisers.

[20] Ms Burkhart submitted that settlement negotiations were in train to compensate the complainants for their loss. The settlement involved a significant lump sum payment. Counsel advised that the Member is not covered by any insurance policy for the settlement, any costs we might award or any fine we might order. The Committee notes that Members have an obligation to carry insurance and observes that the absence of cover was for the prosecution to investigate and prosecute if considered appropriate.

[21] By way of response to the Committee's further written questions arising from counsel's advice, at the teleconference on 4 May 2009, counsel for the member advised that Mr Lunn had contracted cover but the indemnifier has denied liability relying on the terms of the policy.

[22] The Committee provided counsel for the Institute an opportunity to make submissions on the settlement advice and insurance matter. Counsel submitted that the settlement details may be taken into account by the Committee when considering penalty. Counsel advised that the Compliance Officer does not wish to take any point on the insurance matter. Later, on 7 May, counsel for Mr Lunn advised the Committee that the complainants and the Member had reached a confidential settlement and advised the quantum.

[23] At the 4 May conference, the Committee advised the parties of the Committee costs for the process and the determination that was yet to be written. A schedule of all legal, investigation, expert witness and Committee costs was tabled. For the Institute Mr Milner-White submitted that there should be an order for recovery of all those costs from the Member. Ms Burkhart repeated her earlier submissions on costs.

[24] We think that when considering penalty we should have some regard to the settlement the Member has made. It forms part of the cost of the Member's recognition of the loss to the complainants even though there has been no admission of liability. It is relevant to note acceptance of the advice that the financial costs of penalty faced by the Member are not reduced by insurance.

[25] With regard to the recovery of costs, we make the following comments:

(a) The Committee determines orders for costs on the circumstances of each case. As a general principle, the Committee will follow the approach that costs follow the event. Where all of the charges against a member are found proved or costs have been incurred prior to a guilty plea being entered full costs will be awarded unless they are unreasonable or exceptional circumstances apply.

We agree with the submission for the Institute – The IFA is an organisation funded by its members. To the extent that the IFA incurs costs as a consequence of one member failing to live up to its rules, it is unfair to require other members who have done no wrong to subsidise the consequences of such breach through their membership fees. The disciplinary function of the IFA may be undermined if it consistently under-recovers the costs of disciplinary processes. The IFA's only method of funding this work would be to increase its membership fees. This can only discourage membership and reduce the IFA's ability to achieve its mission "To foster professionalism among financial advisers and to serve the needs and interests of members and the public."

We also note the decision in Galvin v. BLB (supra) provides further useful guidance. With regard to costs, the Board in that instance said (at page 32 f.):

> *"It seems to the Board in cases of this level of seriousness there is nothing inherently unfair or improper in requiring an offending member to pay <u>all</u> of the costs incurred by the Association at the trial level, i.e. ail the costs and charges incurred by the Association including the costs of the investigation as well as the costs of prosecuting or complainant's counsel or counsel assisting. In this case, the award was a little over 35% of the actual costs incurred. Thus, if anything, the appellant was treated leniently on costs. In our view, and especially considering the self-funding, self-regulatory nature of the Association, it is entirely appropriate that the general rule should be that the offending professional should pay the whole of the costs involved in the investigation and prosecution of the disciplinary proceedings. However, one can visualise situations where a full indemnity would not be appropriate. Such situations might include cases of inadvertent or trivial breaches and cases where there had been some ambiguity in the Rules or in the Code of Ethics and a resultant difficulty in understanding the standards which were expected of the member."*

(b) We acknowledge that the costs are significant. That is the unfortunate nature of professional fees. We are satisfied that the costs have been necessarily incurred. Ms Burkhart was provided details of the costs sought to be recovered

by the Institute immediately before and at the hearings. No constructive reservation about the detail was expressed.

(c) The Committee makes orders concerning costs on a principled basis.

(d) The Committee has carefully considered the issue of costs arising from the objection to the Committee's jurisdiction. Ms Burkhart raised this point at the teleconference. Of the total costs claimed amounting ultimately to $37,002, $6,825 relates to the cost of addressing Mr Lunn's assertion that the Committee did not have jurisdiction. We consider the question of jurisdiction did not arise from a lack of clarity in the Rules. Rule 10.1 of the Constitution makes it very clear that a Member cannot effectively resign while disciplinary proceedings against the Member are pending. The reasoned decision of the Committee on that matter recorded "We think the analysis presented for Mr Lunn is an attempt to avoid exposure to the disciplinary process that the member agreed to submit to contractually for the good of the profession, the maintenance of standards and the protection of the public. We cannot accept that, whereas the contract documents applicable at the time of the alleged breaches provided that a member should not be able to avoid the disciplinary process by resigning, the member should nevertheless be able to avoid the process by simply not paying a subscription."

Having regard to that finding, we consider it appropriate that Mr Lunn should be required to meet the costs incurred by the Institute in having the jurisdiction matter determined. The Committee determined that matter in conjunction with the application of another Member citing similar grounds. We are satisfied that each member was charged his appropriate share of those costs.

[26] We are not persuaded by the submissions made on Mr Lunn's behalf that an order for less than full costs claimed and full publication should not apply. By all accounts, Mr Lunn has been a competent member of the Institute for a lengthy period. In the circumstances of the complainants' request for investment advice, he has failed to follow the Institute's mandatory bylaws and rules. In doing so, he has caused or significantly contributed to the losses suffered by his clients. We agree with the submission on behalf of the Institute that the sanction imposed on Mr Lunn should be:

- sufficient to appropriately punish him,
- to deter similar actions by other members of the IFA, and

- to engender public confidence.

The disciplinary bylaws recognise that in appropriate cases a commercially significant sanction may be necessary.

[27] If it were not for the settlement made by Mr Lunn to recognise, at least in part, the loss and emotional pain the complainants have suffered, we would have ordered that Mr Lunn should suffer a monetary penalty. Having regard to the quantum of the settlement and the order for costs we consider we must make, we make no order for a fine in this instance.

Determination and Orders of the Disciplinary Committee

[28] The Member having pleaded guilty to the charges as laid and admitted the particulars, the Committee makes the following orders as to penalty, costs and publication.

The Committee hereby orders that Craig Lunn:

(a) be and is hereby censured;

(b) is to meet the costs to the Institute of the disciplinary process in the amount of $37,000 inclusive of GST this amount to be paid to the Institute forthwith;

(c) is not to provide professional financial planning or investment advice for as long as he is a member of the Institute unless he has obtained and proves to the Institute the relevant qualification as per the Institute's or statutory requirements.

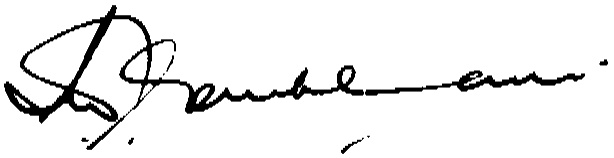
The Committee further orders that taking into account the circumstances of this case, the Committee's reasoned determination giving the member's name and location be published by the Institute in a format approved by the chairman of this Committee and placed on the website of the Institute in a manner accessible by the public. The name and location of the complainants and the amount of the settlement shall remain confidential.

[29] With regard to item (b) and (c) of paragraph 28 the Committee notes that notwithstanding the Member's letter of resignation the Member continues to be bound by clause 10.1 of the Institute's Constitution that provides:

"Any notice of resignation given after any complaint is lodged against the Member or after any disciplinary proceedings are commenced against the Member shall not take effect until the hearing of the complaint or the disciplinary proceedings and related appeals have been disposed of and any resulting action or disciplinary measure, fine or penalty has been settled".

Consequently the Member is also bound to continue to pay his subscriptions to the Institute (including outstanding subscriptions of $644.88) and to observe all other requirements of the Constitution until all disciplinary measures, fine, costs or other penalty have been settled.

By Order of the Disciplinary Committee



A N Frankham
Chairman
11 May 2009

Legal representation:
For the Institute *Kensington Swan (Greg Milner-White))*
For the Member *Shieff Angland (Kim Burkhart)*

Tony Frankham

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