

COMPLAINT INVESTIGATION GUIDELINES

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This document supersedes all others and is a comprehensive outline of NZAP's Complaints process.

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INTRODUCTION

The existence of a complaint procedure demonstrates one aspect of this Association's concern for the provision of quality psychotherapy and the maintenance of high professional standards. All NZAP members accept that they are accountable for their actions and demonstrate their commitment to those principles through meeting their continuing membership requirements.

The professional relationship between the individual responding to a complaint and the Association itself provides the background to the process of investigating and determining all complaints. Once the matters relating to a specific complaint have been made clear, the Association becomes responsible for the task of resolving the questions raised and providing for an outcome. The complaint may remain with NZAP or be made to the Registration Board or the Health and Disability Commissioner.

The Association, via the Ethics and Professional Standards Committee, must decide, in the first instance, whether the behaviour complained about, if proved, could amount to a breach of the Association's Code of Ethics or Constitution. If the Association chooses to investigate the complaint, the complainant is asked to provide sufficient information for to Association it to

assess the issue and decide whether it warrants disciplinary action. The Association does not act to bring resolution between complainant and respondent, it acts on its own accord, based on information the complainant and respondent provide.

The Association values external perspectives on professional matters, and consequently persons outside the membership of the Association may be included in deciding assessing complaints.

Complaint procedures have been developed to assist Council in dealing with complaints made against members of the Association. Our purpose is to have a process that is effective, fair, subject to external scrutiny and capable of providing timely resolution of complaints. Our intention is to provide consistency in dealing with complaints and seeks to incorporate the principles of natural justice. The process is one which is investigative and supervisory in nature as befits a free association. The procedures are not, however, mandatory, and Council is free to depart from them as it sees fit.

GENERAL PRINCIPLES

1. Receiving complaints

1.1 The Association may receive complaints from any person or body, regardless of whether complainants are members or non-members of the Association, except that:

- No action will be taken on anonymous complaints.
- No action will be taken on any complaint regarding behaviour which occurred more than seven years ago.

1.2 Should a respondent make a counter complaint against a complainant it will be at the discretion of the Complaints Convenor (CC) whether it is dealt with sequentially or concurrently with the original complaint.

1.3 Complaints shall be made in writing and addressed to the CC. Any complaint received by the Executive Officer will be forwarded immediately to the CC.

1.4 In view of the Association's legal obligations, complainants will be made aware that the Registration Board now has the oversight regarding complaints against psychotherapists that relate to their fitness to practice, whether through health or competence. They will also be made aware that the Health and Disability Commissioner has jurisdiction for complaints that relate to consumers of health services. The complaint will be forwarded to the Registration Board only if they are related to a practitioner's impairment.

2. The criteria for accepting a complaint

2.1 It shall be in writing and addressed to the CC.

2.2 It shall name current or retired members of NZAP as the respondent(s).

2.3 It shall describe the behaviour deemed to be offensive, incompetent or unethical.

2.4 It shall state the dates and times where the behaviour described took place.

2.5 It shall identify any witness to the behaviour described.

2.6 It shall clearly contain the full name and contact details of the person making the complaint.

2.7 It will be submitted in writing and signed, and shall be in hard copy, not electronically.

3. Assessing complaints

3.1 Complaints received by the Association will be referred to the Complaints Assessment Committee (CAC) which is appointed by the Council for the purpose of investigating complaints.

3.2 Membership of the CAC will consist of 2 Association members and one external person.

3.3 The CAC will consider whether there is sufficient information to decide if the alleged conduct, as described and if proven, would constitute a breach of the Association's Code of Ethics or Constitution.

3.4 The CAC will then assess whether there is sufficient evidence to merit further investigation.

3.5 The CAC will initiate further investigation as required. It may not take disciplinary action against a respondent.

4. Powers to initiate or to continue complaint procedures

4.1 The NZAP Council delegates responsibility to the CAC to initiate an investigation when a member appears to have breached the Code of Ethics, or the Constitution, by having engaged in conduct that might adversely affect the public, the Association, or the profession as a whole. Any person subject to such investigation shall be informed of the existence of the investigation and the background to it.

4.2 If a complaint is withdrawn by the complainant, the CAC may proceed with the matter on its own initiative.

5. Declaration of interest

In appointing a Committee under these procedures the CAC Convenor will enquire as to whether prospective members have any special knowledge or interest in the case, and ask them to declare this and make themselves unavailable for inclusion in the CAC. Should such a conflict of interest arise during the investigation of a complaint the person involved will inform the CAC Convenor and withdraw from further involvement in the investigation.

PROCEDURES

6. Action on receipt of complaints

Complaints are received by the CC. On receipt of the complaint the CC shall:

- 6.1. Determine whether the respondent is a current member of the Association.
- 6.2 If the respondent is not a member, advise the complainant accordingly and suggest alternative actions, including the provision of contact details of responsible bodies.
- 6.3 If the respondent is a member of the Association subject to the assessment and disciplinary procedures, the CC shall check the complaint material against the criteria required for accepting a complaint for investigation.
- 6.4 If the criteria are not met, the CC shall acknowledge the receipt of the complaint in writing, direct the complainant to the NZAP website to see the Code of Ethics and advise them of the criteria for complaints, and the process involved in making a complaint.
- 6.5 If the criteria are met, the CC shall acknowledge the receipt of the complaint in writing and ask the complainant to complete and return the Formal Consent Form, waiving the respondent's duty of confidentiality to the complainant.
- 6.6 On receipt of the formal consent form, the CC shall convene a Complaints Assessment Committee (CAC). The CAC will be composed of three members – two senior NZAP members and an external person.
- 6.7 The CC shall inform the respondent that a complaint has been received and provide brief details of the complaint, stating that the complaint is in the first stage of the process and that no response is required until requested. The CC will let the respondent know the names of the people who have been asked to form the CAC. The respondent may object to the involvement of any of these people on the grounds of overlapping or conflicted roles (as in #5: Reasons for declaration of interest) within 10 days of notification. These objections and the reasons for them will be passed on to the CAC and the member or members concerned will be required to withdraw from assessing the complaint and replaced.
- 6.8 The function of the CAC with the oversight of the CEPSC and the CC is to:
 - Assess the complaint received.
 - Determine the point of entry of the complaint into the complaint process.
 - Assess the information against the sections of the NZAP Code of Ethics and Constitution that may have been breached.
 - Compose a letter summarizing their findings. It is important that this letter acknowledges this is based on information from the complainant's perspective only and material from the respondent needs to be taken into consideration before reaching conclusions.
 - Send a draft of this letter to the CEPSC. Further discussion may be required about the wording. The final draft is sent by the CC to the respondent.

7. First response from the Complaints Assessment Committee

- 7.1. The CAC will consider the information contained in the initial statement of complaint, and such further information as it may require will be requested through the CC.
- 7.2 The CAC may request information about any and all previous steps taken to remedy the situation (including complaints lodged with other professional bodies).

8. Action if further information is not received or is withheld

If, after 14 days, no reply is received from the complainant to the Association's request for additional information the CAC, together with the CC, shall decide: either that the complaint should be closed; or that there is sufficient information for the Association to proceed with the matter on its own initiative.

9. Information sent to the respondent by the Complaints Convenor

If the CAC decides to proceed with the investigation the respondent will then be sent the following information by letter:

9.1 A full copy of the complaint and details of any other information which may be presented in support of the complaint.

9.2 A copy of the complainant's formal, signed, consent to waive the respondent's duty of confidentiality.

9.3 The respondent is directed to the NZAP website for a copy of the Code of Ethics, Constitution, and these Complaint Guidelines.

9.4 A letter from the CAC Convenor which outlines the reasons for proceeding with the investigation, including a statement about the sections of the Code of Ethics or Constitution that they consider may have been breached.

9.5 Advice that any information (verbal or written) provided by the respondent will become part of the documentation of the case.

9.6 A recommendation by the CC that the respondent discuss the matter of the complaint with their current supervisor, and that they consider how the supervisor may contribute to the process of clarifying and resolving the complaint;

9.7 A statement that the CAC requires that the respondent submit their response within 30 days.

10. Action required of the respondent

10.1 The respondent is required to reply in writing to a request by the CAC to provide information relevant to the complaint. This information must be supplied to the CAC, through the CC, within 30 days of the date of registration of the letter advising of the complaint.

10.2 If the respondent believes there is a conflict between responsibilities to clients and the request for information, or he/she holds information which may incriminate the complainant, advice should be sought from the CAC, through the CC, in order to help resolve this conflict.

10.3 The respondent is required to reply personally, in writing, but is free to seek their own legal advice at any time and should consider whether they need to inform their indemnity insurer, if any, of the complaint.

10.4 Failure to respond, unwarranted delay in responding, or lack of co-operation in the investigation, shall not prevent continuation of the procedures in dealing with the complaint and may, of themselves, constitute a breach of the Code of Ethics.

11. Information from other sources

Information relevant to the complaint may be sought from other sources, provided that any such information obtained shall be disclosed to the respondent and the respondent given opportunity to comment upon it. As documentation from the respondent may contain material that is not about the complainant, only information relating to the complainant may be sent to the complainant if requested.

12. Action to be taken by the CAC on receipt of information

On receipt of the respondent's submission, and any other information, if any, the CAC shall formally assess the complaint with reference to the Association's Code of Ethics and Constitution.

13. CAC recommendations

When the CAC has completed its assessment of the statement received from the complainant, and any statements requested from the respondent or from other sources, it shall make appropriate recommendations to the CC regarding any further stages of the complaints procedure. This may include, but is not limited by, the following:

13.1 That the complaint should be dealt with other than by way of a formal Hearing. The CAC is directed to make recommendations to the CC regarding the ways that this might be done.

13.2 That the complaint be referred to a **Professional Clinical Matters Committee**, which will be composed of two senior members of the Association appointed by the Chair of the Ethics and Professional Standards Committee. Its function will be to:

- Conduct a process other than a formal hearing into professional practice matters raised by the complainant and highlighted by the CAC as needing further investigation;
- Write to the respondent with information about the Professional Clinical Matters Committee's process;
- Meet with the respondent and assess their practice;
- Report the outcome of the meeting to the Chair of the Ethics and Professional Standards Committee and thereby to Council.

13.3 That the complaint should be referred to a **Complaints Hearing Committee**.

13.4 That the complaint should be referred by the CC to other professional bodies. The CC may also advise the complainant to consider such action, regardless of whether the Association's investigation continues or ceases.

13.5 That the complaint action should be discontinued and the case closed.

13.6 If the CAC recommends suspension of the respondent, pending determination of the complaint, the CC will refer this matter to Council.

13.7 The CC shall inform the respondent and the initiator of the complaint of the outcome of the complaint investigation process to date. At the outset of the process the CC shall establish with the complainant their preferred level of information about the process of the complaint at various stages, or whether just the outcome is sufficient.

13.8 If, at any stage of the proceedings, a complaint is disallowed, or is considered inappropriate on the basis that, if proven, it would not constitute a breach of the Code of Ethics or the Constitution, the CC will advise both parties of this, offer any appropriate guidance, and may close the current complaint.

14. Complaints Hearing Committee

14.1 The Association, via the CC, shall appoint a Complaints Hearing Committee which will be composed of three members – two senior members of the Association and an external person. The function of the Committee will be to:

- Consider all material supplied by the CAC;
- Meet to consider any further submissions – written or oral – which may have been advised or requested from the respondent, the initiator of the complaint, or any other person;
- Decide whether the alleged conduct constitutes a breach of the Association’s Code of Ethics or the Constitution;
- State in their report to Council the matters considered by the Committee and the reasons for their findings.

14.2 The Association shall appoint a lawyer to prosecute the complaint and will set a date, time and place for the hearing.

14.3 The Complaint Hearing Committee shall not take any direct action itself in terms of the outcome of such a hearing, but will restrict its actions to hearing the matter and reporting its findings and recommendations to Council.

14.4 The respondent may appear before the Complaints Hearing Committee, and may present further submissions, providing that written notice of the intention to do so is received by the Chair or Convenor within 14 days of the date of the letter from Council notifying the details of the hearing, together with the membership of the Committee.

14.3 The respondent may object in writing, within 14 days of the date of the letter notifying the details of the hearing, to the involvement of any such member, giving reasons in each case. These objections and the reasons for them will be considered by the Convenor, and the member or members concerned may be required to withdraw from hearing the complaint. The decision of the Convenor shall be final.

14.4 The respondent may choose to be represented by a solicitor, or they may be accompanied by a support person who may not participate directly in the hearing.

14.5 Failure to respond or unwarranted delay in responding on the part of the respondent shall not prevent continuation of the procedures in dealing with the complaint and of themselves constitute a violation of the Code of Ethics.

15. Report from the Complaints Hearing Committee

15.1 When the Complaints Hearing Committee has completed hearing the matter, it shall decide whether there has been any breach of the Association's Code of Ethics or Constitution and make recommendations, which will be conveyed to the respondent in writing, and, if appropriate, verbally; and send a report signed by its members to the CAC Convenor, reporting its findings on the matters referred to it and the outcome recommendations. These recommendations may include, but are not limited to:

- The respondent is required to undertake reflective or educative processes and report back to the CAC;
- The respondent is required to discontinue the conduct which is the subject of the complaint;
- The respondent is censured or reprimanded;
- The respondent is required to undertake specified education and or supervision;
- The respondent is required to enter into a period of probation, which is that the CAC will actively and systematically monitor for a specified length of time the respondent's compliance with the specific requirements imposed by the CAC;
- The respondent is required to resign from the Association and may re-apply under conditions specified by the Council;
- The respondent's membership of the Association may be terminated.

15.2 The Psychotherapy Board of Aotearoa New Zealand may be informed of the findings and the outcome recommendations and actions.

15.3 The Chairperson of the Ethics and Professional Standards Committee will report to Council on the outcome of the Hearing and Council will be asked to ratify any outcome which affects the respondent's membership status.

16. Respondent's rights to review

The respondent shall be entitled to seek a review of the decisions made by the CAC. Such reviews shall be conducted by an independent arbitrator, the appointment of whom shall be made by the CC. Any such request for review must be made within 10 days of the date of the couriered letter informing the respondent and complainant of the Association's decision. The reasons for seeking a review must be clearly stated.

16.1 The CC shall acknowledge receipt of the respondent's request, and if such a review is agreed to, shall name the intended arbitrator.

16.2 The respondent may request, giving reasons, within 10 days of the date of the letter from the CC, that the intended arbitrator not be appointed. The decision of the Council on any such request shall be final.

16.3 The Arbitrator's decision shall be final and binding on all parties.

17. Acceptance of decision by respondent

17. In situations where the outcome of the complaint does not change the respondent's membership status the respondent shall be required to confirm receipt of the Association's

decision within 30 days and to provide satisfactory evidence of compliance within a time scale to be determined by the CC. If the requirements are not met, the CC shall determine what appropriate action is to be taken, which may involve reconvening the CAC, or reporting to Council.

18. Costs

18.1 Council shall have the power to make such order as it thinks fit in relation to the costs incurred in investigating and disposing of a complaint. Specifically – if a complaint is either admitted by the respondent, or found proved, Council may make such order as it thinks fit requiring the respondent to make a contribution to all or part of the costs which have been incurred by the Association.

18.2 If Council finds that a complaint lodged by one member of the Association against another member of the Association is frivolous, vexatious or made in bad faith, Council may make such order as it thinks fit requiring the complainant to make a contribution to all or part of the costs which have been incurred by the Association in the investigation and disposal of the complaint.

18.3 If the CC, on advice from a Complaints Hearing Committee, decides that sufficient harm has been done to the complainant by the actions of the respondent it may refer the matter to the Health and Disability Commissioner, or the Psychotherapists Board of Aotearoa New Zealand who have the authority to refer it to a Health Practitioners Disciplinary Tribunal.

APPOINTMENTS AND COMMITTEES

The Complaints Assessment Committee is composed of three members – two senior members and an external person.

Together with CEPSC and the Complaints Convenor the function of this Committee is to:

- assess all complaints received;
- determine the point of entry of complaints into the complaints process;
- initiate and oversee the complaints process throughout;
- co-ordinate according to Council directives;
- inform mediators, arbitrators and hearing committee members as indicated.

The Complaints Hearing Committee is composed of three members – two senior members of the Association and an external person. The function of this Committee is to:

- consider all material supplied by the CAC;
- meet to consider any further submissions – written or oral – which may have been advised or requested from the respondent, the initiator of the complaint or any other person;
- reach a decision as to whether the alleged conduct constitutes a breach of the Association's Code of Ethics or the Constitution;
- state in their report to Council the matters considered by the Committee, and the reasons for their findings.

The Professional Clinical Matters Committee is composed of two senior members of the Association appointed by the Chair of the Ethics and Professional Standards Committee. The function of this Committee is to:

- conduct a process other than a formal hearing into professional practice matters raised by the complainant and highlighted by the CAC as needing further investigation;
- write to the respondent with information about the Professional Clinical Matters Committee's process;
- meet with the respondent and assess their practice;
- report the outcome of the meeting to the Chair of the Ethics and Professional Standards Committee and thereby to Council.