

# Professional Conduct Procedure

## Investigation and Assessment Committee (IAC): Terms of Reference

### Objective of the IAC

1. To carry out its functions in accordance with the requirements of the Professional Conduct Procedure and associated protocols.

### Constitution

2. The Investigation and Assessment Committee will consist of no less than three people, at least one of whom will be a lay person.
3. The Registrar will select a Chair from the pool of chairs.
4. The IAC may convene by meeting in person and/or by remote means.
5. The quorum for the IAC will be three members.

### Functions

6. The Investigation and Assessment Committee has the following functions:
  - a. Determining whether the requirements of paragraph 1.4(a) of the Professional Conduct Procedure are satisfied when requested to do so by the Registrar.
  - b. Determining under paragraph 1.7 (c) of the Professional Conduct Procedure whether the time limit for submitting a complaint should be extended.
  - c. Deciding whether repeated complaints should be reconsidered pursuant to paragraph 1.8 of the Professional Conduct Procedure.

- d. Seeking further information or clarification from either party to a complaint as it considers appropriate in accordance with paragraph 3.2 a) of the Professional Conduct Procedure.
- e. Deciding whether the proceedings test is met or whether a complaint should be dismissed in accordance with paragraphs 3.2 d) - f) of the Professional Conduct Procedure
- f. Where it finds that the proceedings test is met, in accordance with 3.2 g) of the Professional Conduct Procedure, set out the formal allegations against the Member, determining whether allegations are allegations of professional misconduct and allocating the case to either the disciplinary proceedings track or the practice review proceedings track in accordance with paragraphs 3.2 h) - i) of the Professional Conduct Procedure.
- g. Deciding whether to impose an interim suspension on a Member in accordance with paragraph 3.6 or other requirement of the Professional Conduct Procedure and the relevant protocol.
- h. Reviewing an interim suspension and lift the suspension following review, if appropriate, in accordance with paragraph 3.6 of the Professional Conduct Procedure and the relevant protocol.
- i. Considering and determining whether a complaint should be disposed of by means of consensual disposal pursuant to paragraph 3.4 of the Professional Conduct Procedure.
- j. Deciding upon, and imposing sanctions on the Member as part of a consensual disposal agreement.

## Decision Making

- 7. The Investigation and Assessment Committee will consider each case on its individual facts and discuss any issues that are raised and make decisions on a majority basis.
- 8. In doing so the Investigation and Assessment Committee need to consider the facts and representations as a whole in light of the ethical codes/ethical frameworks in effect during the period/s of membership of the Member at the time/s when the alleged breaches alleged took place.

9. The Chair should sign the Investigation and Assessment Committee's decision, which will be delivered to the Registrar.

## Applying the proceedings test

10. In applying the proceedings test in accordance with paragraph 3.2 d) of the Professional Conduct Procedure, the Investigation and Assessment Committee will first consider the facts alleged and consider whether those facts if proved would amount to a failure to meet the professional standards. If the IAC decides that they would not, the proceedings test is not met.
11. Secondly, the Investigation and Assessment Committee will consider whether there is a realistic prospect that facts justifying a finding of such a failure will be proved.
12. The word 'realistic' distinguishes fanciful prospects of success and directs the Independent Assessment Committee to consider whether there is a 'realistic' as opposed to a 'fanciful' prospect of success.
13. The IAC should take into account the Member's explanations and representations. A realistic prospect of a finding of misconduct means that the Professional Conduct Panel, properly directed, is more likely than not to make a finding of a failure to meet the professional standards against the Member. The IAC should consider whether the available evidence is reliable.
14. The Investigation and Assessment Committee will have regard to the fact that the Professional Conduct Panel is required to determine that the facts underlying an allegation are more likely than not to be true (on the balance of probabilities). The Investigation and Assessment Committee should take into account that the onus is on the prosecutor to prove their case and not on the Member complained against to disprove the case.
15. The Investigation and Assessment Committee should not conduct itself as a hearing panel and should not seek to make findings of fact. It may need to assume that evidence at any hearing will correspond with the information before it.
16. It is not the role of the Investigation and Assessment Committee to resolve substantial conflicts in the available evidence such as deciding which of a number of differing versions of events is the correct one.

17. The Investigation and Assessment Committee must consider whether the complaint should be dealt with by way of the disciplinary proceedings track or the practice review proceedings track, taking account of the wider public interest including the protection of the public and the need to maintain public confidence in the counselling professions.
18. The Investigation and Assessment Committee should only put forward allegations that meet the proceedings test.
19. The Investigation and Assessment Committee will be clerked by an appropriate person who may advise on any technical and procedural points that may arise.

### Accepting complaints out of time

20. When considering whether or not to accept a complaint out of time in accordance with paragraph 1.7 c) of the Procedure, the IAC will have regard to the following factors:
  - i. The length of time that has elapsed since the conduct giving rise to the complaint occurred and whether the quality of evidence available is likely to be affected by the passage of time;
  - i. Whether there is good and sufficient reason for the Complainant to have submitted their complaint outside the time limits specified in paragraphs 1.7 a) or b) of the Procedure;
  - ii. The seriousness of the complaint and whether it would be in the interests of justice to extend the time limit for submission of the complaint.
21. The IAC will consider the written explanation provided and decide as a preliminary issue, whether or not the time period for submitting the complaint should be extended.

22. What constitutes a 'good and sufficient' reason shall be solely at the discretion of the IAC which may take advice from any person as it deems appropriate.
23. All written explanations will form part of the complaint submission and will be available to the Member concerned.