

By-law 1: Complaints procedure

Approved by CoM on: August 21, 2000
Approved by Ethics Committee on:

Definitions

1 This document, entitled 'complaints procedure', constitutes by-laws of the Committee of Management of the Australian Centre for Psychoanalysis. It may be altered only by the CoM and only with the approval of the Ethics Committee, in accordance with clause 8(3) of the ACP Constitution.

2 The Ethics Committee is a standing committee of the ACP appointed by the CoM in accordance with clause 8(2) of the ACP Constitution.

Procedure

3 If a breach of the Code of Professional Conduct is alleged and a person wishes to lodge a formal complaint against a member of the ACP, the complainant must register the complaint in writing (addressed "To the attention of the President, private and confidential") with the ACP. Upon receipt of a complaint the President must, within 14 days, give or send to the member who is the subject of the complaint notice in writing of the nature and details of the complaint and a copy of the 'complaints procedure'. The President must also, within 14 days, give or send to the complainant a written acknowledgment of the complaint accompanied by a copy of the 'complaints procedure'. In the event that the President is the subject of a complaint the President must delegate all responsibilities under these by-laws to a person appointed by the ACP Committee of Management.

4 Within 28 days of notifying the member who is the subject of the complaint, a preliminary investigation will be conducted by the President of the ACP and the Chair of the Ethics Committee which will decide if there is a case to answer. In the event that agreement is not reached the matter will be referred to the Ethics Committee for hearing. If the preliminary investigation finds there is no case to answer the complainant and the member complained against must be notified in writing within 14 days of the decision and of the fact that an appeal can be made against this decision. If an appeal is to be made it must be lodged with the President of the ACP in accordance with paragraph 13.

5 If there is a case to answer, the matter shall be dealt with by way of an initial hearing conducted by the Ethics Committee. The hearing shall be held not earlier than 14 days and not later than 28 days after notice has been given to the member complained against and the complainant in accordance with paragraph 3.

6 For the purpose of giving notice in accordance with paragraph 3 the Secretary must, within 14 days, cause to be given to the member complained against and the complainant a written notice:

setting out the resolution of the preliminary investigation that there is a case to answer;

stating that the member complained against and the complainant, or their representatives (legal or otherwise), may attend or address the hearing before the Ethics Committee;
stating the date, place and time of the hearing;
informing the parties that they may, instead of appearing, give to the Committee before the date of the hearing a written statement seeking revocation of the decision;
informing the parties that they have a right of appeal against the decision of the Ethics Committee in accordance with paragraph 13.

7 The Ethics Committee must:

give the member complained against and the complainant, or their representatives, an opportunity to be heard;
give due consideration to any written statement submitted by the member complained against or the complainant;
make a determination in relation to the complaint, in accordance with paragraph 11, and where appropriate, determine a penalty, in accordance with clause 8(1) of the ACP Constitution.

8 The members of the Ethics Committee are bound to confidentiality. The hearing shall be conducted in camera and records of the hearing shall be held safely in such a place as to remain confidential and may only be re-opened under one or more of the following conditions:

a further complaint is made against the member;
the appeal process has been initiated by either party to the complaint.

9 Three members of the Ethics Committee shall be considered to constitute a quorum. The chair of the Ethics Committee shall not be the President of the ACP.

10 No member of the Ethics Committee shall have a close friendship, collegial relationship or familial connection with either the complainant or the member complained against which may bias his or her capacity to give either party a fair hearing. If this is the case, that member of the Committee shall step aside from hearing the complaint, which will be undertaken by the other members of the Ethics Committee. The decision that a member of the Ethics Committee step aside from a particular hearing may be made by that person, or by the complainant, or by the member complained against. If the member complained against is one of the members of the Ethics Committee, that person shall stand down from the Ethics Committee and the other members shall undertake the hearing.

11 The hearing of the Ethics Committee must find one of the following outcomes:

a breach of the Code of Professional Conduct has not been demonstrated; or
there has been a breach of the Code of Professional Conduct.

If there has been a breach of the Code, the Ethics Committee shall determine a penalty in accordance with clause 8(1) of the ACP Constitution.

12 The decision of the Ethics Committee is deemed to be that of the majority of the members of the Ethics Committee. The member and the complainant will be informed in writing of the decision and the reasons for the decision.

Appeal

13(1) An appeal may be made against the decision of the Ethics Committee or the preliminary investigation that there is no case to answer. Appeals shall be addressed "To the attention of the President of the ACP, private and confidential". The Committee of Management will appoint a committee consisting of one member of the Committee of Management other than those on the Ethics Committee and another person who is not a member of the ACP to hear the appeal against the findings of the Ethics Committee.

13(2) The hearing of the appeal shall be held not earlier than 14 days, and not later than 28 days, after notice has been given to the member complained against and the complainant. The Secretary shall give notice of the appeal to both parties in writing:

- (a) stating that the member complained against and the complainant, or their respective representatives (legal or otherwise), may address the Committee members hearing the appeal;
- (b) stating the date, place and time of the hearing; and
- (c) informing the member complained against and complainant that they may either attend the hearing of the appeal or give to the Committee before the date of the hearing written submission relating to the appeal.

13(3) The Committee hearing the appeal must:

- give the member complained against and the complainant, or their representatives, an opportunity to be heard;
- give due consideration to any written statements/submissions submitted by the member complained against or the complainant; and
- make a determination, such determination being either an affirmation of the Ethics Committee decision or another decision and penalty as detailed in paragraph 8(1) of the ACP Constitution.

The decision of the Committee of appeal is final. The member complained against and the complainant will be informed in writing of the decision and the reasons for the decision.

13(4) The resignation of the member complained against shall not impede the hearing of the complaint as long as the alleged offence took place during that person's membership.

Reporting

14 The Ethics Committee shall report annually to the Committee of Management of the ACP on the number and type of complaints heard during the preceding year.