



英国中医推拿&反射疗法学会
The Chinese Tui Na & Reflexology Therapists Association UK

The Chinese Tui Na & Reflexology Therapists Association UK
(CTNRTA)

DISCIPLINARY PROCEDURES

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1. INTRODUCTORY

- 1.1. The Chinese Tui Na & Reflexology Therapists Association UK ('the Association') is established to further the objects set out in clauses 1-3 of its Rules, the second of which is "To ensure that the highest standards of practice and ethical behaviour are achieved by its membership."
- 1.2. To these ends, the Association has laid down a Code of Professional Conduct and Ethics ('The Code'), and formed an Ethics Committee, charged with the duties described below at paragraph 2.1. The Ethics Committee reports to the Membership Committee which is Chaired by the CTNRTA's Registrar and both committees report in turn to the CTNRTA Independent Scrutiny and Advisory Committee.
- 1.3. The primary purpose of the present document is to set out a procedure (at paragraphs 3 to 14 below) whereby complaints of misconduct against Members of the Association, as defined in the Code, may be investigated and dealt with promptly and fairly and with proper regard to the interests of the public, the patient, the complainant, the member of the Association, and the profession, and to the balances between those interests.
- 1.4. This procedure applies in full even if, before exhaustion of this procedure, a member resigns from the Association, fails to renew membership or comply with CTNRTA requirements. In such a case, the Association will retain all powers which would have been available to it if the former member were still in membership.

2. THE ETHICS COMMITTEE

Accountability and functions

- 2.1. The Ethics Committee is accountable to the Members of the Association via the Membership Committee and is established in accordance with the Rules of the Association. Its deliberations are confidential but it shall report to the Independent Scrutiny and Advisory Committee. The function of the Ethics Committee is fourfold. Its primary function is to investigate and adjudicate upon potential breaches of the Association's Code that are brought to its notice in accordance with the



procedure set out below. Secondly, it administers the Serious Impairment to Fitness to Practise Procedure (which is documented separately). Thirdly, it produces and publishes an anonymised report on an annual basis, when practical, identifying the lessons that may be learned from the complaints and other concerns that have been investigated. In addition, the Ethics Committee may meet as and when it thinks fit, to consider, give guidance upon, advise and/or report upon any ethical issue concerning the profession of massage.

2.2.

Membership of the Ethics Committee

2.3. The Ethics Committee will determine its own membership subject to the following provisions:

2.3.1 no serving member of the Executive Committee or officer of the Association may be a member of the Ethics Committee;

2.3.2 the Ethics Committee shall consist of at least 8 Members of the Association, and at least 8 lay members;

2.3.3 the Members are required to be either:

2.3.3.1 selected Members of the Association who have held at least one of the following posts:-

- An officer of the Association;
- Chair of the Training Council, Membership Committee or a Subcommittee.
- Trade Union representative; Chair of the Assessors' panel; Chair of the Regional Advisors; or

2.3.3.2 co-opted Association members and non-members of the Association who in the opinion of the Ethics Committee have relevant experience and/or expertise. The co-opted non-members shall be known as Ethics Committee lay members.

2.4. Members of the Ethics Committee shall normally serve a five year term of office and may serve a further five years with the agreement of the Ethics Committee, for a maximum of two consecutive terms. They may



be selected or co-opted for membership again after a break of not less than one year. In the event that the membership of the Ethics Committee falls below 12 as a result of the death or resignation of an existing member or lay member, the current Chair of the Ethics Committee will arrange that at a meeting of the Ethics Committee new members will be selected and/ or co-opted to fill the vacancies as appropriate.

- 2.5. Annually, any member of the Ethics Committee who is due to retire from the Committee will inform the Chair of the Ethics Committee; the Chair of the Ethics Committee will inform the members of the Ethics Committee, seek nominations from them for new members under the provisions above and arrange that the selection of new members is completed at a meeting of the Ethics Committee.

Consultation

- 2.6. The members of the Ethics Committee may consult non members of the Association as they think fit and such consultation may take place at meetings of the Ethics Committee when appropriate.

Resignation

- 2.7. Any member of the Ethics Committee may resign by giving one month's written notice to the Chair of the Ethics Committee.
- 2.8. In the event of the resignation of the Chair of the Ethics Committee, the Chair designate will commence his/her term of office as Chair. If there is no Chair designate, the Committee will immediately elect one of their numbers to complete the term of the resigning Chair. If the Chair designate resigns, the members of the Committee will immediately elect a Chair designate from their own number to complete the term of office of the resigning Chair designate.

Conflicts of interest

- 2.9. Ethics Committee members shall play no part in investigations of complaints where there is, or could reasonably appear to be, a conflict between their own professional or personal interests, including a prior relationship with any party to a complaint, and their obligations to fairly and thoroughly investigate and determine disciplinary matters under this policy.



3. THE LEGAL MEMBERS' PANEL

Membership

- 3.1. Using an appropriate and fair selection process, the CTNRTA shall identify and appoint members of a Legal Members' Panel of at least three currently practising barristers or solicitors who may be appointed to sit as members of Disciplinary Committees when dealing with cases of unusual seriousness or complexity. The Association shall make arrangements to remunerate them on a fixed fee basis for each Disciplinary Committee they are involved with.
- 3.2. The members of the Legal Members' Panel may not be members of the Ethics Committee for other purposes.

Conflicts of interest

- 3.3. Legal Members' Panel members shall play no part in investigations of complaints where there is, or could reasonably appear to be, a conflict between their own professional or personal interests, including a prior relationship with any party to a complaint, and their obligations to fairly determine disciplinary matters under this policy.

4. PRELIMINARY CONSIDERATION OF POSSIBLE BREACHES OF THE ASSOCIATION'S CODE

Members' duty to report to the Ethics Committee

- 4.1. Any member of the Association who receives from any other person by any means whatsoever information which indicates that another member may have committed a breach of the Association's Code which either:
 - 4.1.1 has occurred in the course of the conduct of the member's profession as a massage therapist and has compromised or may compromise the welfare of a child or a vulnerable adult;
 - 4.1.2 or could, if proven, bring the profession into disrepute;

shall report the matter in writing to the Chair of the Ethics Committee. If the information received by the member takes a documentary form, the letter or other document shall be passed to the Chair of the Ethics Committee. The matter shall be treated as a deemed complaint and given preliminary consideration under paragraph 3.5.



Other deemed complaints

4.2. Information which comes to the attention of any member of the Ethics Committee that gives reason to suppose that a member may have committed a breach of the Association's Code shall be treated as a complaint about that member's conduct if:

4.2.1 it is in the public domain;

4.2.2 it has come to light as a result of an investigation by another professional or statutory body; or

4.2.3 it is in writing;

and in all cases shall be given preliminary consideration under paragraph 4.5.

Seeking clarification and authority for disclosure and use of information

4.3. The Association recognises that complaints may be made by colleagues, patients, families, employers or outside agencies, and that complaints may be expressed in the first instance either orally or in writing, or in terms which do not state expressly that they amount to a complaint. It also recognises that some vulnerable adults, disabled people or children may not be able to make a written complaint. It is for that reason that this part of the procedure makes provision for clarification of the intentions of potential complainants.

4.4. Upon receipt of a complaint the Chair of the Ethics Committee shall write to the complainant:

4.4.1 asking him or her to confirm (if the complainant has not already done so) that s/he wishes to make a formal complaint and (if necessary) to confirm or clarify the full grounds of the complaint in writing or, if this is not possible because of the vulnerability, disability or age of the complainant, to contact the Chair of the Ethics Committee to summarise the complaint on the telephone or in person;

4.4.2 sending the complainant a copy of the Code and a copy of this Procedure;

4.4.3 seeking authorisation for disclosure of the complaint to the member complained against; and

4.4.4 where appropriate, seeking the complainant's authority for the member to disclose



information to the Investigating Panel to the extent necessary to enable the Panel to properly investigate.

The complainant will be asked to sign and return a proforma authorisation for disclosure for the purposes of 4.4.3 and, where appropriate, 4.4.4 to the Chair of the Ethics Committee.

Preliminary consideration, decision on referral and appointment of Investigating Panel

- 4.5. On completion of the above steps, the Chair of the Ethics Committee will give the complaint or deemed complaint preliminary consideration. Subject to paragraph 15, if the Chair considers that information received, together with any information about similar concerns that has come to the attention of the Chair or their predecessor/s in the last six years, indicates professional misconduct in breach of the Code may have occurred and that an investigation is called for to establish the facts, s/he will inform the complainant accordingly and will appoint two members of the Ethics Committee to investigate (the 'Investigating Panel') and, if appropriate, present the case against the member in due course. Unless it is wholly impracticable, the panel will consist of one massage therapist member and one lay member of the Ethics Committee. The Chair's letter informing the member that the matter is to be investigated further shall:
- 4.5.1 identify which provision/s of the Code appear/s to have been breached on the face of the material that has been considered;
 - 4.5.2 enclose copies the material considered by the Chair, identifying those that appear to be relevant to the matters to be investigated by the investigating panel;
 - 4.5.3 explain to the member that they will have the opportunity to respond in full during the investigating panel's enquiries and that, at this point of the procedure, the Ethics Committee has reached no concluded view on the complaint save that there is a prima facie case of professional misconduct which calls for an investigation;
 - 4.5.4 Indicate that they are free to take legal advice on their position if they wish and, if the subject matter of the complaint might have financial consequences for them, notify their insurers; and
 - 4.5.5 identify the Investigating Panel members, if they have been appointed.

Time frame



- 4.6. The Chair will endeavour to reach a decision on whether a complaint should be referred to an investigating panel as quickly as possible after receipt of the material on which the complaint is based and within 20 working days of receipt of the full written complaint. If no decision has been reached 28 days after receipt of the material, the Chair will write to the member concerned along with the complainant or the person who provided the information under consideration as a deemed complaint, explaining that they are considering making a referral to an investigating panel, why a decision has yet to be made and when it is expected that a decision will be made.

Maintaining records of complaints that are not referred

- 4.7. If on preliminary consideration the Chair considers that the complaint does not represent an allegation of misconduct that requires investigation or, after seeking clarification from the complainant or other source(s), the complaint remains unintelligible, (s)he may decide that no further action will be taken and, when there is an identified complainant, (s)he will inform the complainant in writing accordingly. The Chair shall keep a concise record of the nature of the complaint, its source, the identities of the complainant (if any) and the member and the date of their decision for the sole purpose of allowing any patterns of similar concerns about that member to be identified. This record shall be destroyed by the CTNRTA as soon as practicable after the six year anniversary of the decision not to investigate has passed.

5. INVESTIGATING A COMPLAINT AGAINST A MEMBER

Investigating Panel functions

- 5.1. The members of the Investigating Panel have the duty of investigating the complaint thoroughly and promptly, and deciding in the light of their investigation whether there is a case that requires a Disciplinary Hearing. If there is subsequently a Disciplinary Hearing, the members of the Investigating Panel will present the case against the member which arises out of their investigation.

The investigation

- 5.2. The members of the Investigating Panel shall take such steps to investigate as in their discretion they consider appropriate. Their decisions should be taken jointly. If they cannot agree on any matter, it should be determined by the Chair of the Ethics Committee. They may, at their discretion, take steps to investigate either jointly or alone. They may interview the complainant and any other witness or potential witness suggested by the complainant.



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They may ask the complainant or any third party to furnish such documents as they may consider appropriate. In dealings with third parties members of the Investigating Panel will have particular regard to the need of confidentiality.

- 5.3. The members of the Investigating Panel will offer the member the opportunity to respond to the complaint either in writing or personally at a meeting and/or by putting forward documents for consideration and at any such meeting the member shall have the right to be represented by any one person of his/her choice, including a union representative or, at the expense of the member, a practicing barrister or solicitor.

The members of the Investigating Panel shall offer any complainant the opportunity to be interviewed and, if they agree, interview them. The sequence of interviews and enquiries will be a matter for the Investigating Panel to determine but, subject to duties of confidentiality owed to third parties, they shall ensure that any complainant has a fair opportunity to comment in response to the information provided by the member during the investigation whether at interview or in writing as appropriate.

- 5.4. The members of the Investigating Panel may, at their discretion, interview any other person suggested by the member who may be able to assist their enquiry and may consider documents put forward by the member.
- 5.5. The members of the Investigating Panel will maintain an accurate written record of any meeting or interview which they hold, whether with the complainant, the member, or any other person. They will disclose a copy of such record to the interviewee and invite the interviewee to agree it as an accurate summary of the interview or meeting. They may also make a tape or digital recording of any meeting or interview, provided they first obtain the consent of those present.
- 5.6. The Investigating Panel may seek expert assistance, including legal advice, as they consider fit at the cost of the Association.

Investigating Panel's decision on whether there is a case to answer and power to make recommendations relating to other concerns

- 5.7. At the end of their investigation, the Investigating Panel shall decide whether or not there is a case to answer of a breach of the Code and, if there is, they shall refer it for a Disciplinary Hearing unless mediation under paragraphs 5.11 to 5.13 is appropriate, agreed to and successful. In making this decision, they (1) shall not place the burden of proving or disproving such a requirement on either the complainant or the member



complained against respectively; and (2) shall resolve any doubt in favour of the complainant and in favour of there being a hearing. They shall inform the member, the complainant and the Chair of the Ethics Committee in writing of their decision as to which, if any, aspects of the complaint amount to a case to answer and, in summary, their reasons ('the Investigating Panel Report').

- 5.8. Provided the Investigating Panel has given the member, complainant or other party notice and a reasonable opportunity to respond before preparing its Investigating Panel Report, it may identify in a supplementary document or letter, or at an informal meeting any evidence-based concerns it has about matters beyond the complaint and make recommendations of action that may be taken to address those concerns. Any concerns recorded in supplementary document or letter, or expressed at such a meeting are not disciplinary findings and any recommendations made are not binding on the person or organisation to whom they are addressed.
- 5.9. If the members of the Investigating Panel decide that there is not a case to answer at a Disciplinary Hearing, the matter will be taken no further under this procedure.

Mediation

- 5.10. If the members of the Investigating Panel decide that there is a case to answer in relation to a matter other than a deemed complaint, the Investigating Panel will consider whether it is capable of being satisfactorily addressed at independent mediation. They will have regard to:
- 5.10.1 the seriousness of the complaint (keeping in mind that it would be a highly exceptional course to propose mediation if conduct is alleged to have occurred in the course of the Member's practice as a massage therapist that has compromised, or may compromise, the welfare of a child or a vulnerable adult or which would, if proven, bring the profession into disrepute);
- 5.10.2 the interests of the complainant, Member under investigation, public and
- 5.10.3 the likelihood of agreement on a response to the complaint consistent with those interests and those of the CTNRTA being reached.
- 5.11. If the Investigating Panel decides there is a reasonable prospect of the case to answer being satisfactorily addressed at independent mediation and mediation is otherwise



appropriate, they will seek the consent of the complainant and member under investigation and, subject to that consent, the CTNRTA will make arrangements for an independent mediator to be appointed at its expense to meet with the complainant, member and panel to seek an agreement as to a mutually acceptable resolution of the matter including, if appropriate, the member taking appropriate remedial steps to be monitored by the CTNRTA.

Referral for a disciplinary hearing

5.12. If there is a case to answer that:

5.12.1 is proposed for mediation, but the complainant and /or the member do not agree to it;

5.12.2 proceeds to mediation but there is no outcome satisfactory to the complainant, member under investigation and panel; or

5.12.3 is not appropriate for mediation;

it will be referred for consideration at a Disciplinary hearing.

5.13. The members of the Investigating Panel will endeavour to reach their decision on referral to a Disciplinary hearing within 60 working days of their appointment. If it appears to the Investigating Panel that the timescale cannot be met, they will inform the Chair of the Ethics Committee in writing giving reasons that explain the need for an extension. If the Chair agrees to an extension, (s)he will give agreement in writing to the Investigating Panel and send appropriate letters of apology and explanation to the complainant and member complained against.

Preparation and dissemination of preliminary bundle

5.14. If a member has been notified there is a case to answer, the Investigating Panel members shall prepare a bundle of documents ('the Preliminary Bundle') including at least the referral decision, the original complaint or complaints, an account of the investigation carried out by the members of the Investigating Panel, notes of any interviews or meetings conducted by the Panel and any other documents which the members of the Panel consider relevant at that time. This bundle should be sent to the member, or their appointed representative, not less than 10 working days before the arrangements meeting referred to in paragraph 6.2 below.



- 5.15. Bearing in mind duties of confidentiality owed to third parties, the Investigating Panel members shall decide what, if any, documents from the Preliminary Bundle may be provided to the complainant (or the person or organisation that was the source of the deemed complaint) to enable them to properly understand the decision on referral.

6. PROCEDURE BEFORE HEARING

Disciplinary Committee appointment

- 6.1. If the Investigating Panel decides that there is a case to answer the Chair of the Ethics Committee will appoint a Disciplinary Committee of three members of the Ethics Committee who have not taken part in any consideration of the complaint by the Ethics Committee during the period of investigation. So far as practicable, the Disciplinary Committee will consist of a member or members whose specialist experience or expertise may be material to the issues in question. Unless it is wholly impracticable, the Disciplinary Committee will have a majority of lay members. If, in the view of the Chair of the Ethics Committee, the case is an unusually serious or complex one he or she may invite a member of the Legal Members' Panel to sit as a member of the Disciplinary Committee in addition to the three members already appointed. The members of the Disciplinary Committee shall not include the members of the Investigating Panel or the Chair of the Ethics Committee. The members of the Disciplinary Committee shall appoint a Chair from among their own number.

Arrangements meeting

- 6.2. The members of the Disciplinary Committee shall, within 30 working days of their appointment, convene a meeting of the members of the Investigating Panel and the member and/or his/her representative for the purposes of making procedural arrangements for the Disciplinary Hearing. This arrangements meeting is an administrative in nature and does not form part of the Disciplinary Hearing. Its purpose will be to enable the Investigating Panel and the member complained against to give an initial indication of the amount of documentation which they intend to present, the number of witness they intend to call, whether they propose to be represented and if so by whom, the estimated duration of the hearing, the fixing of dates for the hearing, and any other procedural or administrative matters which they think fit. In all cases the Disciplinary Committee shall consider what arrangements can be made to ensure any witnesses to be called will not be discouraged from giving evidence and adequately supported when they do (for example, through provision of a person other than a Committee member who has had no



involvement in the investigation to explain the process, facilitating the attendance of a friend or other supporter, designating separate waiting areas for witnesses and the member, using screens to protect vulnerable witnesses giving evidence or, exceptionally, requiring a member representing themselves, or any representative, to put questions through the Chair of the Disciplinary Committee).

- 6.3. The arrangements meeting may proceed despite the absence of any of the above parties, who will nevertheless be invited to set out their view in writing on these or any other material points to be received by the Association no less than 24 hours before the start of the meeting. The meeting will consider any such views when making the arrangements for the hearing. In the event it appears for good reason impracticable to convene the meeting within 30 days of the Disciplinary Committee's appointment, its Chair shall have power to extend the time limit. The Chair may make a tape or digital recording of the meeting, provided they first obtain the consent of those present.
- 6.4. If the Investigating Panel decides not to call any complainant as a witness they shall explain their reasons for not doing so to the Disciplinary Committee at the arrangements meeting. The Disciplinary Committee may, if it wishes to do so, ask for witnesses who have relevant evidence to give to be called by the Investigating Panel even if the Panel does not consider it necessary to call them.

Later appointment of a member of the Legal Member's Panel

- 6.5. If no member of the Legal Members' Panel has been appointed as a member of the Disciplinary Committee before the arrangements meeting, but the Disciplinary Committee considers this is appropriate having considered the seriousness and complexity of the case in the light of what was said at that meeting, the Chair of the Ethics Committee may make such an appointment before the Disciplinary Hearing takes place.

Preparation and dissemination of the Member's and Hearing bundles

- 6.6. Not less than 15 working days before the start of the hearing, the member shall make available copies of any documents ('the Member's Bundle') which s/he wishes to place before the Disciplinary Committee.
- 6.7. Using the Preliminary Bundle and Members Bundle (if any) along with any other relevant documents, the members of the Investigating Panel will make up a paginated set of papers for the purposes of the hearing ('the Hearing Bundle'). Copies of the Hearing Bundle will be sent to the members of the Disciplinary Committee and to the member not less than 10



working days before the start of the hearing.

- 6.8. Bearing in mind duties of confidentiality owed to third parties, the Disciplinary Committee shall decide what, if any, documents from the Hearing Bundle it is appropriate to provide to witnesses (including, where they are to be called, the complainant or the person or a representative of the organisation that was the source of a deemed complaint) to enable them to properly understand the issues that arise for determination and prepare to give evidence.

Use of late documents

- 6.9. The Investigating Panel or the member may at the hearing seek the permission of the Disciplinary Committee to produce documents which have not been included in the Hearing Bundle (for example, material that is new or which has only come to light since the Preliminary Bundle and Member's Bundle were prepared), but the Disciplinary Committee may at its discretion and having regard to the overriding objective (see paragraph 6.1) decline to receive such documents and may proceed without considering them.

Representation

- 6.10. The member shall have the right to be represented by any one person of his/her choice, including a union representative or a practicing solicitor or barrister. The chosen representative may at any stage be excluded from the proceedings if in the opinion of the Disciplinary Committee, (s)he is disruptive, or is plainly unsuitable, for instance due to a prior relationship with any person involved in the case other than the member who is subject to the Proceedings.

Hearing note

- 6.11. The members of the Disciplinary Committee shall arrange for a note (not a transcript) to be made of the hearing, a copy of which will be made available after the conclusion of the hearing on request to the member and, subject to duties of confidentiality to third parties, to any complainant. Such note will be made or approved by the Chair of the Disciplinary Committee. The Chair may also make a tape or digital recording of the hearing, provided they first obtain the consent of those present.

Hearings, adjournments and postponements



- 6.12. Disciplinary hearings shall be held in private. The Investigating Panel, and the member and (subject to the provisions of 5.6 above) his/her representative shall be entitled to be present throughout the hearing but witnesses including the complainant shall be entitled to be present only while giving evidence. Witnesses are called to help establish facts relevant to the conduct being considered, its impact and, if a breach of the Code is established, the extent to which it has been mitigated. Witnesses, including the complainant, do not have the right to be represented. Witnesses may be accompanied with the agreement of the Chair of the Disciplinary Committee, if, for example, they need support. Any person accompanying a witness may do so on the understanding that (s)he is not a representative and may not participate in the proceedings and must before the start of the meeting undertake in writing to maintain confidentiality about the proceedings as a condition of attendance. Others may attend at the discretion of the Disciplinary Committee.
- 6.13. The Disciplinary Committee may adjourn or postpone the hearing or any part of it and may proceed in the absence of any person. It may, exceptionally, adjourn or postpone the hearing or any part of it to allow a witness to be called when the need for their evidence has arisen due to a development at the hearing that was not, and could not reasonably have been, anticipated at the preliminary meeting.

7. PROCEDURE AT THE HEARING

Objective

- 7.1. The over-riding objective of the Disciplinary Committee in the Proceedings is to deal justly with the case before it, having regard to each of the interests identified in paragraph 1.3 of this procedure, and to the balance between such interests. At any stage at which the Committee is to exercise its discretion, it shall do so with regard to the overriding objective.

Introductions and housekeeping

- 7.2. All present will identify themselves and confirm that they all have the same set of paginated papers.

Presentation of the case to answer

- 7.3. A member of the Investigating Panel will begin with a presentation of the case against the member. The presentation will usually include a summary of the allegations, the investigation, and the documentary evidence.



- 7.4. The presenting member of the Investigating Panel may then call witnesses. Each witness will be questioned by a panel member, then by the member or his/her representative, then by the members of the Disciplinary Committee and then (as re-examination) by the presenter. This procedure will be followed in turn in relation to each of the witnesses called by the Investigating Panel.

Presentation of the member's case

- 7.5. The member complained against or his/her representative may address the members of the Disciplinary Committee before calling evidence.
- 7.6. The above procedure will be followed with suitable modification in relation to each of the witnesses called on behalf of the member including the member him/herself when (s)he gives evidence.

Evidence

- 7.7. Either side may, instead of or in addition to calling witnesses, present a written statement or affidavit by or on behalf of a witness who is unable to attend the hearing. Any such document must clearly identify the name and address of the person making the document and must be signed and dated. The members of the Disciplinary Committee may at their discretion agree to receive or reject such written evidence having regard among other things to the reasons for the absence of the person giving the evidence, the nature of what is set out in the written evidence, and the unavailability for questioning of the witness.
- 7.8. The rules of evidence do not apply at the hearing. Accordingly, the Disciplinary Committee may, at its discretion, accept an adult third party's account of the evidence of a child, or a child's written account, whether or not signed or sworn, or a video or tape recording of a child giving evidence.

Closing submissions

- 7.9. After completion of the evidence, the member or his/her representative will be invited to make a closing submission. The Investigating Panel will then be invited to make a closing submission. At the conclusion of the closing submissions the Disciplinary Committee will declare the proceedings concluded and will withdraw to consider its decision.
- 7.10. Where the member has admitted a breach of the Association's Code of Professional Conduct and Ethics, evidence and submissions at the hearing may be directed to the



question of the severity of any penalty to be imposed.

8. THE DECISION

Form and timing of decision and power to make recommendations relating to other concerns

- 8.1. The members of the Disciplinary Committee shall not give their decision orally or immediately. Their decision may be by a majority, and in that case the written decision will state that it is a majority decision, but the decision shall not include a statement of the dissenting minority view.
- 8.2. The members of the Disciplinary Committee will prepare a written decision, setting out their findings of fact, with reasons and, where the member has admitted a breach of the Association's Code of Professional Conduct and Ethics, will state any penalty which they impose, with reasons. The decision will be signed by the Chair of the Disciplinary Committee, or, in his / her incapacity, by all other members of the Committee.
- 8.3. The Chair of the Disciplinary Committee will send the written decision to the member, to the complainant and to the Chair of the Ethics Committee within 20 working days of the conclusion of the hearing. In the event it appears for good reason impracticable to send the decision within this time frame the Chair shall have power to extend it for up to 10 working days.
- 8.4. Provided the Disciplinary Committee has given the member, complainant or other party notice and a reasonable opportunity to respond before preparing its decision, it may identify in a supplementary document or letter, or at an informal meeting, any evidence-based concerns it has about matters beyond the complaint and make recommendations of action that may be taken to address those concerns. Any concerns recorded in supplementary document or letter, or expressed at such a meeting are not disciplinary findings and any recommendations made are not binding on the person or organisation to whom they are addressed. The disciplinary committee shall have discretion in deciding who, besides the subject of such concerns, should receive the supplementary document or letter, but in all cases, the Chair of the Ethics Committee will be sent one and the CTNRTA shall retain a copy for six years and then destroyed.

Dissemination of the decision

- 8.5. The Chair of the Ethics Committee will inform the Chair of the Membership Committee who



shall inform the members of the Association, in such manner as (s)he thinks fit, of any decision that a member has committed a breach of the Association's Code of Professional Conduct and Ethics which will result in expulsion from the Association. This will not be done until either the time for appealing provided by paragraph 9.2 has expired without the member giving notice of appeal, or until any such appeal has been dismissed.

8.6. The Chair of the Disciplinary Committee shall also produce a concise note for posting on the CTNRTA website which identifies the allegation made, nature of the breach of the Code found, save for health-related breaches, the member responsible and any penalty applied. The note will be posted on the CTNRTA website 28 days after the outcome of the disciplinary hearing or 28 days following the outcome of any in-time appeal that does not overturn the finding of a breach of the Code. The note shall remain posted for 18 months, save where the penalty is:

8.6.1 a restriction on practice, in which case the note shall remain posted for the period of the restriction or 18 months, whichever is the longer;

8.6.2 a suspension, in which case the note shall remain posted for 18 months or six months after it has have lapsed, whichever is the longer; or

8.6.3 an expulsion, which shall remain posted for 10 years.

8.7. The Chair of the Ethics Committee may write to any employer of the Member identifying the Member and supplying the information contained in the concise note once it is published on the CTNRTA website. The Chair of the Ethics Committee has discretion to provide further information, if requested, subject to the need to protect any confidentiality in information that comes to light as a result of a complaint investigation.

9. PENALTIES

Available penalties

9.1. The Disciplinary Committee shall have the power to impose the following penalties:

9.1.1 to expel the member from the Association;

9.1.2 to suspend the member from membership of the Association for a specified period of up to 3 years;

9.1.3 to require that the member continue in membership or continue in practice subject



to conditions to be specified for a period to be specified. Conditions may include requirements as to personal health, further training and conditions, restrictions and requirements regarding the member's participation in the activities of the Association (e.g. attendance at specified meetings or holding office or membership of committees and sub-committees);

9.1.4 the member be formally warned in writing as to matters specified; and

9.1.5 that the member be formally advised and/or counselled in writing as to matters specified.

Penalties to be dealt with separately from disputes over conduct and breaches of the Code

9.2. Where the member has not admitted a breach of the Association's Code of Professional Conduct and Ethics, and the Disciplinary Committee finds that the member has committed such a breach, it shall, before deciding what penalty to impose, invite the member to make written representations to it within a period of 10 working days, and it shall not impose any penalty until that period has expired.

9.3. Such representations shall normally be in writing only, but the Disciplinary Committee may hold a further hearing if, having regard to the evidence, the nature of the allegations, or to the written representations on penalty, it considers it appropriate to do so.

10. APPEAL

Permitted grounds of appeal

10.1. Subject to the following provisions, the member may appeal against any decision of the Disciplinary Committee on the grounds that:

10.1.1 the conduct of the matter by the Disciplinary Committee was procedurally unfair; or

10.1.2 there is new evidence which could not reasonably have been made available to the Disciplinary Committee; or

10.1.3 if the member considers the penalty harsh or disproportionate.

Initiating an appeal

10.2. The member shall institute any such appeal within 15 working days of the date of the



written decision of the Disciplinary Committee by writing to the Chair of the Ethics Committee, setting out whether s/he wishes to appeal against the decision, or the penalty or both and the grounds on which the appeal is brought. If s/he wishes to submit fresh evidence, s/he must state in the letter, what the new evidence is and why it was not presented at the original hearing.

Appointment of an Appeal Committee

- 10.3. On receipt of an appeal the Chair of the Ethics Committee shall consult with the Chair of the Membership committee and they shall appoint an Appeal Committee of three members of the Association who are not current members of the Ethics Committee, and who have been qualified as Massage Therapists for not less than 6 years and who have no previous involvement in the matter. Whenever practicable the Chair of the Ethics Committee shall appoint an Appeal Committee that includes former Ethics Committee members and a former lay member.

Appeal Hearings

- 10.4. An appeal hearing shall take place within 30 working days of receipt of the member's letter of appeal.
- 10.5. Appeals will be heard in private. The same rules of representation will apply as above. The member may attend, as may the members of the investigating panel, but not the members of the Disciplinary Committee. The members of the Appeal Committee and the parties' representatives shall have available to them the set of papers used at the Disciplinary Hearing, any written statements in evidence available to the Disciplinary Committee, copies of the notes of proceedings of the Disciplinary Committee, the decision of the Disciplinary Committee and the member's letter of appeal.
- 10.6. The member or his/her representative may make representations in support of his/her appeal. If the appeal seeks to rely on fresh evidence, the Appeal Committee may hear or refuse to hear that evidence at its discretion, having regard to the cogency of the reasons why this evidence was not produced at the original hearing, to the potential weight of the new evidence, and the over-riding objective (see para 6.1).
- 10.7. A member of the Investigating Panel may reply.
- 10.8. The members of the Appeal Committee may ask the representatives questions. After questions, the Appeal Committee will declare the appeal hearing closed.



Decisions on appeals

- 10.9. The Appeal Committee may reach its decision by a majority. It shall give its decision with reasons in writing within 20 working days of the appeal hearing, and the decision will be sent to the member, to the Chair of the Membership Committee, Chair of the Ethics Committee and to the complainant.
- 10.10. The Appeal Committee may reject or uphold the decision of the Disciplinary Committee in whole or part. The Appeal Committee has power to vary the penalty imposed by the Disciplinary Committee by substituting a lesser penalty.
- 10.11. A decision of the Appeal Committee on an appeal shall be final.

11. RESTORATION

Restoration applications

- 11.1. Any former member who has been expelled from membership by a Disciplinary Committee may, on any date after two years from the date of expulsion, apply in writing to the Association for restoration of membership. Any former member who has applied unsuccessfully for restoration of membership in accordance with this procedure may re-apply on any date after two years from the date on which his/her application for restoration has been rejected. For the purposes of this rule, the date of expulsion is 5 days after the date of the letter of expulsion posted to the member, and the date of rejection is 5 days after the letter of rejection posted to the member.

Meetings to consider restoration applications

- 11.2. Any such application shall be considered by a meeting of all members of the Ethics Committee, 5 of whom will for these purposes form a quorum.
- 11.3. The applicant will be invited to supply to the Committee in advance of the hearing any documents, including signed statements and/or Affidavits in support of his/her application.
- 11.4. The Ethics Committee will also have copies of the papers set out at paragraph 9.5
- 11.5. The applicant will be entitled to be present and to address the Ethics Committee in person and/or to be represented by any one person of his/her choice, including a union representative or a practicing barrister or solicitor.



- 11.6. The application will be heard in private. The applicant or his/her representative may make any representations which they wish and may produce or refer to any documents.
- 11.7. The members of the Ethics Committee may ask the applicant and/or his/her representative questions.
- 11.8. The applicant and/or his/her representative may then address the Committee in closing.

Decisions on restoration

- 11.9. The Committee will then withdraw to consider its decision. The decision may be a majority decision. In the event of a tied vote, the Committee Chair shall exercise a casting vote. The Committee will inform the applicant and the Membership Committee in writing of its decision. If the application is upheld, no reasons for the decision need be given, but if it is rejected, the Committee should give an outline of the reasons for the rejection.
- 11.10. The decision of the Ethics Committee on restoration will be final.

12. POWER TO STAY PENDING THE OUTCOME OF ANOTHER PROCESS

- 12.1. In circumstances where another disciplinary, investigatory or legal process is taking place which, in the view of the Chair of the Ethics Committee, members of an Investigating Panel or Chair of the Disciplinary Committee (at the Preliminary Consideration, Investigation and Disciplinary Committee stages of this procedure respectively) either:

12.1.1 is likely to make findings that will be relevant to decisions on the complaint against the member being considered under this procedure; or

12.1.2 makes it impractical to make progress within the timescales set out in this procedure;

the Chair of the Ethics Committee, members of an Investigating Panel or Chair of the Disciplinary Committee (as applicable) shall have the power to stay this procedure at any stage prior to a final Hearing of the Disciplinary Committee for a period of up to six months at a time.

- 12.2. This power:



12.2.1 may only be exercised after consulting with the complainant, the member under investigation and Investigating Panel and Disciplinary Committee members that have been involved in the investigation to date; and

12.2.2 in all cases must be exercised consistently with the overarching objective's of the CTNRTA's Code of Ethics and Disciplinary Procedure particularly that of protecting patients and the public.

12.3 Written reasons will be given to the complainant and the member under investigation for any decision to grant a stay. The power to stay should not be exercised by members of an Investigating Panel or Chair of the Disciplinary Committee to create a total period of stays exceeding 12 months save where this is agreed by the Chair of the Ethics Committee.

13. REGISTRAR'S POWER TO SET ASIDE IN RESPONSE TO CONCERNS

Availability of the Registrar's set aside power

131 Certain decisions of the Ethics Committee Chair, Investigating Panel or Disciplinary Committee identified below may be set aside by the CTNRTA's Registrar and reconsidered in response to concerns raised by a complainant, a person who supplied information dealt with as a deemed complaint, or a complained of member.

Bases on which a decision may be set aside

132 The circumstances in which this power may be exercised are where the decision was:

13.2.1 not one which the Chair, Panel or Committee had the power to make in the circumstances;

13.2.2 made in a procedurally unfair manner that could have made a material difference to the outcome; or

13.2.3 otherwise unlawful.

Decisions that may be set aside

133 Where a complainant, a person who supplied information dealt with as a deemed complaint or a complained of member is dissatisfied with a decision under paragraphs 4.5 (Ethics Committee Chair's decision to refer to an Investigating Panel), 4.6 (Chair's decision to take no further action), , 5.8 and 5.10



(Investigating Panel's decision on whether there is a case to answer), 5.2 read with 5.8 or 5.10 (Chair's decision on whether there is a case to answer in the event of disagreement between Investigating Panel members), 8.6 (content of published note) and 12.1 (decision to stay investigation) they may, within 21 days of being notified of the decision, make written representations to the Registrar asking for the decision to be reconsidered and identifying which, if any, of the set aside criteria listed in paragraph 13.2 apply and why.

- 134 Where a complainant or person who supplied information that was dealt with as a deemed complaint is dissatisfied with a decision under paragraphs 8.2 or 9.1 (determination of complaint or penalties) they also may, within 21 days of being notified of the decision, make written representations to the Registrar asking for the decision to be reconsidered and identifying which, if any, of the set aside criteria listed in paragraph 13.2 apply and why.

Registrar's decision on whether to use the set aside power

- 135 When written representations are received under paragraphs 13.3 or 13.4, the Registrar shall determine, with legal advice and following further enquiries as necessary, whether the representations demonstrate to their satisfaction that the decision meets one or more of the criteria for set aside listed in paragraph 13.2 and, if so, they shall set it aside giving their reasons for doing so in writing. The set aside power shall be used on these bases only and not on the grounds of a mere difference in view about an issue of professional conduct.

Remaking a decision that has been set aside

- 136 If a decision is set aside, the Registrar and the person or persons who originally made it shall discuss whether it can properly be made again by that person or persons having regard to paragraph 1.3. The Registrar shall make the final decision on this question and, if appropriate and in consultation with the Chair of the Ethics Committee, appoint a substitute or substitutes to make the decision again. If the decision can properly be made again by the person or persons who made it, it shall be referred back to them by the Registrar.
- 137 In either case, the decision shall be made again promptly but not before the member has had a reasonable opportunity to make representations consistent with that they would normally have had at the stage of the Disciplinary Procedure at which the decision would normally have been made.

14. PROSPECTIVE EFFECT



- 14.1 This procedure was adopted on 15 September 2014 by the Association and shall have prospective effect to all complaints, deemed complaints and applications for restoration received after that date. The former Disciplinary Procedure shall continue to have effect for all other complaints, deemed complaints and applications for restoration.

15. PROVISION FOR OVERSEAS MEMBERS

- 15.1 Paragraphs 4.5 to 13 of this procedure do not apply to Overseas Members as defined in the Rules save in respect of issues concerning their practice identified as appropriate for investigation in the Code and breaches of the Association's Rules. When an issue concerning any other actual or potential breach of the Code by an Overseas Member is brought to the attention of the Chair of the Ethics Committee, whether as an actual or deemed complaint, and it would merit investigation if it concerned practise in the UK he or she shall refer it to this responsible authorities in the country where the Overseas Member resides and practises.
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